

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR SHEPHERD’S CREEK PLANNED DEVELOPMENT**

This Declaration of Covenants, Conditions and Restrictions (“Declaration”) is made, entered into, published and declared this 1<sup>st</sup> day of November, 2013, by Crews Development, L.L.C., a Tennessee limited liability company (the “Developer” or the “Declarant”), and any and all persons, firms or corporations hereinafter acquiring any of the within described property;

**WITNESSETH THAT:**

WHEREAS, the Developer owns certain real property consisting of approximately 23.739 acres situated and lying in Shelby County, Tennessee as more particularly described on Exhibit “A” attached hereto and incorporated herein by reference (the “Property”);

WHEREAS, the Developer has caused a plan for the development of a subdivision to be known as the Shepherd’s Creek P.D. to be prepared for the Property, providing for the development of the Property into residential lots, the development of certain Common Areas on the Property for the use, benefit and enjoyment of the owners of the residential lots in common with one another, (the “Development”) all as shown on plat of record in Plat Book \_\_\_\_\_ Page \_\_\_\_\_, in the Register’s Office of Shelby County, Tennessee (the “Plat”), as the same may be amended or recorded, and to which plat reference is hereby made for a more particular description of the subdivision. A copy of the Plat is attached hereto as Exhibit “B”;

WHEREAS, it is to the benefit, interest and advantage of the Developer and each and every person or other entity hereafter acquiring any interest in the Property that certain covenants, restrictions, conditions, easements, assessments, and liens governing and regulating the use and occupancy of the Property be established, fixed, set forth, and declared as covenants running with the land;

NOW, THEREFORE, in consideration of the premises, the Declarant does hereby publish and declare that all or any portion of the Property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations (and subject to all easements, conditions, restrictions, etc., as set out in the Plat hereto), all of which are declared and agreed to be in furtherance of a plan for the development and improvement of the Property, and the said covenants, conditions, restrictions, uses, limitations and obligations shall run with the land and shall be a burden and a benefit to the Declarant, their successors and assigns, and any person or legal entity acquiring or owning any interest in any portion of the said Property or any improvements thereon, their grantees, successors, heirs, executors, administrators, devisees, and assigns. Notwithstanding anything herein contained to the contrary, the Declarant or its successors or assigns, reserves the right for a period of twenty years from the date of the official recording hereof to unilaterally amend the covenants and restrictions contained in this plat and to re-record said plat for any reason. The Declarant and/or the Architectural Committee or its successors or assigns, in its sole discretion, deems necessary, including, but not limited to, to meet the requirements of any governmental agency, on the federal, state or local level; for the

requirements of any mortgage lender; or for any reason the Architectural Committee or its successors or assigns, deems advisable for the orderly development of the subdivision, including, without limitation, the reduction of the minimum heated floor area of any single family residence, exclusive of porches and garages, to be constructed on a lot, the deletion or reconfiguration of any one or more lots then owned by the Declarant or any of its members, its successors or assigns, and the realignment, and/or the relocation of easements for utilities or drainage purposes. No lot owner shall be required to execute or ratify the amendment and re-recording of the plat which Declarant or its successors or assigns amends and re-records for any purpose it deems fit. This provision cannot be amended for a period of twenty years without the consent of the Declarant or its successors or assigns.

In the event any covenant is violated, the Declarant, the Shepherd's Creek Homeowner's Association and/or its designated agents reserve the right to assess against the subject lot and/or owner a fine of \$500.00 per day for each day the violation remains unresolved and not corrected. If the violation is construction related, any such work or construction performed shall cease until the plans and the construction have been approved by the Declarant, the Shepherd's Creek Homeowner's Association and/or its designated agents. If the plans and/or construction activity is not approved, the lot and the improvements thereon shall be immediately returned to their respective conditions prior to commencement of such work or construction.

Neither the Declarant, the Architectural Committee nor the Association shall be required to pursue enforcement of any alleged violation by an owner of a lot of a use restriction set forth herein. Any failure to so pursue by the Declarant, the Architectural Committee or the Association shall not serve as a waiver of such violation, and the Declarant, the Architectural Committee or the Association shall have the right to enforce any use restriction herein which is violated by an owner of a lot, regardless of any prior election to not pursue enforcement thereof.

## **ARTICLE I – DEFINITIONS**

**1.01** “Architectural Review Committee” shall mean the designated group appointed by the Declarant and/or Developer with the power to review and control all improvements within the Development, as well as to make such exceptions to these Covenants, and to waive particular violations, as deemed necessary, appropriate or proper for the orderly development of the Property.

**1.02** “Association” shall mean and refer to Shepherd's Creek Homeowners' Association, Inc., a Tennessee not-for-profit corporation, its successors and assigns. The Association's Charter and Bylaws are attached hereto as Exhibits “D” and “E”, respectively and are made a part hereof. Every Owner, as defined herein, of a Lot in the Development automatically shall and must be a member of the Association by virtue of the ownership of a Lot. The Association, at any time that it is the record owner of a Lot or Lots within the Development, shall not be considered an Owner of a Lot, shall not be a Member of the Association, shall not be entitled to vote and any Lot owned by it shall not be subject to assessments hereunder.

**1.03** “Board of Directors” shall mean the designated managing group of the Association having all powers and duties necessary for the administration of the affairs of the Association and the Development.

**1.04** “Common Area” shall mean all real property owned or leased by the Association and all improvements located upon such real property, held for the common use and enjoyment of the Owners. The Common Area initially owned by the Association is shown on the Plat of the Development, The exact legal description of the Common Area shall be as described in one or more deeds from the Developer to the Association.

**1.05** “Declarant” shall mean the person or entity declaring these Covenants, Conditions and Restrictions.

**1.06** “Declaration” shall mean this Declaration of Covenants, Conditions, and Restrictions and any supplementary declaration filed hereto, as this Declaration may be amended from time to time in accordance with its terms.

**1.07** “Developer” shall mean the entity preparing the real property for residential use.

**1.08** “Development” shall mean the subdivision of land known as Shepherd’s Creek PD, recorded in the Register’s Office for Shelby County, Tennessee at Plat Book \_\_, Page \_\_. as shown in Exhibit “A” attached hereto and incorporated herein by reference.

**1.09** "Easement Areas" shall mean all those areas shown on the Plat, including any Common Area, upon or within which areas any common element or common improvement is located, including without limitation, fences, landscaping, lighting, entry way treatment or subdivision identification sign, irrigation system or park equipment which may now or hereafter be placed on the property or other common improvements, if any, shall be located. The structures and landscaping within these areas shall be maintained by the Association. The Developer, Declarant and/or the Association shall have an exclusive perpetual easement and right of access, at any time, to enter these areas for the purpose maintenance, landscape planting and/or landscape replacement or other enhancements.

**1.10** “Family” shall mean and refer to only those persons who live in the same household, or are related, such as father, mother, son, or daughter.

**1.11** “Home Builder” shall mean a person or firm, whose business is the construction of dwellings

**1.12** "Improvements" shall mean the structures, walls, pavement, plantings and other additions built or placed on the Lots. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within said Lot, as referred to hereafter. In the event, that by reason of construction, settlement, reconstruction or shifting of the Improvements, any minor part of the Improvements reasonably intended for a particular Lot lie outside that Lot, an easement of use shall apply thereto in favor of the Lot to be benefited.

**1.13** "Lot" shall mean and refer to the plots of land so designated on the Plat for Phase I, as shown on Exhibit "B" hereto, and shall also, at the Declarant's sole discretion, upon the recordation of their respective plats, include those lots planned for subsequent phases of the Shepherd's Creek P.D. Subdivision to be located upon the Additional Property. For all purposes hereunder, it is understood and agreed that the Declarant shall be the Owner of all the said Lots, save and except only those particular Lots which Declarant conveys in fee simple title by recordable deed from and after the date hereof. Ownership of a Lot hereunder shall include an undivided pro rata interest in the Common Area owned by the Association, as shown on Exhibit "B".

**1.14** "Member" shall mean and refer to every Person that is a Member of the Association.

**1.15** "Owner" shall mean and refer to the Person or Persons, which is or are the record owner of fee simple title to any Lot, excluding those having such interest merely as security for the performance of an obligation, provided however that the purchaser at a foreclosure sale or trustee's sale be deemed an Owner.

**1.16** "Person" means any individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

**1.17** "Plat" shall mean the plat of record for Shepherd's Creek PD, as amended recorded at Plat Book \_\_, Page \_\_ in the Register's Office for Shelby County, Tennessee..

**1.18** "Property" or "Properties" shall mean the real property described in Exhibit "A" attached hereto and such additions thereto as may hereafter be made from Additional Property in accordance with recorded plats.

## **ARTICLE II. - PROPERTY, ROADS AND SEWERS**

**2.01.** The Property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Collierville, Shelby County, Tennessee and is more particularly described in Exhibit "A" attached hereto and made a part hereof.

**2.02.** There shall be no private drives in the Development. Any and all streets, as shown in Exhibit "B" shall be dedicated to the Town or County within which the development is located or other appropriate governmental body. The responsibility for payment of maintenance and/or repair expenses of all streets will be the responsibility of the Town or County within which the development is located or the appropriate governmental body,

**2.03.** The Additional Property which is intended to be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Collierville, Shelby County, Tennessee and is more particularly described in Exhibit "C" attached hereto and made a part hereof.

