HB 6384

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RETURN TO:
Murphy, DeZonia & Webb
6389 Quail Hollow Rd.
Memphis, TN 38120

DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR McLEAN PLACE PLANNED DEVELOPMENT

This Declaration, is made, published and declared this 10th day of December, 1997, by JAMES A. SHEPHERD, JR. (hereinafter referred to as "Declarant") and any and all persons or legal entities hereinafter acquiring any of the within described property.

WHEREAS, the Declarant is the fee simple owner and developer of the following described property:

> Lots 1, 2, 3, 4 and Area "A" McLEAN PLACE P. D. as shown of record in Plat Book 165, Page 8 in the Register's Office of Shelby County, Tennessee to which plat reference is hereby made for a more particular description of the entire Planned Development (hereinafter referred to as "Planned Development").

WHEREAS, it is to the benefit, interest and advantage of the Declarant and to all future persons acquiring any interest in any lot in the Planned Development that certain covenants, restrictions, easements, assessments and liens governing and regulating the use and occupancy of the Planned Development 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 lots in the Planned Development are henceforth held and shall be held, conveyed, hypothecated, encumbered, used and occupied subject to the all easements, conditions and restrictions as set out in the recorded Plat of Planned Development and the following covenants, conditions, restrictions, easements, uses, limitations contained herein, all of which are hereby declared to be in furtherance of a plan for the development and improvement of the Planned Development, and the said covenants, conditions, restrictions, easements, uses, limitations and obligations shall run with the land and shall be a burden and a benefit to the Declarant, his successors and assigns, and any person acquiring or owning any lot in the Planned Development, their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration and the attached Bylaws shall have the following meanings:

1. "Association" shall mean and refer to McLEAN PLACE HOMEOWNERS ASSOCIATION, INC. its successors and assigns. The Association's Bylaws are attached hereto marked as Exhibit "A" and made a part hereof.

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

3. "Common Area" shall mean Area "A" as set forth and described in detail in the recorded plat of the Planned Development.

4. "Improvements" shall mean any plantings, fences, concrete, asphalt and other additions built or placed in the Common Area of the Planned Development.

5. "Lot" shall mean and refer to one of the plots of land as set forth and designated with the Numbers 1, 2, 3, and 4 on the plat of the Planned Development.

6. "Member" shall mean and refer to any person who holds membership in the Association and is a owner of a lot.

7. "Owner" shall mean and refer to the record owner (whether one or more persons or entities) of fee simple title to any lot which is in the Planned Development. The meaning shall exclude any person having an interest merely as security for the performance of an obligation; however, the meaning shall include the purchaser at a foreclosure sale or trustee's sale.

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

9. "President" means the duly elected President of the Association.

10. "Secretary" means the duly elected Secretary of the Association.

ARTICLE II

THE ASSOCIATION

1. Members. Every Person who is a record owner of any lot within the Planned Development shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a lot and ownership of such lot shall be the sole qualification for membership.

2. Voting Rights. The voting rights of the membership shall be

appurtenant to the ownership of a lot, each member (owner of a lot) being entitled to one (1) vote for each lot owned.

3. Secured Parties. No individual or legal entity holding title to a lot as security for any debt or obligation shall be considered as Owner of such lot, and such individual or entity shall not be entitled to membership in the Association.

4. Bylaws. The Association shall be operated in accordance with its Bylaws, a copy of which are attached hereto and marked as Exhibit "A".

ARTICLE III

COMMON AREA

The Common Area shall be owned by the Association and is for the common use and enjoyment of all owners, their tenants, guests and invitees or the guests and invitees of such tenants.

Each owner, his family members or his tenants shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and passes with the title to each lot. However; the Association shall have the power to subject this easement of enjoyment to rules, regulations, and restrictions of use.

The Common Drive is an easement for ingress and egress to McLean for all owners.

All easements created herein are perpetual and are to run with the land.

