

THIS INSTRUMENT PREPARED BY AND RETURN TO:

E. WOODS WEATHERSBY  
EVANS & PETREE PC  
1000 RIDGEWAY LOOP ROAD, SUITE 200  
MEMPHIS, TENNESSEE 38120

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE PINNACLE OF GERMANTOWN**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PINNACLE OF GERMANTOWN ("Declaration") is made, published and declared this 18<sup>th</sup> day of JULY, 2007, by B.K. Pinnacle, L.L.C., (the "Declarant or "Developer") and is binding upon any and all persons, firms or corporations hereinafter acquiring any of the within described property.

WHEREAS, the Declarant is the fee simple owner of a certain tract of real property in Shelby County, Tennessee, which property is more particularly described in Exhibit "A" attached hereto (the "Property"); and,

WHEREAS, the Developer has caused to be prepared a plan for the development of the Property, to be known as "The Pinnacle of Germantown" ("The Pinnacle") into 16 residential lots; and,

WHEREAS, the Developer has caused a plat of the Property to be filed in Plat Book 234, Page 20, in the Register's Office of Shelby County, Tennessee ("Plat"); and

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

NOW, THEREFORE, in consideration of above recitals and the premises, the Declarant does hereby publish and declare that all or any portion of the Property described in Exhibit "A" 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, Exhibit "B"), all of which are declared and agreed to be in furtherance of a plan for the development and improvement of the said 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, the Lot Owners, 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.

## ARTICLE I. PURPOSE

The Pinnacle is a private, gated residential community with a natural park-like wooded atmosphere endowed with natural streams and rolling terrain. The purpose and goal of this Declaration is to preserve The Pinnacle's natural domain while overseeing the establishment of sixteen custom homes that will enhance an already wonderful place.

## ARTICLE II. DEFINITIONS

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

Section 1. "Association" shall mean and refer to The Pinnacle Homeowners Association, Inc., a nonprofit, corporation incorporated under the Tennessee Nonprofit Corporation Act of the State of Tennessee, its successors and assigns.

Section 2. "Common Area" shall mean and refer to all real property (including the Improvements thereto) owned by the Association (or by Declarant prior to conveyance of the Common Area pursuant to Article III, Section 5) for the common use and enjoyment of the Members of the Association, its respective guests and invitees.

Section 3. "Declarant" shall mean B.K. Pinnacle, L.L.C. with offices at 5900 Poplar Avenue, Suite 100, Memphis, Tennessee 38119, its successors and assigns. "Declarant" shall be synonymous with "Developer" for purposes of this Declaration.

Section 4. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for The Pinnacle of Germantown, and any supplementary declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.

Section 5. "Lot" shall mean and refer to the Lots of land designated with Numbers 1 through 16, inclusive, as shown on Exhibit "B" attached hereto. For all purposes hereunder, it shall be understood and agreed that Declarant shall be the Owner of all of 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 indirect pro rata interest in the Common

Area owned by the Association.

Section 6. "Member" shall mean and refer to every Person who holds membership in the Association.

Section 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 a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

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

Section 9. "Property" shall mean that real property described in Exhibit 'A' attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 10. "Improvements" shall mean the residences, structures, walls, fences, pavement, plantings, roads, sewers, water systems and other additions built or placed on the Lots or Common Areas.

### ARTICLE III. PROPERTY

Section 1. Property Subject to Declaration. That certain real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration located in Shelby County, Tennessee, and which is more particularly described in Exhibit "A" attached hereto and made a part hereof.

Section 2. Roads, Drainage and Common Area. The Lots are estate-sized lots with the water drainage carried in existing streams on the Property. The natural streams located within the Property are bodies of the State of Tennessee and shall not be altered, changed, obstructed or manipulated in any way. Any alteration, change, obstruction or manipulation of the natural streams on the Property shall be an express violation of this Declaration. In addition to natural streams, there are certain ponds located on the Property which shall provide certain water detention for the Property. The Developer makes no warranty concerning the degree of water inundation that may result on the Lots.