## **ARTICLE III – PROPERTY RIGHTS**

**3.01.** Every Owner shall have a right and easement of use and enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following conditions and restrictions:

- a.** The right of the Association as provided in its Articles and Bylaws, to limit the numbers of guests of Members to use the Common Areas at any time;
- b.** The right of the Association to provide for and establish the easements and rights-of-ways on all roads and to regulate parking, motorized and non-motorized vehicular traffic, and to maintain the walks and pathways within the Development;
- c.** The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purposes of improving the Common Area and facilities;
- d.** The right of the Association to suspend the voting rights and/or right to use the Common Area by a Member for any period during which any assessment remains unpaid; or for a period not to exceed thirty days (30) for any infraction of its published rules, regulations, or for any violation of these Covenants, Conditions and Restrictions by such Member, Member's Family or guests or invitees of the Member or Member's Family.
- e.** The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by two-thirds of the Members entitled to cast votes. No such decision or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Members entitled to cast votes has been recorded, agreeing to such dedication or transfer. Notice of any proposed dedication shall be sent to every Member not less than thirty (30) days in advance of such dedication or transfer.
- f.** The Developer, Declarant, and/or the Association shall have a non-exclusive perpetual easement and right of access to (i) the fence along Shea Road and Shepherd's Creek Lane as provided herein and (ii) the landscape areas along Shea Road and Shepherd's Creek Lane as dedicated on the Plat, as amended, but no individual Members shall have such rights. The landscape area shall be initially installed and maintained by the respective Lot Owners of Lots 1, 2, 3 at their expense, but subject at all times to review, approval, maintenance, and replacement requirements, by the Architectural Review Committee of the Association.

**3.02.** The Common Area and any common elements cannot be mortgaged, conveyed or in any way used as security without the consent and approval of not less than two-thirds (2/3) of the Members, excluding the Declarant.

#### **ARTICLE IV – THE ASSOCIATION**

**4.01.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Lot, which is subject to

assessment, by the Association. Ownership of such Lot shall be the sole qualification for membership.

**4.02.** Members shall be entitled to one vote for each Lot owned, unless otherwise provided in the Bylaws of the Association. When more than one Person shall hold an interest in any Lot, all such Persons shall be Members, and the vote for such Lot shall be exercised in accordance with the provisions of the Bylaws of the Association.

**4.03.** At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of the Members representing a fifty-one percent (51%) majority of the total votes cast with respect to any question, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute or of the corporate Charter, or this Declaration, or of the By-Laws, a different vote is required, in which case such express provision shall govern and control. The vote of any membership which is owned by more than one Person may be exercised by any of the Persons present at any meeting unless an objection or protest by any other Owner of such membership is noted at such meeting. In the event all of the co-Owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

**4.04.** A Member may appoint any other Member or the Developer or any other Person permitted by law or by the By-Laws as his proxy. In no case may any Member (except the Developer) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's By-Laws.

**4.05.** The presence, either in person or by proxy, of Members representing at least ten percent (10%) of the total votes entitled to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

## **ARTICLE V. - MAINTENANCE, REPAIR AND INSURANCE RESPONSIBILITIES**

**5.01.** The Association shall provide and pay for all maintenance and expenses for the Common Area as indicated upon the Plat, as well as any additional plats recorded upon the Additional Property. Upon the conveyance by the Developer to the Association of an area designated upon the Plat or any additional plats as common open space or Common Area, Developer shall have no further liability or obligations hereunder or otherwise, of any nature whatsoever, with respect to any maintenance or expenses for the property so conveyed to the Association. The Association will satisfy any and all requirements imposed by the Town of Collierville or any other governmental entity with respect to the Common Area. The real property taxes on the Common Area, if any, shall also be the responsibility of the Association.

**5.02.** Each Owner of a Lot shall be responsible for all interior and exterior maintenance, painting, repair and upkeep on such Owner's Lot and the improvements thereon. Each Owner shall also be responsible for the upkeep and maintenance of the individual yard, landscaping, driveways, curbs and sidewalks thereof, and for maintaining all side and rear yard swales. All fences other than fences located on the Common Area shall be maintained by the Owner of the Lot on which the fence is erected except as provided below. In the event an Owner of a Lot in the Development shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Declarant, Board of Directors, or the Association, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the buildings and any other Improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the current year assessment to which such Lot is subject. The purpose for such exterior maintenance and such exterior maintenance shall only be undertaken in extraordinary circumstances in which the failure to act would jeopardize the value of properties in the Development.

**5.03.** The location of any fence in any area within the Lot shall be approved by the Architectural Review Committee as provided in Article VII of this Declaration. No fence shall be allowed in the front yard of any Lot or side yard of any Lot except as specifically provided for herein. If an approved fence is located on a property line between two Lots, it shall be maintained and repaired jointly by the Owners of both Lots. There shall be an access gate upon each of said approved fences for the purpose of allowing utility personnel and other public employee's access to the Lots in the performance of their respective public duties. Notwithstanding the provisions of this section, the Developer shall install and the Association shall own and maintain a fence along Shea Road and Shepherd's Creek Lane.

**5.04.** The Association shall keep all insurable Improvements and fixtures located on the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

**a.** In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owner. In the event that the Association is maintaining blanket casualty and fire insurance on the Dwelling Units, the Association shall repair or replace the same from the insurance proceeds available.

## ARTICLE VI – COVENANT FOR MAINTENANCE ASSESSMENTS

**6.01.** All Owners, by acceptance of a deed thereof, whether or not it shall be so expressed in any such deed or other conveyance, are deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments to be fixed, established and collected from time to time as provided herein. The assessments, together with interest, costs, and costs of collection (including reasonable attorney's fees), shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to the successors in title of that Owner unless assumed expressly by them. The annual assessments and special assessments shall commence and accrue as of the conveyance of a Lot to a Member.

**6.02.** Annual assessments, shall be equal to the Member's proportionate share of the sum required by the Association, as estimated by its Board of Directors and/or its managing agent (, to meet its annual expenses, including, but in no way limited to, the following:

- (a) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any; and
- (b) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any; and
- (c) The cost of extended liability insurance and the cost of such other insurance as the Association may effect; and
- (d) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and
- (e) The estimated cost of repairs, maintenance and replacement of the common elements and improvements, including, without limitation, perimeter fences, irrigation system, wood and masonry walls, lighting, landscaping, jogging trails, entry way treatment and such other improvement which may be placed upon Common Areas and upon common easement areas.
- (f) The maintenance and utility cost of entry lighting shall be the responsibility of the Association. The entry lights shall be separately metered.
- (g) The maintenance and utility cost of irrigation systems shall be the responsibility of the Association, and the irrigation system shall be separately metered.

Except as provided in Paragraph 10 of this Article VI, the Board of Directors of the Association and/or the Managing Agent shall determine the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the By-Laws.



Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a letter signed by an officer of the Association or the Managing Agent setting forth whether the assessment on a specified Lot has been paid.

**6.03** In addition to the annual assessments authorized by this Article, the Association may levy in any assessment year a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement for which the Association is specifically responsible or for such other purposes as the Board of Directors may consider necessary.

**6.04** In the event of any emergency situation, condition or occurrence affecting the life, health, safety or welfare of Members or Property of Members, the Board of Directors, acting pursuant to this paragraph, may declare an emergency assessment in such amount and payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. Such assessment shall be borne pro rata by all Members of the Association. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment was made in good faith.

**6.05.** Written notice of any meeting held for the purpose of taking the actions authorized under Article 6 shall be sent to all Members not less than thirty (30) days nor more than sixty days (60) in advance of the meeting. Such notice may be delivered through traditional or electronic mail.

**6.06.** Both annual and special assessments must be fixed at the same rate for all Lots, and will be collected on an annual basis.

**6.07.** The Board of Directors, may assess an Owner for the cost of cleaning up his property if necessary, removing or correcting a nuisance caused by the Owner, or for the cost of enforcing the rules and restrictions, including but not limited to a suspension of the use of recreational facilities and Common Area.

**6.08.** Any assessments that are not paid within 30 days after the due date shall be delinquent.

a. If the assessment is not paid within such 30-day period, an administrative fee of \$100.00 shall be assessed to Owner, and the assessment shall bear interest from the due date at the rate of the lesser of (i) the maximum rate of interest allowable under applicable law or (ii) 18% per annum. To evidence the lien of any unpaid and delinquent assessments, the Association shall prepare a written notice setting out the amount of the unpaid obligation, the name of the Owner of the Lot and a description of the Lot. The notice may be executed by any member of the Board of Directors of the Association and/or the managing agent and shall be recorded in the Shelby County Register's office. This notice may also be distributed to Members of the Association. The personal obligation of any Owner to pay such assessment shall, however, remain his personal

obligation for the statutory period, and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration, or of any installment thereof, may be maintained without foreclosing or waiving the lien created hereby. Any interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided herein by nonuse of the Common Area or abandonment of the Owner's Lot.

**b.** For the purpose of enforcing the lien granted hereunder for any unpaid or delinquent assessments, each Owner irrevocably grants to the Association and its Board of Directors the power to sell his Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. The Association is hereby authorized and empowered to enter and take possession of the Lot, and before or after such entry to advertise the sale of the Lot for twenty one (21) days by three weekly notices in some newspaper published in Shelby County, Tennessee, giving the time and place of such sale and by written notice of the time and place of such sale to the Owner of the Lot at his last known address. Any sale shall be free from equity of redemption, statutory right of redemption, homestead, dower, and all other rights and exemptions of every kind, all of which are hereby expressly waived by the Owner. The Association shall thereafter execute a conveyance to the purchaser in fee simple, and deliver possession to the purchaser, which the Owner binds itself shall be given without obstruction, hindrance or delay. Any sale hereunder shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust. The proceeds of any such sale shall be applied first to the payment of expenses associated with the sale; of protecting the Lot; and the expenses of litigation including reasonable attorney's fees; and second to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust (unless sold subject thereto); and third, to the payment of all amounts due the Association under the terms of this Declaration; and the balance, if any, to the Owner whose Lot is sold, his successors and assigns. Upon any default in the payment of an assessment, the Board of Directors shall have the right to all rents, issues, and profits from the Lot in Default and shall have the right to secure the payment through notice to those in possession of the Lot. The Association may notify the holder of the mortgage on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the Owner of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of ninety (90) days.