ARTICLE IV

MAINTENANCE AND REPAIRS

1. Association Responsibilities. The Association shall provide and pay for all the repair and maintenance of the Improvements located in the Common Area including but not limited to maintaining and repaving of the common drive and guest parking area; repair, painting and replacement of any fencing; maintenance, repair and replacement of the electric gate; and maintaining, planting and replanting the landscaping. The Association shall have the right to contract and pay for all such maintenance and repair.

2. Individual Owners. Each Owner shall be responsible for all maintenance, painting, repair and upkeep within the boundaries of his lot.

ARTICLE V

ASSESSMENTS

1. Creation of the Lien and Personal Obligation of Assessments. Each owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (a) annual assessments or charges (b) special assessments and (c) emergency assessments. All such assessments, together with such interest thereon and costs of collection thereof, shall be a charge against the lots and shall be a continuing lien upon each lot until paid. Each such assessment, together with such interest thereon and cost of collection thereof, shall also be the personal obligation of the person who was the Owner of such lot at the time when the assessment fell due.

2. Regular Assessments. Each member (owner of lot) of the Association shall pay to the Association an annual sum equal to that member's proportionate share (one/fourth) of the total sum required by the Association, as estimated by its President and approved by the members to meet the Association's annual expenses, including but in no way limited to, the following:

(a) The estimated cost of repairs and maintenance necessary to maintain the Common Area and electric gate in good condition.

(b) The estimated cost of funding any reserve established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacement;

(c) The estimated cost of all operating expenses for services rendered to the Association such as legal and accounting.

The President shall prepare an annual budget and submit it to the members at their annual meeting for approval. The Association shall establish the method of payment and the due dates and delinquent dates for all regular assessments.

3. Special Assessments. In addition to the regular assessments, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of Improvements or for such other purposes as the Association may consider necessary. The Association shall establish the method of payment and the due dates and delinquent dates for all Special Assessments at the meeting where the assessment is voted upon.

4. Emergency Assessments. In the event of any emergency situation, condition or occurrence in the Common Area which affects the life, health, safety or welfare of the members, the President, acting pursuant to this section, may declare an emergency

assessment in such amount and payable at such time as the President, in his 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 and the Bylaws. The President shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment is made in good faith.

5. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, the entire balance of said assessment may be accelerated at the option of the Association and be declared due and payable in full.

6. Lien for Delinquent Assessments. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid by its delinquent date shall be delinquent and shall together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the lot belonging to the member against whom such assessment was levied and shall bind such lot and its owner, his heirs, devisees, personal representatives and assigns. To evidence the lien of any unpaid and delinquent assessments, the President shall prepare a written notice (Notice of Lien) setting out the amount of the unpaid indebtedness, the name and address of the owner, the address of the lot, and the legal description of the lot. Such notice shall be signed by the President and recorded in the Shelby County Register's Office and a copy of the recorded lien shall be sent to the owner at the address shown on the Association's records.

The Association may establish at any annual or special meeting of the members, an interest rate to be charged against delinquent assessments. Such interest rate shall not exceed the highest rate allowed under the laws of the State of Tennessee. In addition the Association may establish a reasonable penalty or "late charge" against delinquent assessments.

7. Priority of Lien. The lien established by this article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

(a) General and special assessments for real estate taxes on a lot; and

(b) The liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the lot prior to the assessment of the lien thereon.

8. Subordination and Mortgage Protection. The lien of any assessment levied pursuant to this Declaration upon any lot shall be subordinate to and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage

upon such lot which was made in good faith and for value received, provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such lot pursuant to a foreclosure or any other proceeding in lieu of foreclosure. Any such delinquent assessments which are extinguished pursuant to the foregoing provision may be reallocated and assessed to all owners as a common expense, including the purchaser at foreclosure. Such sale or transfer shall not relieve the purchaser at foreclosure from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment which said lien, if any, claimed shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this Section shall affect the rights of the holder of any such first mortgage recorded prior to recordation of such amendment unless the holder thereof shall join in the execution of such amendment.