The roads and drainage within The Pinnacle are, and shall remain, private and have not been dedicated to the City of Germantown or Shelby County or any other governmental body. By remaining private, the responsibility for payment of maintenance and repair expenses for said roads and drainage shall remain the

responsibility of the individual Lot Owners, and be paid for by the Owners through the assessments levied by the Association as provided herein. The Association shall be responsible for the maintenance and repair of the roads. Notwithstanding anything herein to the contrary, this paragraph shall not apply to those easements designated as "public" easements.

The private roads that provide ingress and egress to all Lots shall be located, for the most part, within the area shown on the Plat. In some instances, the location of the private road may encroach onto an individual Lot outside the area shown on the plat. If so, a perpetual easement for ingress and egress is hereby granted and shall apply.

The Association shall be responsible for the continued maintenance of the roads, including all Improvements located thereon such as gas street lights, benches and the like in the Common Area. Maintenance of the private roads shall include removal of debris caused by falling trees or limbs. The Association shall use reasonable efforts in clearing the roads so that the orderly ingress and egress to a particular Lot shall not be hindered.

### Section 3. Perimeter Fences.

A perimeter fence is to be installed along the exterior boundaries of the Property ("Perimeter Fence"). The Perimeter Fence shall include a gated entrance from Dogwood Road into the Pinnacle that also extends along the western most boundary of Lot 1 and the eastern most boundary of Lot 16. In addition, the Perimeter Fence shall have a sign and shall have an entrance gate paid for and installed by the Developer which will be operated by an electronic system and telephone lines to each residence on each Lot. The Association shall be responsible for the continued maintenance of the Perimeter Fence and all appurtenances and systems related thereto. The costs and expense associated therewith shall be allocated and assessed to all Owners as a common expense. A perpetual easement is hereby granted to the Association, its officers, agents, employees, and to any construction or management company selected by the Association to enter in or to cross over the Common Areas and any Lot to install and perform the duties of maintenance, repair and replacement to the Perimeter Fence.

Section 4. Retaining Walls. The Declarant shall have the right, in its discretion, to construct and install certain retaining walls on Lots within the Development. The retaining walls will be part of the Lot upon which they are constructed and will not be part of the Common Area. Although the retaining walls will not be part of the Common Areas, all retaining walls constructed and installed by the Developer shall be maintained by the Association. The costs and expense associated with repair, maintenance and replacement of the retaining walls constructed and installed by Developer shall be allocated and assessed to all Owners as part of the Assessment. An easement over, across and upon every Lot upon which a retaining wall

is constructed is hereby granted to the Association, its officers, agents, employees, and to any construction or management company selected by the Association to perform the duties of maintenance and repair to the retaining walls.

Should the retaining walls fail or weaken, the Association, at its expense as part of the Assessments, shall restore the retaining walls, but neither the Declarant nor the Association shall be liable or responsible for any damage incurred on the Lots or to persons and property located thereon as a result of water inundation or failure of the retaining walls.

Damage, by any Owner or guest, agent, or employee of any Owner, to any retaining walls will be, at the option of the Association, either repaired by the Owner responsible, at that Owner's expense, or repaired by the Association and back-charged to the Owner responsible at the direct cost and the Owner also may be fined.

Section 5. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association prior to or simultaneously with the conveyance of the last Lot on the Property.

#### ARTICLE IV. THE ASSOCIATION

Section 1. Members. Every Person, as defined, who is a record Owner of a fee or undivided fee interest of any Lot within the Property shall be a Member of the Association, as defined, provided, however, that anyone who holds such interest solely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot within The Pinnacle. Ownership of such Lot shall be the sole qualification for membership.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of a Lot, each Owner of a Lot being entitled to one (1) vote for each Lot owned, except the Developer, which shall be entitled to three (3) votes for each Lot owned by it. When more than one person holds an interest as an Owner in any Lot, other than the Developer, the vote for such Lot shall be exercised as the owners of such Lot shall determine, but in no event shall there be more than one vote per Lot. If additional property is added to The Pinnacle, then the total number of Lots shall increase.