**6.09.** The lien of the assessments provided for herein shall automatically be subordinate to the lien of any first mortgage, deed of trust or any lien of deed of trust or mortgage instruments or encumbrances made in good faith and for value received, duly recorded on the Lot prior to the assessment of the lien thereon or duly recorded on the said Lot after receipt of a written statement from the Board of Directors or the Managing Agent reflecting that payment made on such lien was current as of the date of recordation of the said first mortgage, deed of trust, mortgage instrument or encumbrance.

**6.10.** Sale or transfer of any Lot shall not affect the continuing force and validity of an assessment lien hereunder. The sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any conveyance to the holder of such mortgage in lieu of a foreclosure thereof, shall extinguish the lien of such assessments as to any assessments becoming due prior to such sale or conveyance. No other sale or transfer shall relieve a Lot from liability for any assessment thereafter becoming due or from the lien thereof.

**6.11.** No amendment to Section 6.09 or 6.10 shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

**6.12.** Any recorded first mortgage or deed of trust secured by a Lot in the Development may provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby) but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof, and the protection extended to the holder of any such mortgage (or the indebtedness secured thereby) by reason of Section 6.11 shall not be altered, modified or diminished by reason of such failure.

## **ARTICLE VII – ARCHITECTURAL CONTROL**

**7.01.** These architectural guidelines are to ensure neighborhood preservation and encourage neighborhood aesthetics. Additionally, the architectural guidelines are designed to preserve, protect and enhance the property values of homes within the community. The guidelines are to ensure the improvements within the development are generally harmonious, aesthetically consistent, conform to good architectural standards and provide for a residential development with common elements and/or features. The architectural guidelines set forth herein shall apply to each Lot and/or Parcel to ensure the best use and consistent development of each. For the purpose of insuring the orderly development of Shepherd's Creek the Developer hereby establishes an Architectural Review Committee ("ARC") with the power to review and control all improvements within the Development, as well as to make such exceptions to these Covenants, and to waive particular violations, as the ARC shall deem necessary, appropriate or proper. Neither the Declarant, the Architectural Committee, or any agent thereof, shall be responsible in any way for any violations or defects in any plans or specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

**7.02.** The ARC shall serve until the last lot in the development is built upon. After the last lot has been built on, the Architectural Review will be the responsibility of the Shepherd's Creek Homeowner's Association. The Architectural Review Committee may charge a fee for reviewing and controlling improvements within the development. Fees may be distributed as compensation to participating members of the AR.

**7.03** With the exception of improvements made by the Developer, no structure of any kind or nature or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the Lots within the Property nor shall any existing structure, fence

or barrier upon any lot be painted or altered in any way which materially changes the exterior appearance thereof, without the written consent of the ARC; nor shall any new use be commenced on any Lot unless plans and specifications (including a description of any proposed new use) shall have been submitted to and approved in writing by the ARC. In the event any covenant is violated, the Declarant, the Shepherd's Creek Homeowner's Association and/or its designated agents reserve the right to assess against the subject lot and/or owner a fine of \$500.00 per day for each day the violation remains unresolved and not corrected. If the violation is construction related, any such work or construction performed shall cease until the plans and the construction have been approved by the Declarant, the Shepherd's Creek Homeowner's Association and/or its designated agents. If the plans and/or construction activity is not approved, the lot and the improvements thereon shall be immediately returned to their respective conditions prior to commencement of such work or construction.

Approval to start any type of improvement, new construction, change, addition or alteration will not be given until a set of plans showing the full nature and impact of the proposed improvement has been submitted as required, appropriately reviewed and approved by the Architectural Committee or its designated representative.

The Architectural Committee utilizes a simple review process that is designed to assure smooth coordination between the Committee and the Owner's professional representative. The committee may ask for two submittals:

- a. Schematic and/or Preliminary submittal. (Homeowner's ideas, not highly detailed.)**
- b. Final submittal. (Final working drawings suitable for a building permit.)**

**a. Schematic and/or Preliminary Plan Review**

This Schematic and/or Preliminary Plan Review is strongly encouraged. This optional step allows an Owner to submit the design and layout concept to the ARC for preliminary comments and suggestions. The ARC will either make recommendations or authorize the Owner to proceed to the next step.

The following drawings are encouraged at a minimum, as a submission for preliminary review:

1. Site plan.
2. Exterior appearance (perspective, photographs, elevations, etc.).
3. Preliminary floor plan, all levels.

**b. Final Submission Requirements**

Final review by the ARC is concerned with working drawing content and aesthetic considerations only. Neither the ARC nor the Developer shall be responsible for engineering design or code compliance matters.

The following drawings are required for final review:

1. Site plan (2 copies with 1 copy to be retained by ARC or Declarant, together with 1 copy in digital form acceptable to the ARC or Declarant) at a minimum of 1" = 20'-0". Drawings to include:
  - a. North arrow and scale.
  - b. Property lines with dimensions and bearings.
  - c. Dwelling to be indicated as exterior walls with entry area and stairs delineated and roof and deck lines shown and noted.
  - d. Finished floor elevations (FFE) indicated.
  - e. Setback limits shown.
  - f. Building accurately located from property lines.
  - g. Location, dimension, and materials for walks and driveways.
  - h. Proposed location of HVAC unit and trash enclosure with screening location of each.
  - i. Proposed utility meter location (s).
  
2. Architectural plans (2 copies with 1 copy to be retained by ARC or Declarant, together with 1 copy in digital form acceptable to the ARC or Declarant) of construction documents and specifications for final review are to be submitted. These drawing should verify that the final plans and drawings conform to the covenants and restrictions set forth in this Declaration.
  - a. Foundation plans with proper dimensions shown at minimum of 1/4" = 1'-0".
  - b. Floor plans at minimum 1/4" = 1' -0".
  - c. Elevations at minimum 1/4" = 1' -0", all four elevations.
  - d. Roof plans at minimum 1/8" = 1'-0"
  - e. Structural plan only if structure is not shown in principal plans.

At the option of the ARC, a bona-fide sample built on site of the proposed siding material, roof material, exterior paint or stain, trim color sample, and door and window colors samples, if different from trim shall be supplied.

The Architectural Committee reserves unto itself the right to waive, at any time, any of the aforementioned submission requirements or to add other submission requirements/contents as necessary.

3. After approvals have been given by the ARC and before construction can begin, building permits must be obtained from the Town of Collierville, and a copy of the same provided to the ARC or Developer in an acceptable digital format.

**c. Final Submission Procedures**

Application format: Each submission must be accompanied by the required information

as outlined in the final submission requirements in order to be scheduled for review.

Final approval from the ARC shall be dated and in writing. It shall be effective for twelve (12) months after the approval. If construction is not commenced within six (6) months of approval, a new submission for final approval is required, with an additional submission fee. In the event that approval of such plans is neither granted nor denied within sixty (60) days following submission to the ARC, said request shall be deemed approved without further action of the ARC.

**d. Liaison and Timing**

To speed the review and approval process, all submittals should be complete. Choosing a professional to draw the proposed design, design changes and/or alterations is very critical to the approval process. Over the years, we have found most approval problems stem from poor design submittals. To avoid such problems, we strongly recommend that all new construction, design changes and/or alterations be prepared by a design professional. It is hopeful that an outright or qualified approval will be given on the first submission. All approvals shall be in writing and signed by an Architectural Committee member or its representative. Until further notice, all submittals should be delivered or mailed to:

David Gribble  
Crews Development  
3035 Center Oak Way, Suite 101  
Germantown, TN 38138

**e. Future Improvements Review**

The covenants and restrictions require all proposed designs be submitted to and approved by the Architectural Committee or its representative. This requirement encompasses all construction, initial designs, later additions or alterations of any home, structure, wall, fence, walks, driveways, or exterior element. Additionally, this includes, but not limited to, the existing home, fencing, outdoor lighting, service buildings, storage buildings, accessory structures, pools, swings etc.

A request for preliminary improvement review with the ARC should be accompanied by the following submissions (including 1 copy in digital form acceptable to the ARC):

1. Site plan of proposed improvements to scale.
2. Letter of intent with description and purpose of improvements.
3. Material and color samples (preferable to match existing materials)

**f. Architectural Design Guidelines**

1. The minimum heated livable area of any residence, excluding garages, basements, porches, storage rooms, workshops, etc., shall be not less than 3,500 heated square feet for a two-story residence. Ceiling heights are a minimum of 9

feet of the first and second floor of the residence.

2. The majority of the dwelling must be brick or stone. Brick must be queen-sized, painted brick must be paint-grade queen-sized. Dormers and any material on dormers should be brick, copper, Hardiplank-style fiber cement siding, cedar, or a similar exterior material to be approved by the ARC. The Declarant reserves the right to grant exceptions to this restriction under special architectural design using its sole and absolute discretion.
3. All street facing (front elevations for corner lots) windows must be true or simulated divided light. Simulated divided light is defined as permanently applied grill bar on inside and/or outside surface of glass. All windows must be approved by the ARC. Any colored or decorative glass on street facing elevations must be approved by the ARC.
4. Garages must be a minimum of three-car and must be side-entry or rear-entry. Declarant reserves the right to review and approve garages facing the street provided street-facing garages shall be a minimum of 20 feet behind the front facade of the dwelling they serve. Corner lots must also be approved by the Declarant for a garage facing the side or primary street. No garage door opening shall be taller than ten feet (10').
5. All Lots within the Development may have a mailbox suitable to the design of the home with approval of the ARC or may use a prototype mailbox selected by the Developer to be used within the Development.
6. Yards must be solid sod with installed irrigation (at least in the front yard) and included in final submission review to the ARC.
7. All Lots must comply with the Town of Collierville's requirements to plant and maintain (and if necessary replace) one required deciduous tree for every 40 feet of frontage, existing tree cover permitting, with a minimum of two (2) trees in the front yard of each Lot, having a trunk diameter of not less than 3 inches (measured at a height of one (1) foot above the base of the tree). Trees shall be selected from Collierville's Design Guidelines Appendix III list.
8. Heating, air conditioning and plumbing vents cannot penetrate the roof on the front side of the dwelling, but, if necessary, may be oriented to the side of the dwelling, and shall be painted to blend with the color of the roof.
9. All mechanical, electrical and electronic equipment including air conditioning condensing units and compressors will be located behind the front building line of the dwelling. All such equipment must be fenced or landscaped so it cannot be seen from street. No window air conditioning units will be permitted.
10. Setback lines will be as indicated on the Plat. The Developer reserves the right to absolute control of the precise site and location of any structure upon all parcels.