9. Additional Default. Any recorded first mortgage secured by a lot in the Planned Development may provide that any default by the owner (mortgagor) in the payment of any assessment levied pursuant to this Declaration, shall likewise be a default in such mortgage. Failure to include such a provision in any such mortgage shall not affect the validity or priority of the first mortgage and the protection provided herein to the mortgagee shall not be altered, modified, or diminished by reason of such failure.

10. Collection. The Association may file an legal action against the member personally obligated to pay the delinquent assessment or foreclose the lien against his lot subject to the lot's prior recorded liens and deeds of trust; in either event, the Association may collect from the said member interest, late charges, costs and reasonable attorneys' fees.

The Association is hereby authorized to take any and all courses of action available to it for collection of the assessment against the owner which the laws of the State of Tennessee allow.

(a) The personal obligation of the member 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 the Bylaws, may be maintained without foreclosing or waiving the lien created herein.

(b) For the purpose of enforcing the lien of any unpaid and delinquent assessment, each owner grants the President irrevocably the power to sell his lot at public outcry to the highest and best bidder for cash. The Association shall be able to enforce its lien by whatever means available, including the power of sale granted hereinabove or filing suit for foreclosure in the appropriate court. If the Association decides to sell according to the power of sale then the President is authorized to make such a public sale if and only if such sale is made subject to any prior recorded mortgage or deed of trust upon the lot. Any such sale shall be made after first advertising the sale of said property for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of Shelby, State of Tennessee, giving notice of the conditions of sale and the time and place of such sale. Written notice of the time and place of such sale shall also be given to the owner of the lot and all holders of mortgages prior to the Association's lien. Any sale of a lot to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, including the statutory right of redemption, homestead, and dower and all other exemptions, all of which are expressly waived by the owner; and any such sale and the lien enforced thereby 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 liens and deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied (a) to the payment of the prior recorded liens or deeds of trust if they cannot be assumed by the Purchaser at the foreclosure sale; (b) to the payment of the expenses of litigation, attorneys' fees and cost of sales; (c) to the payment of real estate and ad valorem taxes assessed against the lot and (d) to the payment of all amounts due the Association under the terms of the Declaration and Bylaws; and (e) the balance, if any, to the owner whose lot is sold, and his assigns. Upon any default in the payment of any assessment, the Association shall (subordinate to any rights of prior mortgage holders) have the right to all rents, issues, and profits from the member's lot and shall have the right to secure the payment through notice to those in possession of the lot or by entry into possession in the same manner as a mortgagee entering into possession following default.

All rights, remedies and privileges granted to the Association and the President, pursuant to any terms, provisions and covenants or conditions of the Declaration and Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the Association exercising such other and additional rights, remedies or privileges as may be granted to the Association by the Declaration and Bylaws or at law or in equity.

11. Lot Transfers. Upon request of a mortgage lender or closing agent, the President or Secretary of the Association shall furnish a certificate signed by said officer setting forth whether all assessments on a specified lot are paid.

ARTICLE VI

MORTGAGEE'S RIGHTS

Upon written request to the Association by the holder of any first mortgage and the receipt of $10.00 to cover copies and postage, the Secretary shall send to such mortgagee, current copies of this Declaration, the Bylaws, the prior year financial statement and other rules concerning the affairs and management of the Planned Development. The Association shall have the right to bill the holder of any first mortgage for additional cost of such copies and postage over the $10.00 received. Further, the holder of any first mortgage shall have the right to request that the books, records, and older financial statements of the Association be made available for inspection. "Available" means available for inspection, upon request, during normal business hours.

Upon written request to the Association by the holder of any first mortgage, the Secretary shall send to such mortgagee notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of a lot so secured by the first mortgage.