Section 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 or to cast a vote on any question or matter affecting the administration of the Association.

Section 4. Quorum. The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total votes entitled to be cast 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.

Section 5. Voting. 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, in person or by proxy (provided a quorum exists), 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 bylaws, a different vote is required, in which case such express provision shall govern and control. The vote for any membership which is owned by more than one person may be exercised by any of them present at any meeting unless any 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 delinquent in any payment due the Association.

Section 6. Proxies. A Member may appoint any other Member or the Developer or any other person permitted by law or by the 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. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's Bylaws.

## ARTICLE V. PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area Improvements and Common Areas, and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following:

(a) The rights of the Association to promulgate reasonable rules, regulations and fees concerning the use of the Common Area Improvements or Common Area in

The Pinnacle.

(b) The right of the Association to suspend any enjoyment rights of any Member (which shall in no event deny access to a Lot) for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and,

(c) The right of the Association to provide for and establish easements and rights-of-ways on all private roads, and to regulate parking, motorized and non-motorized vehicular traffic, and to maintain the private roads within The Pinnacle.

Section 2. Easement for Utilities. Utilities (electric, water, gas, phone, TV cable, internet) shall be provided to each Lot. The utilities serving the various Lots shall be located, generally in the private roads. Declarant hereby reserves for itself and the Association a perpetual easement for the continued location of said utilities where installed. The Declarant and the Association are each independently authorized and empowered to grant (and shall from time to time grant) such licenses, easements and/or rights-of-way for sewer lines, water lines, electrical cables, telephone cables, television and other communication cables, internal and external wiring and antennae, gas lines, storm drains, underground conduits and/or equipment for such purposes related to the provision of public utilities and other common services to the Property or any Lot(s) as may be considered necessary, appropriate or desirable for the preservation of the health, safety, convenience and/or welfare of the Owners and the Declarant.

## ARTICLE VI. MAINTENANCE AND REPAIR

Section 1. Association Responsibilities. The Association shall provide and pay for, by the assessments to individual Lot Owners, all costs and expenses for the maintenance, repair, replacement and operation of the private roads, decorative headwalls, bridges, utility and sewer costs, the Perimeter Fence (including the sign, electric gate and telephone system associated therewith), irrigation, lighting, the landscaping of the Common Area, the natural streams, the ponds of the Common Area, and all other costs and expense related to or arising from the maintenance, repair, replacement and operation of the Common Areas and Common Area Improvements. In addition, the Association shall provide and pay for, by the assessments to the individual Lot Owners, routine lawn cutting and leaf removal service for the Common Areas and for each Lot within the Development.

### Section 2. Individual Lot Owners.

(a) Interior Maintenance. Each Owner of a Lot shall be responsible for all interior maintenance, painting, repair and upkeep on his Lot and the improvements

thereon.

(b) Exterior Maintenance & Alterations. As shown on Exhibit "B" attached hereto, there will be sixteen (16) residential Lots. Each Owner of a Lot shall be responsible for exterior maintenance, painting, repair and upkeep on his Lot (except for routine lawn maintenance and leaf removal which shall be the responsibility of the Association as noted above in Section 1). No changes, alterations, or additions shall be commenced for the improvement of an individual Lot unless written approval is obtained from the Architectural Control Committee, as hereinafter defined, in accordance with Article VIII.

(c) Drainage. All Lots have natural drainage. All maintenance expenses associated with the drainage on each Lot is solely the responsibility of the Lot Owner. Any modification to the natural drainage flow shall be designed by an engineer according to the Final Plat of The Pinnacle and approved by Declarant or the Architectural Control Committee.

In the event an Owner of any Lot in the Property shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Board of Directors or the Architectural Control Committee, the Association shall have the right, but not the obligation, through its agents and employees, to enter upon said Lot and to repair, maintain, or restore the Lot and the exterior of the building and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment and shall be a lien to which such Lot is subject.