11. Architectural design and landscaping must be compatible with other residences in the Development.

12. Each residence shall be guttered as required by the ARC.

13. All roofing shall be dimensional shingle and must be of weathered wood or driftwood color. Specialty roofing such as tile, granite, slate or metal must be approved in writing by the Developer or the ARC. Chimneys must be brick or stucco veneer of an approved color. No stucco board or siding can be used on chimneys unless approved by the Architectural Committee or its designated representative. Copper flashing is the preferred material and should be used where flashing is visible. However, unless copper, all visible flashing must be painted to match the roof color unless otherwise approved by the Architectural Committee or its designated representative.

14. Private sidewalks and driveways must be of a washed pea gravel brown aggregate finish, 3500 psi, and must be approved in advance by the Developer or the ARC. Expansion joints and/or controlled joints are required. All driveways and parking areas must be surfaced. No sidewalks, driveways, or other concrete visible from the streets within the development shall be painted, stained or otherwise decorated without the approval of the Developer or the ARC. Maintenance and repairs of all sidewalks and driveways is the responsibility of the homeowner

15. All exterior colors for initial construction and all subsequent repainting, renovation or restoration must also be approved by the ARC. A sample board may be required to be constructed onsite which would include the brick, mortar color, trim color, and roofing. Re-roofing as to materials, weight, color, and texture must also be approved by the ARC. No awnings or exterior shades may be attached to the front or sides of any building.

**7.04.** The ARC may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on the Lots including, without limitation, the exterior lighting and planting, disapproval of the architectural styles or details or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the ARC at any time and no inclusion in or omission from or amendment of any such rule or statement shall be deemed to bind the ARC to approve or disapprove any feature or matter subject to approval or to waive the exercise of the ARC's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the ARC in its discretion to disapprove such plans or specifications or any features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other lot. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter provided that the plans and specifications as approved in any condition attached to any such approval have been adhered to and complied with in regard to all structures,



fences, or barriers on and uses of the Lot in question.

**7.05.** In the event the ARC fails to approve or disapprove any plans and specifications as herein provided within sixty (60) days after submission thereof, the same shall be deemed to have been approved as submitted and no further action shall be required.

**7.06.** If any structure, fence, hedges, or barrier shall be altered, erected, placed or maintained upon any Lot contained therein or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the ARC as required herein, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of the restrictions herein and without the approval required herein and upon written notice from the ARC any such structure, fence or barrier so altered, erected, placed or maintained upon any Lot, in violation hereof shall be removed or re-altered, and such use shall be terminated so as to extinguish such violation.

**7.07.** If, in fifteen (15) days after the notice of such violation, the Owner of the Lot upon which such violation exists shall not have taken reasonable steps towards the removal or termination of the same, the Association by its officers or directors shall have the right through its agents and employees to enter upon such Lot and to take such steps as may be necessary to extinguish such violation and the costs thereof shall be a binding personal obligation of such owner as well as a lien upon the lot in question upon the recording of such with the Office of the Register of Shelby County, Tennessee.

**7.08.** Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the ARC, the ARC may, upon written request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure and the Lot on which such structure is placed and stating that the plans and specifications, location of such structure and the use or uses to be conducted thereon have been approved. Preparation and recording of such certificate shall be at the expense of the owner or owners of such Lot. Any certificate of compliance issued in accordance with the provisions of this paragraph shall be prima facie evidence of the facts therein stated and as to any purchaser or encumbrancer in good faith and for value or as to any title insurer, such certificate shall be conclusive evidence that all structures on the section and the use or uses described therein comply with all the requirements as to which the ARC exercises any discretionary or interpretive powers.

**7.09.** The ARC will charge a reasonable fee of \$500 for the examination of any plans and specifications submitted for approval pursuant to these restrictions payable at the time such plans and specifications are submitted.

**7.10.** Any agent of Developer or the ARC may, at reasonable times, enter upon and inspect any Lot and any improvements thereon for the purposes of ascertaining whether the maintenance of such Lot and the maintenance, construction or alteration of structures thereon are in compliance with the provisions of these restrictions, and no such person shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**7.11.** The Association or any Owner of any Lot contained within the Subdivision shall

have the right to enforce by any proceeding at law or in equity all conditions, restrictions, covenants, reservations and easements herein or hereinafter contained or otherwise contained in any deed to any Lot in the Subdivision. Failure by any owner to enforce any of such proceedings shall in no event be deemed a waiver of the right to do so thereafter.

**7.12. Non-Liability.** Neither the Board of Directors, nor the ARC, nor any employee, owner, architect, consultant or agent thereof shall be responsible or liable in any way regarding any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, nor shall the above be liable for or responsible for any exterior or interior plans of structures built or to be built on any lot or the review thereof.

### **ARTICLE VIII – RESTRICTIVE COVENANTS AS TO USE**

Covenants and Restrictions are to ensure neighborhood preservation and encourage neighborhood aesthetics. The general purpose of these covenants and restrictions are to ensure and protect property values within the neighborhood. The covenants and restrictions encourage excellence by providing neighborhood standards and by controlling some of the activities within the neighborhood.

**8.00.** Owner's right of use of his Lot is subject to all laws, ordinances, rules and regulations of the applicable municipal and other governmental authorities. In the event of a difference between the use restrictions contained in said ordinances, rules and regulations and laws and the use restrictions set forth in this Article, the more restrictive provision shall apply.

**8.01.** No Lot shall be used except for residential purposes and no building shall be erected, altered, placed, or permitted to remain on any Lot other than one single family dwelling, unless otherwise provided for herein. No Lot shall be subdivided.

**8.02.** No trailer, tent, shack, garage, outbuilding, or barn shall be erected on any Lot, temporarily or permanently, unless approved by the ARC. In no event shall the ARC approve a proposed accessory building or other free standing structure exceeding four hundred (400) square feet, or structures which are a manufactured unit or constructed from a kit. All buildings or structures erected upon the Lot shall be of new construction, built upon a slab and constructed to equivalent standards and of a like method to the residence on said Lot. No buildings of any type, accessory structures or structures of any type shall be moved from other locations onto the Lot. No structures of a temporary character, house trailer, trailer, mobile home, modular home, tent, shack, garage, barn, or other out buildings shall at any time be used as a residence, temporarily or permanently.

**8.03.** No Lot, nor any building erected thereon shall at any time be used for the purpose of any trade, business, manufacturing, or for public amusements, excluding home based businesses approved by the Town of Collierville. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

**8.04.** Each Lot shall be conveyed as a separately designed and legally described freehold estate subject to the terms, conditions and provisions of this Declaration and all easements, restrictions and covenants set out in the Plat. No Lot may be further subdivided, and any joint form of ownership of a Lot must be of an undivided interest. Any joint owners shall have the rights of an Owner hereunder and each shall be subject to all restrictions and obligations of an Owner.

**8.05.** All utility connections, including telephone service lines and cable TV will be underground buried cable from the service point to any structure.

**8.06.** The Declarant and/or the Developer reserves unto itself the right to approve additional and separate restrictions at any time which restrictions may differ from Lot to Lot.

**8.07.** Notwithstanding any contrary provisions contained herein, the Developer shall be permitted to maintain, during the period of development of the Subdivision and sales of the Lots, upon such portion of Property or the unsold Lots as Developer deems, in the sole opinion of Developer, necessary or reasonably required, convenient or incidental to such development or sales including but not limited to, a business office, storage areas, construction yard signs, model units and sales office.

**8.08.** No reptiles, horses, livestock, swine or poultry of any kind shall be raised, bred or kept on any of the Lots. Dogs, cats or other household pets (exclusive of any reptiles or animals mentioned in the immediately preceding sentence) may be kept on the Lots provided they are not kept, bred or maintained for any commercial purpose as regulated by Town ordinance. All household pets shall be confined within homes or fenced areas or restrained by leash at all times.

**8.09.** Only one "For Sale" sign may be placed in an owner's yard and it must be approved in advance and in writing by the ARC or its designated representative. The foregoing covenant shall not apply to signs, if any, regarding development of construction by the Developer, its agents and assigns, during the development and sales period of lots and/or homes in the subdivision. No unsightly objects, or nuisances shall be erected, placed or permitted to remain on any lot, nor shall any lot be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner of any lot or any residence thereof.

**8.10.** No exterior television, aerials, antennas, nor any satellite dishes of any sort shall be placed, allowed or maintained upon the property or any improvements to be located upon the Property unless approved by the ARC and the Association. The size and location of all satellite dishes must be approved by the ARC and/or the Association prior to installation. All exterior speakers are subject to regulation by the Association with regard to decibel levels at Lot boundaries.

**8.11.** All out-buildings (including storage buildings and playhouses), equipment, air conditioning units, electrical transformer, meters, garbage cans, service yards, dog pens or runs, woodpiles or storage piles, vegetable gardens, compost containers and pool equipment shall be kept screened by planting or fencing so as to completely conceal them from view of all streets and neighboring Lots. Further, any and all of the foregoing items, along with any basketball goals or other playground or sports equipment shall be located and placed no closer to any street

than the back of the house. "Back of the house" as used in this paragraph shall mean that part of the principal dwelling farthest away from the street and also facing such street. Gazebos and cabanas may be situated without the aforesaid screening if approved by the ARC.