ARTICLE VII

RESTRICTIVE COVENANTS

In order to provide for a congenial occupation of the residences within the Planned Development, and to provide for the protection of the values of the entire development, the use of the residences shall be in accordance with the following:

1. No lot shall be used except for residential purposes.

2. No structures of a temporary character, trailer, tent, shack, garage, barn or other out building shall be used on any portion of the Planned Development at any time as a residence, either temporarily or permanently.

3. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

4. No advertising signs (except for a "for rent" or "for sale" sign no more that five square feet and only one per lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain in the Planned Development. No business activity of any kind whatever shall be conducted in any residence or in any portion of the Planned Development; provided, however, the foregoing covenants shall not apply to the business activities, signs, and billboards or the construction and

maintenance of residences, if any, of Declarant and his agents and employees, during the development and sales period of the lots.

5. All equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of the neighbors or the street. All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

6. No recreation vehicles or commercial vehicles, including but not limited to boats, boat trailers, house trailers, camping trailers, motorcycles, pick-up trucks, or similar type items shall be kept other than in the garage or otherwise screened from the view of neighbors or the street.

7. Grass, weeds, vegetation shall be kept mowed and all debris shall be cleared at regular intervals by the owner thereof so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, debris and plants which die shall be promptly removed from such lots.

8. No obnoxious or offensive trade or activity shall be carried on upon any lot in the Planned Development nor shall anything be done thereon which may be or become an annoyance or nuisance to other owners within the subdivision.

9. No radio or television transmission or receiving tower or antennas or satellite dishes or solar panels may be installed in the front yard of any lot unless approved by the Association.

10. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant to maintain, during the period of the sale of the lots, upon such portion of the premises as Declarant deems necessary, such facilities, as in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the sale of said lots, including, but without limitation, a sales office, storage area for construction material, signs, model, and sales office.

11. There shall be no violation of any rules which may from time to time be adopted by the Association and copies given to the owners.

ARTICLE VIII

INSURANCE

1. Association Insurance. The Association may obtain public liability insurance and any other insurance which its members decide upon, covering the Common Area, the Association and its members for all damage or injury which may occur in the Common Area. The amount of coverage shall be determined by the members of

the Association.

2. Owner's Insurance. Each Owner of a lot, shall be responsible for his own all-risk casualty insurance covering himself and his family from liability and other perils to his lot and improvements thereon.

ARTICLE IX

GENERAL PROVISIONS

1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the Planned Development and shall inure to the benefit of and be enforceable by the Association, or any owner subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten (10) years each. Except as stated hereinafter and unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Owners holding not less than three/fourth (3/4) of the votes entitled to be cast. Any amendment must be properly recorded to be effective.

The Declarant reserves the right until the first annual meeting of the Association, to unilaterally amend this Declaration in whole or in part to conform this Declaration to the requirements of any governmental agency and/or mortgage lender.

2. Enforcement. The Declarant, the Association, or any member, shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages; and against the lot to enforce any lien created by these covenants; and failure by the Association or any member 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 Association shall be chargeable to the owner of the lot violating these covenants and restrictions and shall constitute a lien on the lot, collectible in the same manner as assessments hereunder.

3. Severability. Invalidation of any one of these covenants of restrictions by judgement or count order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

4. Waiver. 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.

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

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has caused these presents to be signed by the officer duly authorized so to do the day and year first above written.

JAMES A. SHEPHERD, JR.

STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, a Notary Public in and for said State and County, JAMES A. SHEPHERD, JR., the within named bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this 10th day of December, 1997.

Notary Public

RICHARD T.D. BETHEA
MY COMM. EXP.
NOTARY PUBLIC AT LARGE
10-26-1999
SHELBY COUNTY, TENN.