## ARTICLE VII. ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, 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: (1) annual assessments or charges; (2) special assessments for capital improvements, including private roads, fence and landscape maintenance; and (3) emergency assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual, special and emergency assessments, together with such interest thereon, reasonable attorneys fees, and costs of collection shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon, reasonable attorneys fees, and cost of collection, shall also be the personal obligation of the Owner of such Lot at the time when the assessment became due.

Section 2. Annual Assessments and Carrying Charges of the Association.

Each Member of the Association shall pay to the Association an annual sum (herein sometimes referred to as "annual assessments" or "carrying charges") equal to the Member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, 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;

(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 be required to pay, if any;

(c) The cost of extended liability insurance and the cost of such other insurance as the Association may effect;

(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) Any professional fees (architectural, legal, and engineering) incurred by the Association; and

(f) The estimated cost of repairs, maintenance and replacements of the private roads, gate, monuments, irrigation, Perimeter Fence, natural streams, ponds and landscaping within The Pinnacle and any other item for which the Association may be responsible.

(g) The cost of performing routine lawn and grass maintenance on all Lots and on all Common Areas.

(h) The costs of performing maintenance, repair and replacement to the retaining walls located within the Development.

(i) The estimated and actual cost of enforcing and policing all the terms, covenants, conditions, restrictions and other duties and obligations contained in this Declaration.

Except as provided in Section 10 of this Article VII, the Board of Directors of the Association 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 Bylaws. Written notice of the annual assessment shall be sent to every Owner subject thereto. Except as provided in Section 10 of this Article VII, 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 setting forth whether the

annual assessment on a specified Lot has been paid.

The annual assessment for each Lot shall in no event be less than Two Hundred Fifty and No/100 Dollars (\$250.00).

Section 3. Special Assessments. 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, provided that such assessment shall have the assent of the Members representing two-thirds (2/3) of the total number of votes eligible to be cast. A meeting of the appropriate Members shall be duly called for this purpose, written notice of which shall be sent to all Members at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

Section 4. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of Members, Property, or property of Members, the Board of Directors, acting pursuant to this section, 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 is made in good faith.

Section 5. Non-Payment of Assessments. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent. If not paid when due, the assessment, together with interest thereon and all costs of collection thereof, including but not limited to reasonable attorneys fees, shall become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. To evidence the lien of any unpaid and delinquent assessments, the Board of Directors shall prepare a written notice setting out the amount of the unpaid indebtedness the name of the Owner of the Lot, and description of the Lot. Said notice shall be signed by a member of the Board and recorded in the Shelby County Register's Office. 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, of any installment thereof, may be maintained without foreclosing or waiving the lien created herein.

Any assessment levied pursuant to this Declaration or any installment thereof, which is not paid within ten (10) days after it is due, may bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Tennessee, and may subject the Member obligated to pay the same to the payment of "late charge" as the Board may fix. The Association may bring an action at law or in equity against the Member personally obligated to pay the same, or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust upon the Lot or Lots, then belonging to said Member; in either of which events, the Association may collect from the said Member interest, costs and reasonable attorneys' fees.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Lot Owner grants the Board of Directors of the Association irrevocably 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 to take any and all courses of action available to them for collection of the assessment which the laws of the State of Tennessee allow. 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 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 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 Lot Owners; 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 mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the Property and the expenses of litigation, attorneys' fees, and sales commission; 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 to said mortgage or deed of trust); and third, to the payment of all amounts due the Association under the terms of the Declaration and Bylaws; and the balance, if any, to the Lot Owner whose Lot is sold, or his assigns. Upon any default in the payment of any 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 or by entry into possession in the same manner as a mortgagee entering into possession following default. The Association may enforce its lien by whatever means available, including, but not limited to, the power of sale granted herein or filing suit for foreclosure in the appropriate court.

All rights, remedies, and privileges granted to the Board of Directors or a Lot Owner, 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 party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by the Declaration and Bylaws or at law or in equity.

The Association may notify the holder of the first 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.