**8.12.** All garbage and recycling receptacles must be hidden from view by fencing or stored in the garage. No Lot shall be used as a dumping ground for rubbish, trash, garbage, or other waste. All such waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition. All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.**8.13.** No outside clothes line or other items detrimental to the appearance of the property shall be permitted.

**8.14.** No fence, wall, hedge, or other dividing instrumentality may be erected or maintained on any Lot which is higher than seventy-two inches (72") in height. All fences must be approved by the ARC. All fences must be constructed of brick, wrought iron, or cedar. All cedar fences with street frontage must be capped and trimmed in a manner similar to the fences located on the Common Area. All wood must be sealed and the finish color approved by the ARC. No fence may be erected on any Lot closer to the street than the mid-point of the side of the dwelling. Notwithstanding all of the foregoing provisions of this paragraph, the ARC shall have the right to grant approval for such variations, waivers or exceptions to any or all of the above restrictions related to fences as it, in its sole discretion, shall deem proper.

**8.15.** Private sidewalks and driveways must be approved in advance by the Developer or the ARC, must be of a washed brown aggregate finish, of at least 3500 psi, and include expansion joints and/or controlled joints. All driveways and parking areas must be surfaced. No sidewalks, driveways, or other concrete visible from the streets within the development shall be painted, stained or otherwise decorated without the approval of the Developer or the ARC. Maintenance and repairs of all sidewalks and driveways is the responsibility of the homeowner.

**8.16.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage, or which may obstruct or retard the flow of water through drainage channels in the easements.

**8.17.** No recreation vehicles or commercial vehicles, including, without limitation, boats, boat trailers, horse trailers, motorcycles, trucks, camping trailers, or similar type items shall be kept on a Lot, other than in an enclosed garage. Parking of any vehicle in the yard of a Lot is prohibited. No vehicles of any kind shall be kept unless it displays current license plates. Lawn tractors may be kept and used for property maintenance but must be stored out of view of other Lots. No cars, trucks or any mechanical devices that are visually in need of repair shall be kept on any Lot at any time or for any purpose, other than checking fluids and such emergency repairs as are necessary to move or tow the affected vehicle from the Lot and the Development. Any trucks not considered a "pickup" or not used as a passenger vehicle shall not be kept in the Development. All vehicles must be parked in the garage or in the driveway. All vehicles of any type cannot be parked on the street, easement, or right-of-way. These vehicles are subject to removal by the Developer, the Association or its assigns, without permission and at the expense

of the Owner.

**8.18.** All exterior lighting on a lot, including, but not limited to, landscape lighting, must receive prior approval of the Architectural Committee. Said lighting on each lot shall be constructed and maintained to provide such illumination as is necessary for that lot only. Additionally, it shall be installed or directed to avoid glare and excessive spillage on adjacent properties or streets. If any exterior light is considered to be objectionable, the owner of the Lot on which the same is located will immediately remove the said light or have it shielded in such a manner that it is no longer objectionable

**8.19.** Swimming pools may be permitted on a case-by-case basis and in the sole discretion of the ARC. The size, location and design of both the swimming pool and the privacy fence surrounding such pool shall also be subject to ARC approval. All pools permitted shall be in compliance with all applicable regulations, ordinances, safety codes and requirements. No aboveground or portable pools shall be allowed within the Development.

**8.20.** No tree with a diameter of twelve (12) or more inches, as measured one (1) feet from the ground, shall be removed without the approval of the ARC.

**8.21.** Each Lot Owner shall be required to maintain property in such a condition as to minimize off-site damage from erosion, sediment deposits and storm water. This requirement will be in effect from the beginning of site preparation and continue throughout the establishment of permanent vegetative cover. Owner acknowledges and agrees that Declarant is not responsible for any damages which hereafter may be suffered by the Owner as a result of site preparation work carried out by Owner and his/her subcontractors and any Owner agrees to fully indemnify and hold the Declarant and the Association harmless from any such damages sustained in connection therewith.

**8.22.** It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt conditions of buildings or grounds on such Owner's Lot which would tend to decrease the beauty of the specific area or of the Subdivision as a whole. The Owner shall cause the Lot to be suitably planted with grass continuously thereafter, in order to reduce runoff, and each Owner shall be responsible for erosion control on his Lot. The grass shall be maintained on the Lot at all times and grass, weeds, vegetation and debris kept mowed and cleared at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from the Lot. If the Owner fails to satisfy these maintenance obligations, the Developer or the Association shall have the right, but not the obligation, to have the Lot cleaned, maintained and trash or other material removed at the Owner's expense. This expense shall become an assessment on the lot.

**8.23.** All exterior Christmas decorations may be placed on the residence and on the lot no earlier than thirty (30) days before Christmas and must be removed within thirty (30) days after Christmas. Exterior decorations for all other holidays and for Halloween may be placed on the residence and on the lot no earlier than two (2) weeks prior thereto and must be removed within one (1) week thereafter.

**8.24.** Garage sales are strictly prohibited unless the neighborhood Association agrees to sponsor one for the entire community.

**8.25.** Basketball goals shall not be located in front of the building line of the residence constructed on a Lot. No moveable or portable basketball goals are permitted on any street within the Development.

**8.26.** The placement and/or location of any trampoline on any part of a Lot is subject to the prior written approval of the ARC and, if approved by the ARC, must be at all times located inside a fenced area and screened from public view.

**8.27.** Window treatments within the Development shall consist of draperies, blinds, shutters, decorative panels or other tasteful window coverings, of the type customarily found in single-family homes, and no newspaper, sheets, or other temporary window treatments are permitted, except for periods not exceeding two (2) months after an Owner first moves into a residence on a Lot or when permanent window treatments are being cleaned or repaired. The color of all window treatments as seen from the street shall be white or off-white, unless otherwise approved by the ARC.

**8.28.** No Owner shall permit garage doors to remain open for more than a reasonable time as necessary for vehicles entering or exiting the garage and for reasonable periods needed for yard and residence maintenance.

**8.29.** The right is given to the Developer or the Association to require the owner of a damaged or destroyed dwelling upon any lot to make repairs or replacements in order to restore the dwelling to its condition prior to the damage or destruction, including the right to require that insurance proceeds paid to the Owner because of said damage or destruction be applied to the repair or replacement.

**8.30.** A Lot Owner shall, in connection with any construction within a Lot, place on deposit with Declarant or the Association, the amount of One Thousand Five Hundred Dollars (\$1,500.00) per Lot to offset the costs of any construction damage to the concrete curbs, common area sidewalks within the Development, or to the Lot. Curbs and gutters, as well as sidewalks, will be inspected by the Declarant or the ARC upon receiving the Certificate of Occupancy from the Town of Collierville to ensure that no damage has been done during construction. If no damage has occurred and no other maintenance issues exist, the \$1,500.00 will be refunded to the Owner upon a written request. If any damage has occurred, these escrowed funds will be applied toward the cost of repair by the Declarant or the Association.

**8.31.** No building material of any kind or character shall be placed or stored upon any Lot until the Owner is ready to commence improvements. Building materials shall be stored only within the property lines of the particular Lot involved.

**8.32.** Specific Construction and Maintenance Requirements. Each of the following shall apply in connection with any construction of improvements upon a Lot:

- a.** All Home Builders performing work on a Lot must be licensed in the State of

Tennessee and must be approved by the Developer.

- b.** Upon commencement of construction, an Owner shall have **one year** to complete the exterior of the principal dwelling and return the Lot to an orderly appearance, as determined by the ARC. Developer has the option to re-purchase any lot at the original sales price if construction has not begun within **two years** of purchase.
- c.** Each builder is to provide portable toilets for each house during construction, placing such in as limited view as possible.
- d.** A trash dumpster is required for each Lot during construction. No trash, garbage, hazardous waste, or other refuse shall be dumped, stored, or accumulated on any Lot. Trash, garbage, or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. No outside burning of woods, leaves, trash, garbage or household refuse shall be permitted.
- e.** Construction material must be kept out of the right-of-way at all times and shall be kept in an organized and compact manner with appropriate measures taken daily to prevent unsightliness during construction.
- f.** Construction working hours are from 7:00 A.M. until 7:00 P.M. on weekdays, and as permitted on weekends by the Town.
- g.** No dumping of excess concrete or any other materials is permitted within the Development including the lot being improved.
- h.** Each builder and Owner is responsible for protecting all Common Area infrastructure adjacent to and within the Lot and may be assessed for any damage caused.
- i.** Each builder and Owner agree to provide and maintain adequate erosion control measures as may be required to be in conformance with all state, federal and local laws.
- j.** Each lot owner shall be responsible for the interior and exterior maintenance of his lot and improvements, including, but not limited to, all exterior walls of dwellings, doors, windows, roofs, patios, garages, light fixtures, irrigation systems, parking surfaces, landscaping, driveways, painting, mailboxes, street lights, private drives, plumbing and electrical repairs. All grass, weeds, vegetation and/or debris on each lot shall be kept mowed and cleared on a weekly basis by the owner thereof to maintain the same in a neat and attractive manner. All lots shall, at all times, be kept free and clear of dead trees, shrubs, vines, plants and other vegetation. In the event an owner of any lot shall fail to maintain his or her lot and the improvements thereon in a manner reasonably satisfactory to Declarant and/or the Association, and/or in keeping with other lots, the Declarant and/or the Association shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain and restore the lot and the exterior of the improvements erected thereon. The cost of such repair, maintenance and restoration shall be added to and become part of the assessment of that lot. If necessary, such cost shall create a valid lien on said Lot, which shall be enforceable, as a special Assessment against the Lot.

**8.33.** Any lease entered into with respect to a Lot located within the Development must be in accordance with the following provisions:

**a.** No sign of any kind may be located on the property stating the property is Rental Property and/or the Property is For Lease. No lease may be entered into for less than a one (1) year period, and all leases must be in writing. A copy of each lease shall be provided to the Association.