My commission expires:

Prepared by and return to:
RICHARD T.D. BETHEA, Attorney
Bethea, Maxwell & Waddell
1789 Kirby Parkway Suite 2
MEMPHIS, TN 38138-3657

EXHIBIT "A"

BYLAWS OF
McLEAN PLACE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME

The name of the Association is **McLEAN PLACE HOMEOWNERS ASSOCIATION, INC.** (the "Association"). The office and principal place of business of the corporation shall be located at 203 McLean, Memphis, Tennessee 38104. The Association may have other offices as the Association may designate.

ARTICLE II

MEMBERSHIP

The ownership of each lot within McLEAN PLACE, P.D. as shown of record in Plat Book 165, Page 8, Register's Office of Shelby County, Tennessee (the "Planned Development") shall be a member of the Association. If two or more individuals or entities own an interest in a lot, then those persons shall delegate one individual who is an owner and who is authorized to vote for the group. Membership does not include persons or entities who hold an interest merely as security for the performance of an obligation. Membership is appurtenant to and may not be separated from ownership of any lot within said Planned Development; therefore, a transfer of the ownership interest in any lot within said Planned Development automatically transfers the membership.

ARTICLE III

MEETINGS OF MEMBERS

1. Annual Meetings. The annual meeting of the members shall be held at 7:00 o'clock P.M. on the second Thursday in September of each year beginning 1998. At such meeting the members shall elect a President and Secretary and transact such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, the meeting shall be held on the next succeeding business day.

2. Special Meetings. Special meetings of the members may be called by the President or by at least one/half (1/2) of the holders of all votes entitled to be cast by delivering to the Secretary of the Association a written demand signed and dated by said members requesting the meeting and stating the issue proposed to be discussed at said meeting.

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3. Notice of Meetings. The Secretary of the Association shall give either written or oral notice stating the place, day, and hour of the Annual Meeting; however, in the case of a Special Meeting, the notice must be written and the purpose or purposes for which the meeting is called shall be stated. All notices shall be given not less than 10 days nor more than two months before the date of the meeting. Written notices may either be personally delivered or by mail. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid and addressed to the Member's address in the Planned Development (unless the Member has given written notification to the Association of another mailing address). When the meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at the meeting at which the adjournment is taken.

A Member may waive notice of a meeting by either: (a) executing and delivering to the Secretary a written waiver which shall be included in the minutes of the meeting or the Association's records or (2) attending the meeting at the time and place called.

4. Place of Meetings. Meetings of members shall be held at the principal office of the Association or at such other suitable place convenient to the membership as may be designated by the President.

5. Quorum. Three/Fourth (3/4) of the votes entitled to be cast represented at the meeting shall constitute a quorum at any meeting of members. If a quorum is present, the affirmative vote of the majority of members represented at the meeting and entitled to vote shall be the act of the Association, unless the vote of a greater number is required by these Bylaws or the Declaration. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote shall have the power to adjourn the meeting, without notice other than by announcement at the meeting until a quorum as aforesaid shall be present or represented. No period of adjournment may exceed thirty (30) days. The withdrawal of members from any meeting shall not cause failure of a duly constituted quorum at that meeting.

6. Proxies. At all meetings of members, a member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before or at the time of the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance of the member's lot.

7. Voting. The ownership of each lot in the Planned Development is entitled to one vote. Since there are four (4) lots in the Planned Development there are a maximum of four (4) votes. If two or more members jointly own a lot, then those persons shall delegate one individual who is an owner and who is authorized to vote for the group and the Secretary will be informed at the start of the meeting who will cast the vote for the group. In the event

only one individual of an ownership group is present at the meeting, then that person is presumed to be the authorized individual to cast the group's vote. When one person owns more than one lot, then that member shall be entitled to cast a vote for each lot.

No member shall be eligible to vote, either in person or by proxy, or to be elected to the office of President or Secretary, who is shown on the books of the Association to be more than sixty (60) days delinquent in any payment due the Association.

8. Order of Business. The order of business at the annual meeting of members and, insofar as possible, at all other meetings of members, shall be as follows:

(a) Call to order, roll call, designation of authorized Member to vote for a group and presentation of proxies.

(b) Secretary's statement as to how notice of meeting was given.

(c) Reading and disposing of any unapproved minutes.

(d) Reports of President and Secretary.

(e) Disposition of unfinished business.

(f) Disposition of new business.

(g) Adjournment.

In the case of a special meeting, items (a) through (c) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meeting.

ARTICLE IV

POWERS AND DUTIES OF THE ASSOCIATION

The primary purpose of the Association is to provide an entity for the operation, maintenance, upkeep, preservation and enforcement of the "Declaration of Covenants, Conditions and Restrictions" which is or will be recorded in the Register's Office of Shelby County, Tennessee, (the "Declaration"). Said Declaration pertains to and governs all lots located within the Planned Development.

The Association shall be responsible for the care, maintenance and upkeep of (i) the planting area immediately south of the guest parking, the Landscape Strip adjacent to the north property line of the Planned Development, any fencing along the north and west property lines of the Planned Development, the guest parking area, and the "Common Drive", all being located within Area "A" on the recorded plat of the Planned Development and (ii) the entrance gate serving the Planned Development. The Association shall have the right and power to assess its members an amount necessary to carry out the affairs and directions of the Association including the enforcement of lien against any lot in the Planned Development. The type (regular or special), the amount and the method of collecting all assessments shall also be decided by three/fourth (3/4) vote of the members entitled to vote.

The Association has the right to borrow money in its own name for the purpose of caring, maintaining and repairing the items stated above and for such other matters as the Association elects including but not limited to the right to purchase a lot at a foreclosure sale; however, the decision to borrow, pledge Association property or purchase a lot at foreclosure must be with consent of all members entitled to vote.

ARTICLE V

PRESIDENT AND SECRETARY

1. Election and Term of Office. The President and Secretary of the Association shall be elected at the annual meeting of members and shall serve until the next succeeding annual meeting and until their successors have been elected and qualified. Each officer must be a Member or the spouse of a Member.

2. Removal and Resignation. Any officer may be removed from office at any time, with or without cause, on the affirmative vote of three/fourth (3/4) vote of the members entitled to vote.

Either officer may resign at any time by delivering notice to the other officer. Such resignation is effective when such notice is delivered unless such notice specifies a later effective date.

3. Vacancies. Vacancies in offices, however occasioned, shall be filled by election of the members at a special meeting of the Association.

An officer, who becomes more that Sixty (60) days delinquent in payment of any assessments due the Association, may be removed as an officer by the members. An officer automatically resigns if he loses his right to membership in the Association as a result of a change of the record owner of his lot in the Planned Development.

4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the members. The President shall supervise and direct generally all the business and affairs of the Association. The President shall also make reports to the members, perform all duties assigned to the

President in the Declaration, and in general perform all duties incident to the office of President and as may be prescribed from time to time by the Association including but not limited to:

(a) The promulgation and enforcement of rules and regulations and restrictions as may be established by the Association or stated in the Declaration.

(b) Designation of the personnel necessary to carry out day to day care, maintenance, upkeep, repair needed for the Planned Development and all professional services for the Association.

(c) The payment of all cost associated with running the affairs of the Association, for the care and maintenance of the Planned Development or other services provided such as legal and bookkeeping.

5. Secretary. The Secretary of the Association shall (a) keep the minutes for the meetings of members, in one or more books provided for that purpose; (b) see that all notices are duly given, in accordance with these bylaws or as required by law; (c) be the custodian of the Association records; (d) perform all duties assigned to the Secretary in the Declaration; and (e) in general perform all duties incidental to the office of Secretary and as may be assigned from time to time, by the President and the Association.

6. Initial Officers. Until their successors are duly appointed by the Association and have qualified, James A. Shepherd, Jr. will serve as President and Courtney Shepherd will serve as Secretary.