**b.** Owners shall also provide the Association with the following additional information, within ten (10) days of the execution of any lease: (i) the Owner's current mailing address and telephone number; (ii) the names of all Persons residing within the residence on the Lot; and (iii) such additional information as the Board of Directors of the Association may request.

**c.** Each Owner shall be responsible for delivering to the lessee copies of this Declaration and all other rules, notices, and directions adopted by the Association for the use of the Common Area or otherwise. Lessee does not participate as a voting Member of the Association

**8.34.** Each Owner agrees to abide by the rules which may be from time to time adopted by the Board of Directors of the Association and promulgated to the Owners by it in writing and except as otherwise specifically limited in the Charter or Bylaws, the Board of Directors of the Association is authorized to adopt such rules.

**8.35.** Any deviation from the covenants set forth in this Declaration will result in fines and necessitate immediate correction of the violation at the Owner's expense. The Declarant, the ARC and the Association have the right to impose on the Owner a fine of \$500.00 per day for any one violation of these covenants, for continued or unremedied violations and the payment of any attorney and/or corrective costs incurred. Any amounts set above are subject to change by approval of Declarant.

**8.36.** The purchaser of a Lot and the Association with respect to the Common Area, shall accept the same in its existing condition, as is, where is, and with all faults; no warranties or representations having been made by the Developer or its designated representatives except as may be expressly stated herein. The acquirer agrees to indemnify and hold the Developer, its successors or assigns, harmless against any claim, liability, damage or cost in connection with the Developer's development of the Property. The Property may consist of filled land or partially filled land. Developer shall not be responsible or liable for any claims of any kind or character related to the fill or soil conditions of the Property. Developer makes no warranty concerning the degree of rainwater inundation that may result on the Property, since any inundation can be expected with rainfall which exceeds the current design standards. Developer shall not be responsible for any trees that die.

The provisions of this Section 8.36 shall survive the closing of any sale of Lots or the Property.



## **ARTICLE IX – COMMON AREA RULES**

Until the last lot is built on and the home is completed, the Declarant shall control all activities related to the Common Areas. After the Association has been turned over to the homeowners, the Board of Directors of the Association shall have the absolute right to adopt rules, as it deems, in its sole discretion, for the use of the Common Area as necessary to protect the health, safety and mutual interests of the Association and its Members, and interpret, amend or modify the same from time to time.

Notwithstanding the foregoing, no motorized vehicles of any description shall be allowed on the Common Area with the exception of lawn maintenance and gardening equipment. “Motorized vehicles” as used in this Article shall include, without limitation, motorcycles, motorboats, all terrain vehicles, go carts, and motorized scooters.

## **ARTICLE X - MISCELLANEOUS**

**10.01.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for thirty (30) years from the date hereof, unless otherwise expressly limited herein, after which time these covenants shall be automatically extended for successive periods of ten (10) years each.

**10.02** Declarant, and only Declarant, shall have the right to bring additional property into the Association and subject it to this Declaration. The additional property may be owned by the Declarant or by others. As to any additional property, whether owned by the Declarant or others, which Declarant desires to bring into the Association and subject it to this Declaration, the Association, its Members, and all present or future Owners, their mortgagees, successors, and assigns, hereby waive and relinquish any rights to object or protest against bringing such additional property in to the Association or any desired subdivision of such additional property as may be required or desired by Declarant for such additional property. No Owner other than Declarant shall have the right to bring additional property into the Association or to subject additional property to the terms of this Declaration. The provisions of this Section shall not be strictly construed, but shall be broadly and liberally construed for the benefit of the Declarant and the additional property so as to allow the Declarant to bring additional property into the Association and subject it to this Declaration, including but not limited to the subdivision thereof.

**10.03.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as an Owner on the records of the Association at the time of such mailing.

**10.04.** The Declarant, the Association, or any Owner, shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or

persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure by the Developer, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement by the Developer or Association shall be chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the Lot, collectable in the same manner as assessments hereunder.

**10.05.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

**10.06.** No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

**10.07.** Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF the Developer has executed this Declaration or caused it to be executed by and through its appropriate officers.

**CREWS DEVELOPMENT, LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the \_\_\_\_\_ of the Crews Development, LLC, a Tennessee limited liability company and that he as such \_\_\_\_\_ being authorized so to do, executed the foregoing instrument for the purposes therein contained by subscribing thereto the name of the limited liability company by himself as \_\_\_\_\_.

WITNESS my hand and notarial seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## Exhibit A

### Property Description of Property

#### PROPERTY DESCRIPTION

**Of part of the Boyle North Company, LLC, property as recorded by inst. # 11122259  
in the Shelby County Registers Office, said property located in  
Collierville, Shelby County, Tennessee,  
and more particularly described as follows:**

**Beginning at a Point** in the centerline of **Shea Road** said point being a distance of 2046.96' south of the centerline of **Frank Road** as measured along the centerline of **Shea Road**, said point being the southeast corner of the Mack J. Williamson and Danya Welch tract as recorded by inst. #09113518 in said Register's Office; thence  $N86^{\circ}17'39''W$  along the south line of said Williamson and Welch tract and continuing along the south line of the Donna A. Welch Family LLC. property as recorded by inst.#07189063 in said Register's Office a distance of 1106.76' to a point in a west line of Phase 1, Shepherd's Creek P.D. (unrecorded); thence  $S04^{\circ}02'47''W$  along said west line a distance of 384.00' to an angle point; thence  $S04^{\circ}56'33''W$  along said west line a distance of 32.76' to an angle point; thence  $S22^{\circ}23'07''W$  along said west line a distance of 120.73' to an angle point; thence  $S28^{\circ}40'08''W$  along said west line a distance of 124.03' to a point in a south line of said Shepherd Creek P.D.; thence  $S60^{\circ}23'22''E$  along said south line a distance of 57.23' to an angle point; thence  $S63^{\circ}26'27''E$  along said south line a distance of 128.06' to an angle point; thence  $S65^{\circ}12'55''E$  along said south line a distance of 41.60' to an angle point; thence  $S67^{\circ}02'15''E$  along said south line a distance of 126.85' to an angle point; thence  $S01^{\circ}44'44''W$  along said south line a distance 134.00' to a point in a curve; thence northeasterly along a curve to the right having a radius of 140.50', a chord bearing of  $N64^{\circ}38'13''E$ , a chord distance of 174.05' and an arc length of 187.70' to a point of tangency; thence  $S77^{\circ}05'25''E$  along said south line a distance of 235.31' to a point of curvature; thence southeasterly along a curve to the right having a radius of 40.00', a chord bearing of  $S36^{\circ}31'19''E$ , a chord distance of 52.03' and an arc length of 56.64' to the point of tangency; thence  $S04^{\circ}02'47''W$  along said south line a distance of 198.66' to a point in the north line of the Kenneth and Linda Shappley property as recorded by inst.#07153832 in said Register's Office; thence  $S85^{\circ}57'22''E$  along said north line a distance of 444.76' to a point in the centerline of Shea Road; thence  $N04^{\circ}02'47''E$  along said centerline a distance of 1103.11' to the **Point of Beginning** and containing 23.739 acres of land.

**Exhibit B**

**Plat of Shepherd's Creek Subdivision (Phase I)**

## Exhibit C

### Property Description of the Additional Property

#### PROPERTY DESCRIPTION

**Of part of the Boyle North Company, LLC, property as recorded by inst. # 11122259  
in the Shelby County Registers Office, said property located in  
Collierville, Shelby County, Tennessee,  
and more particularly described as follows:**

Commencing at a point in the centerline of Shea Road said point being a distance of 3150.07' south of the centerline of Frank Road as measured along the centerline of Shea Road, said point being the northeast corner of the Kenneth and Linda Shappley tract as recorded by inst. # 07153832 in said Register's Office; thence N85°57'22"W along the north line of said Shappley tract a distance of 444.76' to the **Point of Beginning** of the following described real estate; thence continuing along said north line and a north line of the Hartwell Subdivision (PB 233, Pg. 50) N85°57'22"W a distance of 1231.86' to a point in an east line of said Hartwell Subdivision; thence N03°17'38"E along said east line a distance of 735.26' to a point in a north line of said Hartwell Subdivision; thence N76°37'47"W along said north line a distance of 445.37' to a point in the east line of Section "B", Houston Downs Subdivision (PB 106, Pg.52); thence N03°21'49"E along said east line and continuing along the east line of Section "A", Houston Downs Subdivision a distance of 1308.92' to a point in the south line of the George & Jan Hume III tract as recorded by inst. #H2 7612 in said Register's Office; thence S86°00'03"E along said south line a distance of 482.12' to a point in a south line of the Waymon & Donna Welch tract as recorded by inst. #JA 7836 in said Register's Office; thence S86°23'37"E along said south line a distance of 388.54' to an angle point; thence S03°06'12"W along said south line a distance of 85.90' to a point in the west line of the Donna A. Welch Family LLC tract as recorded by inst. #07189063 in said Register's Office; thence S02°16'00"W along said west line a distance of 938.31' to a point in the south line of said Welch Family LLC. tract; thence S86°17'39"E along said south line a distance of 133.40' to a point in a west line of Phase 1, Shepherd's Creek P.D. (unrecorded); thence S04°02'47"W along said west line a distance of 384.00' to an angle point; thence S04°56'33"W along said west line a distance of 32.76' to an angle point; thence S22°23'07"W along said west line a distance of 120.73' to an angle point; thence S28°40'08"W along said west line a distance of 124.03' to a point in a south line of said Shepherd Creek P.D.; thence S60°23'22"E along said south line a distance of 57.23' to an angle point; thence S63°26'27"E along said south line a distance of 128.06' to an angle point; thence S65°12'55"E along said south line a distance of 41.60' to an angle point; thence S67°02'15"E along said south line a distance of 126.85' to an angle point; thence S01°44'44"W along said south line a distance 134.00' to a point in a curve; thence northeastwardly along a curve to the right having a radius of 140.50', a chord bearing of N64°38'13"E, a chord distance of 174.05' and an arc length of 187.70' to a point of tangency; thence S77°05'25"E along said south line a distance of 235.31' to a point of curvature; thence southeastwardly along a curve to the right having a radius of 40.00', a chord bearing of S36°31'19"E, a chord distance of 52.03' and an arc length of 56.64' to the point of tangency; thence S04°02'47"W along said south line a distance of 198.66' to the **Point of Beginning** and containing 42.606 acres of land.

**Exhibit D**  
**CHARTER**  
**OF**  
**SHEPHERD'S CREEK HOMEOWNERS ASSOCIATION, INC.**

The undersigned person under the Tennessee Nonprofit Corporation Act, adopts the following charter for the above-listed corporation:

1. The name of the corporation is Shepherd's Creek Homeowners Association, Inc.
2. This corporation is a mutual benefit corporation.
3. This corporation is a nonreligious corporation.
4. The name and address of the sole Incorporator and the initial registered agent is:

Jason Crews.:  
3035 Centre Oak Way, Suite 101  
Germantown, Tennessee 38138

5. The street address of the initial principal office is:

3035 Centre Oak Way, Suite 101  
Germantown, Tennessee 38138

6. The Corporation is not for profit.
7. The Corporation will have members.
8. The corporation may be dissolved with the assent given in writing and signed by not less than sixty-seven percent (67%) of the members. Upon dissolution of the corporation, other than a dissolution incident to the merger or consolidation of the corporation, all of the assets and property of the corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this corporation was created. In the event that such a dedication is refused, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.
9. No director shall be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director, except as otherwise provided in subparagraph (a)(b) and (c) of T.C.A. § 48-52-102(b)(3). The foregoing shall not eliminate or limit the liability of a director any action or omission occurring prior to the date when this paragraph became effective.

By: \_\_\_\_\_  
Incorporator

Exhibit E

**BY-LAWS  
OF  
SHEPHERD’S CREEK HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

Name

The name of this corporation is Shepherd’s Creek Homeowners Association, Inc. (the “Association”). Its principal place of business is c/o: Crews Development, LLC, 3035 Centre Oak Way, Suite 101, Germantown, Tennessee 38138. The Association may have such other offices within or without the State of Tennessee as the Board of Directors or the Members may from time to time designate.

**ARTICLE II**

Membership

1. Eligibility. The Owner or Owners of a Lot who have become such in compliance with all of the requirements and conditions contained in the Declaration of Covenants, including these Bylaws, shall be eligible to be a member of the Association, entitled to attend and vote at all meetings of the Association. The Declarant shall be considered the Owner of each Lot unsold by it.

2. Voting Rights. The Owner or Owners of a Lot shall be entitled to one (1) vote for each Lot owned, except: the Developer shall be entitled to three (3) votes for each Lot owned by it. In the event that a Lot is owned by two or more persons, the vote allocated to that Lot shall be cast by the person authorized by such multiple Owners, and in the event of a failure to agree upon such authorization, no vote shall be recorded for that Lot. In the event that only one of two or more Owners of a Lot is present in person at a meeting, such one person shall be presumed to be authorized by all other Owners of the Lot to cast the vote with respect to such Lot. If an Owner/ member is delinquent in paying his Homeowners Association dues and/or assessments, the Owner/ member is ineligible and not entitled to vote on any matter related to the Homeowners Association, is ineligible and not entitled to serve on any committee of the Homeowners Association, is ineligible and not entitled to serve on the Board of Directors of the Homeowners Association and is ineligible and not entitled to serve as an officer of the Homeowners Association.

3. Meetings of Members

a. Place of Meeting. Meetings of the Members shall be held at the principal office or the principal place of business of the Association, or at such other place as may be designated from time to time by the Board of Directors.



b. Annual Meeting. After the Association has been turned over to the Owners, the annual meeting of the Members of the Association shall be held at a date and time established by the Board of Directors. The Declarant and only the Declarant will determine when the first annual meeting will occur. At such meeting, the Members shall by written ballot elect a Board of Directors in accordance with these Bylaws and transact such other business of the Association as may properly come before them.

c. Special Meetings. Special meetings of the Members may be called by a majority of the Board of Directors. The Owners/ members may call for a special meeting if seventy-five percent (75%) of the members sign a petition asking for a special meeting. One member per household may sign the petition. The signed petition must be delivered to the Board of Directors and/or the President. Special members' meetings may be held in or out of the State of Tennessee at such place as the Directors or President may designate, or, in the absence of such designation, at the Corporation's principal office. The Corporation shall notify members of the date, time, and place of each special members' meeting no fewer than ten (10) days or more than two (2) months before the meeting date. No business shall be transacted at a special meeting except as stated in the notice.

d. Notice of Meetings. Written or printed notice stating the place, day and hour of the meeting, shall be delivered either personally, via standard mail, or via email by the Secretary to each Member entitled to vote at the meeting, as address information appears on the membership book of the Association, if any, or if no such addresses appears, at his last known place of address, all at least ten (10) days but no more than two (2) months prior to such meeting. Delivery of any notice to the member at his last known address by deposit, postage pre-paid, with the U.S. Postal Service, shall be conclusive notice hereunder. Upon the request of any Member, the Secretary or other person shall certify that the notice required by this paragraph has been given.

e. Waiver of Notice. A Member may waive any notice required by the Tennessee Nonprofit Business Corporation Act, the Charter or these Bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the Member entitled to notice and be filed in the minutes or corporate records. A Member's attendance at a meeting waives objection to (a) lack of notice or defective notice of the meeting unless such Member objects at the beginning of the meeting or promptly upon his arrival to holding the meeting or transacting business at the meeting; and (b) consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless such Member objects to considering the matter when it is presented.

f. Quorum Requirements. Unless the Charter or any provision of the Tennessee Nonprofit Corporation Act provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter. If the number of Members at a meeting falls below the quorum and the question of the lack of a quorum is raised, no business may thereafter be transacted. If any meeting of the Members cannot be held because a quorum is not in attendance, the Members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48)

hours from the time the original meeting was called without a requirement for additional notice.

g. Voting. At every meeting of the Members, each Member shall have the right to cast his vote on each question brought before the meeting. However, if an owner is delinquent in paying his dues and/or assessments, the owner shall not be eligible to vote at the meeting of members, shall not be eligible to vote at the Board of Directors meeting and shall not be eligible to serve on the Board of Directors or serve as an officer of the Association. The vote of the Members representing a fifty-one percent (51%) majority of the total votes cast, in person or by proxy (provided that there is a quorum present) shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of a statute or of the corporate charter of the Association, or the Declaration, or of the Bylaws, a different vote is required, in which case such express provision shall govern and control. The vote of any membership, which is owned by more than one person, may be exercised by any of them present at any such meeting unless any objection or protest by any other owner of such membership is noted at the meeting. In the event all of the co-owners of any membership who are present at any meeting are unable to agree on the manner in which the vote for such membership shall be cast on any question, then such vote shall not be counted for purposes of determining that question. No Member is eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

h. Proxies. A Member may appoint any other Member or any other person permitted by law or by these Bylaws as his proxy. In no case may any Member (except the Developer) cast more than one vote by proxy, in addition to his own vote. A proxy must be in writing and shall be filed with the Secretary or other officer or agent authorized to tabulate votes of the meeting, before being voted. A proxy shall entitle the holder thereof to vote at any adjournment of the meeting, but shall not be valid after the final adjournment the meeting. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless otherwise provided in the proxy.

### **ARTICLE III**

#### **BOARD OF DIRECTORS**

1. Qualification and Election. The affairs of the Association shall be managed by a Board of Directors. A Director does not have to own property in Shepherd's Creek to serve on the Board of Directors. After the first annual meeting, Directors shall be elected by a plurality of the votes cast at the annual meeting of the Members. Each Director shall hold office until the expiration of the term for which he is elected, and thereafter until his successor has been elected and qualified. The initial Board of Directors shall consist of the following persons: Jason Crews, Reggie Garner, Jr., David Gribble and Angie White, who shall serve from the date upon which the Declaration is recorded in the Register's Office of Shelby County, Tennessee, until the first annual meeting of the Members.

2. Number. The number of Directors shall be set at the first annual meeting of the Members, but shall not at any time be less than three (3) persons nor more than five (5) persons unless a greater number approved by the Declarant.

2. Power and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and the development and may do all such acts and things as are not by law or these Bylaws directed to be done by the Members. The powers and duties of the Board of Directors shall include, but not be limited to, the following:

- a. Care and upkeep of the private road, utilities, walls, columns and fences, entrance, lighting and landscaping and any other properties charged to the care of the Association, including the establishment of reserves for repairs or replacements;
- b. Establishment and collection of assessments and/or interest and charges thereon from the Members and for the assessment and/or enforcement of liens therefore in a manner consistent with the Declaration and applicable law;
- c. Designation, hiring and termination of the personnel necessary for the good working order of and provision of services to the development, consistent with applicable law and the Declaration;
- d. Promulgation, distribution and enforcement of rules and regulations, and such additional restrictions and requirements as may be necessary and proper respecting the use, occupancy and maintenance of the development, all of which shall be consistent with the Declaration and applicable law; and
- e. Appointment of the Architectural Review Committee in accordance with the Declaration.

4. Nominations. Nomination for election to the Board of Directors shall be made by the Initial Board of Directors. Nominations shall also be accepted from the floor at the annual meeting of the Members. The Board of Directors may consider establishing a Nominating Committee.

5. Removal of Directors. A Director may be removed if seventy-five percent of the owners sign a petition and deliver the Petition to the Board of Directors and/or the President, asking for the Director to be removed. A Director may be removed by the members only at a meeting called for the purpose of removing the Director, and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the Director. A director may also be removed for cause by a majority vote of the entire Board.