7. Compensation. No Compensation shall be paid to any officer of the Association. However, any officer may be reimbursed for his actual expenses incurred in the performance of his duties.

ARTICLE VI

INDEMNIFICATION

The Association shall indemnify any officer or member who was or is a party or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a member or officer of the Association, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlements, actually and reasonably incurred by him in connection with such action, suit, or proceeding, including any appeal, if he acted in good faith and in his official capacity and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and its members. Further, with respect to any criminal action or proceeding, he had no reasonable cause to believe such conduct was unlawful. No indemnification shall be provided, with respect to any claim, issue, or matter as to which such person is adjudged to be liable for negligence or misconduct in the performance of his duty to the Association. Indemnification shall continue as to a person who has ceased to be a member or officer, and shall inure to the benefit of the heirs, executors, and administrators of such a Person.

ARTICLE VII

MISCELLANEOUS

1. Association Records. The Association shall keep correct and complete books and records of account and shall also keep minutes of all meetings of members at the principal office of the Association. Any member shall have the right to inspect and copy said books and records at their expense and at any reasonable time.

2. Association Liens. Any lien which may be filed against a lot shall be subordinate to any previously recorded mortgage.

3. Conflicts. All of the terms hereof, shall have the same meaning as in the Declaration. In the event these Bylaws are silent or there is a conflict between these Bylaws and the Declaration then the Declaration shall control. In the event there is a conflict between these Bylaws and Declaration and the State Statute, then the State Statute shall control.

4. Board of Directors. The charter of the Association appoints an initial Board of Directors of three individuals who will serve until replaced. Due to the size of the membership of the Association, when the members take control of governing the Association, then all members will be deemed Directors and all member meeting will be in deemed Board meetings as called for in the statutes governing corporations in the State of Tennessee.

5. Fiscal Year. The fiscal year of the corporation shall be based on a calendar year.

6. Gender. Whenever in these Bylaws 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.

7. Governing Law. These Bylaws shall be governed by and construed in accordance with the laws of the State of Tennessee.

8. Notices. Any notice required to be sent to any member under the provision of these Bylaws shall be deemed to have been properly sent when personally delivered or mailed, postage prepaid to the address of the owner's lot in the Planned Development unless the owner has given written notification to the Association of another

mailing address.

9. Reports. The Association shall furnish its members and the holders of any first mortgages requesting same, written annual reports of the financial condition of the Association.

10. Severability. In the event any provision or provisions 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.

ARTICLE VIII

AMENDMENTS

Except as stated , these Bylaws may be amended or modified by the affirmative vote of three/fourth (3/4) of all votes entitled to be cast at any special meeting of the members duly called for such purpose. All mortgage holders who have registered themselves with the Association shall be entitled to at least thirty (30) days notice of the special meeting. A description of any proposed amendment shall accompany the notice to the members and the mortgage holders.

The Declarant reserves the right until the first annual meeting of the Association, to unilaterally amend these Bylaws in whole or in part to conform these Bylaws to the requirements of any governmental agency and/or mortgage lender.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 10th day of December, 1997.

JAMES A. SHEPHERD, JR.
Declarant

RICHARD T. D. BETHEA
MY COMM. EXP.
NOTARY PUBLIC AT LARGE
10-26-1999
SHELBY COUNTY TENN.

PREPARED BY ~~XXXXXXXXXXXX~~:
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RETURN TO:
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6389 Quail Hollow Road, Suite 102
Memphis, TN 38120

TG# 384753-971588

HB 6384

HB 6384

No. ______

D/C D DR# 6

Pgs. 19 Ilm. ______

Val ______

STATE TAX ______

REGISTER'S FEE ______

RECORDING FEE 76.00

WT ☐ MISC FEE ______

TOTAL ______

STATE OF TENNESSEE

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GUY D. D[illegible]ES

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HB6384

SHELBY COUNTY
REGISTER OF DEEDS

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