VACANCIES: Any vacancy occurring in the Board of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors.

6. Compensation. No compensation shall be paid to Directors for their services as Directors, provided however, that a Director shall be paid for services performed for

the Association if a resolution authorizing enumeration for services actually performed is considered and adopted by the Board of Directors before such services are undertaken.

7. Meetings. The annual meeting of the Board of Directors shall be held in or out of the State of Tennessee as soon as practicable after each annual meeting of the members. The Board of Directors shall permit any or all Directors to participate in an annual meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating can simultaneously hear each other during the meeting. A Director participating in a meeting by this means shall be deemed to be present in person at the meeting.

8. Notice of Directors' Meetings. Regular meetings of the Board of Directors shall be held without notice. Special meetings of the Board of Directors shall be preceded by at least two (2) days' notice to each Director of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting. Notice of an adjourned meeting need not be given if the time and place to which the meeting is adjourned are fixed at the meeting at which the adjournment is taken and if the period of adjournment does not exceed one (1) month in any one (1) adjournment

9. Waiver of Notice. A Director may waive any notice required by the Tennessee Nonprofit Corporation Act, the Charter, the Declaration, or these Bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the Director entitled to the notice and be filed with the minutes or corporate records. A Director's attendance at or participation in a meeting waives any required notice to him of the meeting unless he objects at the beginning of the meeting or promptly upon his arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

10. Quorum and Vote. The presence of a majority of the Directors shall constitute a quorum for the transaction of business. A meeting may be adjourned despite the absence of a quorum, and notice of an adjourned meeting need not be given if the time and place to which the meeting is adjourned are fixed at the meeting at which the adjournment is taken, and if the period of adjournment does not exceed one (1) month in any one adjournment. The vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, unless the vote of a greater number is required by the Charter, these Bylaws, the Declaration, or by the laws of Tennessee.

11. Fidelity Bonds. The Board of Directors may require that all officers and employees of the Association handling or responsible for the Association's trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

## ARTICLE IV

### OFFICERS

1. Number. The Association shall have a president, a secretary, a treasurer, and such other officers as the Board of Directors shall from time to time deem necessary. Any two or more offices may be held by the same person, except the offices of president and secretary. Officers of the Association are not required to own property within Shepherd's Creek..

2. Election and Term. Officers shall be appointed at the first meeting of the Board of Directors and shall hold office until the annual meeting of the Board of Directors to be held at a time determined by the Board of Directors. Thereafter, officers shall be appointed for a three-year term which will expire at the annual meeting of the Board of Directors held three years after said officers are appointed. Despite the expiration of an officer's term, he shall continue to serve until his successor is appointed and qualified. An officer may resign at any time by delivering notice to the Corporation

3. Duties. All officers shall have such authority and perform such duties in the management of the Association as are normally incident to their offices and as the Board of Directors may from time to time provide. In addition to other duties, the secretary shall be responsible for preparing minutes of the Directors' and Members meetings and for authenticating records of the Members.

4. President. The President shall be the chief executive officer of the Association and shall have responsibility for the general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. The President shall preside at all meetings of the Members and, if a Director, at all meetings of the Board of Directors. The President shall have all of the general powers and duties of such office and shall execute all authorized conveyances, contracts, or other obligations in the name of the Association except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Association.

5. Secretary. The Secretary shall attend all meetings of the Members and all meetings of the Board of Directors and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. When necessary, the Secretary shall give, or cause to be given, notice of all meetings of the Members and the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors or by the President, under whose supervision he or she shall act. When required or requested, the Secretary shall execute with the President all authorized conveyances, contracts or other obligations in the name of the Association except as otherwise directed by the Board of Directors. The Secretary shall keep in safe custody the seal of the Association and, when authorized by the Board, affix same to any instrument requiring it and when so affixed, it shall be attested by the Secretary's signature or by the signature of the Treasurer or an Assistant Secretary.

The Secretary shall keep a register of the post office address of each Member. Said address shall be furnished to the Secretary by such Member and the responsibility for keeping said address current shall be upon the Member.

6. Treasurer. The Treasurer and/or the managing agent shall have custody of and keep account of all money, funds and property of the Association, unless otherwise determined by the Board of Directors, and the Treasurer shall render such accounts and present such statements to the Directors and the President as may be required of him. The Treasurer shall deposit funds of the Association that may come into his or her hands in such bank or banks as the Board of Directors may designate. The Treasurer shall keep the bank accounts in the name of

the Association and shall exhibit the books and accounts at all reasonable times to any Director of the Association upon application at the office of the Association during business hours.

## **ARTICLE V**

### **RESIGNATIONS, REMOVALS, AND VACANCIES**

1. **Resignations.** Any Director may resign at any time by delivering written notice to the Board of Directors, or the President of the Association. Any such resignation shall take effect when it is delivered unless the notice specifies a later effective date.
2. **Removal of Officers.** Any officer or agent may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby.
3. **Vacancies.** Newly created Directorships resulting from an increase in the number of Directors, and vacancies occurring in any office or Directorship for any reason, including removal of an officer or Director, may be filled by the vote of a majority of the Directors then in office, even if less than a quorum exists.

## **ARTICLE VI**

### **ACTION BY CONSENT**

Whenever the Members or Directors are required or permitted to take any action by vote, such action may be taken without a meeting if all Members or Directors consent to taking action without a meeting, and if the number of Members or Directors that would be necessary to establish a quorum and take the action at a meeting sign a written consent setting forth the action so taken and their vote for or against each such proposed action. Written approvals shall only be valid when the number of votes evidenced by written consent equals or exceeds the quorum required to be present at a meeting authorizing such action, and the number of approvals meets or exceeds the number of votes required to approve the matter at a meeting.

## **ARTICLE VII**

### **FISCAL MATTERS**

1. The fiscal year of the Association shall end on the 31st day of December or such other time as may be determined by the Board of Directors.
3. The Board of Directors shall manage the funds of the Association for the benefit of the Members and shall enforce the provisions of these Bylaws and the Declaration and shall pay out from the common expense funds of the Association the following:

- a. The cost of such insurance coverage as the Association may effect; and
  - b. The cost of providing legal and accounting services as may be considered necessary to the operation of the development;
  - c. Such other expenses of the Association as are provided for under these Bylaws, the Declaration or applicable Tennessee law.
3. Books and records of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practice. .
4. The Board of Directors shall furnish the Members, and the holder of any first mortgage requesting the same, with an annual financial statement of the Association, within ninety (90) days after the end of the fiscal year of the Association, including the income and disbursements of the Association.

## **ARTICLE VIII**

### SEAL

Unless otherwise determined by the Board of Directors, the Association will not have a seal and in any event the failure to affix a corporate seal to any instrument executed by the Association shall not affect the validity thereof.

## **ARTICLE IX**

### INDEMNIFICATION

1. Indemnification and Hold Harmless. The officers and Directors of the Association shall not be liable to the Members for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify to the extent authorized or permitted by the laws of the State of Tennessee any person, or the estate of any person, made, or threatened to be made, a party to any action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that he is or was, or is or was purported to be, a Director, officer, agent or employee of the Association or served any other enterprise at the request of the Association. The officers and Directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Directors may also be Owners of Lots within the subdivision) and the Association shall indemnify and forever hold each such officer or Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer of Directors or former officer of Director may be entitled. The Association may pay for or reimburse the reasonable expenses incurred by an indemnified person who is a party to a proceeding, including

counsel fees, in advance of final disposition of the proceeding if such advance payment is permissible under the laws now in effect or hereafter enacted of the State of Tennessee.

2. Interested Directors. The Directors shall exercise their powers and duties in good faith and with a view to the interests of the Association and the members. No contract or other transaction between the Association and one or more of its Directors, or between the Association and any other Association, firm or Association (including the Developer) in which one or more of the Directors of this Association are directors or officers or otherwise have a financial interest in or are in any way otherwise interested, is either void or voidable because such Director or Directors are present at a meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, provided that:

- a. The fact of the common directorate or pecuniary interest is disclosed or known generally to the Board of Directors or a majority thereof or otherwise noted in the minutes of the meeting, and the Board authorizes, approves or ratifies such contract or transaction in good faith; and
- b. The contract or transaction is commercially reasonable to the Association at the time of its authorization, ratification, approval or execution.

Common or interested Directors or officers may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, as if he were not a director or officer of such other Association or not so interested.

## **ARTICLE X**

### AMENDMENT OF BY-LAWS

The Declarant and/or the Corporation's Board of Directors may amend or repeal the Corporation's By-Laws. The Corporation's members may amend or repeal the Corporation's By-Laws even though the By-Laws may also be amended or repealed by its Board of Directors. With approval of the Board of Directors, an amendment to the By-Laws by the Corporation members shall be approved by submitting a signed petition to the Board of Directors with seventy-five percent of the Corporation members signing the petition.

## **ARTICLE XI**

### MISCELLANEOUS PROVISIONS

1. The resident or management agent may be designated as the person authorized to accept service of process on behalf of the Association for any purpose.



2. In the event that any provision of these Bylaws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

3. The captions contained in these Bylaws are for convenience only and are not a part of these Bylaws and are not intended in any way to limit or enlarge upon the terms and provisions of these Bylaws.

4. Whenever in these Bylaws the context so require, the singular shall also include the plural and the use of any gender shall be deemed to include all genders.

5. THESE BYLAWS SHALL BE SUBORDINATE TO ALL PROVISIONS OF THE DECLARATION. ALL OF THE TERMS HEREOF, EXCEPT WHERE CLEARLY REPUGNANT TO THE CONTEXT, SHALL HAVE THE SAME MEANING AS IN THE DECLARATIONS AND IN ANY CONFLICT BETWEEN THE TERMS OF THESE BYLAWS AND THE DECLARATION, THE DECLARATION SHALL CONTROL.

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