Section 6. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

Section 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 or duly recorded on said Lot after receipt of a written statement from the Board of Directors reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Section 8. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, 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 (meaning a mortgage with priority over other mortgages) upon such interest 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 such sale of the Lot 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 mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof shall join in the execution of such amendment.

Section 9. Additional Default. Any recorded first mortgage secured by a Lot in The Pinnacle 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 the 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 such mortgage (or the indebtedness secured thereby) by reason of Section 8 of this Article shall not be altered, modified, or diminished by reason of such failure.

Section 10. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on a date selected by Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Until \_\_\_\_\_, the Declarant shall have the sole authority to determine whether an assessment shall be levied. After \_\_\_\_\_, the assessment shall be fixed by the Board of Directors as set out in Section 2 of this Article VII.

## ARTICLE VIII. ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. An "Architectural Control Committee" is hereby established. The initial committee shall consist of Doug Dickens, Gary Thompson, and an architect selected from the list of approved architects by the two aforementioned members. These three individuals shall serve for a period of five (5) years, or until they resign from the Committee by written notice to the Board of Directors of the Association. Upon the expiration of five (5) years from the date hereof, or the earlier resignation of Doug Dickens, Gary Thompson, and the selected architect the Board of Directors of the Association shall then appoint the Architectural Control Committee, which shall be composed of three (3) or more individual Lot Owners or any other persons commissioned by the Association.

Section 2. Approvals Necessary, Rules of Committee and Remedies for Violation. With the exception of Developer, no structure or Improvement of any kind or nature (including but not limited to buildings, outbuildings, fences, walls, driveways, walkways, mailbox, outdoor lighting, sanitary or sewer systems, and swimming pools)

or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the Lots within The Pinnacle, nor shall any existing structure, fence or barrier upon any Lot be altered in any way which changes the exterior appearance (which includes but is not limited to changes in paint color and re-roofing) thereof, nor shall there be any additions, attachments, or deletions to Improvements, nor shall there be any tree removal, tree trimming or changes in landscaping, without the prior written approval of the Architectural Control Committee; 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 Architectural Control Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Control Committee, but in any event shall include:

- (1) A site plan of the Lot showing the overall nature and location of all improvements, including front, sides, and rear setbacks of all structures; fences, gates or barriers, and location of driveway, turn-arounds, parking spaces, utility meters, air conditioning equipment, refuse storage, and screening;
- (2) Said site plan shall also show the floor area of a single family dwelling, to be a minimum of four thousand (4,000) heated and cooled square feet and a maximum of six thousand five hundred (6,500) heated and cooled square feet; provided, however that (i) the initial Architectural Control Committee shall have the right to change the minimum and maximum square footage requirement for any individual Lot to preserve the orderly development of and integrity of The Pinnacle; and (ii) a vote of seventy-five percent (75%) of the Owners shall have the right to change the minimum and maximum square footage requirements for The Pinnacle;
- (3) Existing and proposed drainage plans, grading plan, grading permit, tree clearing plan and proposed landscaping and hardscaping plans for the Lot which must include an irrigation system for such Lot;
- (4) Mailboxes and front yard exterior lighting (which shall include a minimum of one (1) gas light per Lot), the design, material, and location of said mailboxes and exterior lighting;
- (5) Where a drainage pipe may be required for a driveway, a masonry head wall of decorative stone used in the theme of the Development or brick which matches the residence on the Lot may be required on each end of the drive culvert; and,

(6) Evidence that a sprinkler system shall be installed within the residence to be constructed on the Lot in accordance with the requirements and ordinances the City of Germantown and other applicable governing authorities.

(6) Architectural plans which include floor plans, all exterior elevations, building sections and details of cornice, dormers, front entrance, porches, rails, and other details, etc. of special or unique importance or character. Said plans shall include adequate data and detail as to the overall kind, style, shape, height, materials, color scheme, and quality of the proposed structure and other improvements.

The Architectural Control Committee may require additional data or more detailed plans should the items noted above not be adequately covered or should a design of unique quality or merit require such for full review and approval.

Review by the Architectural Control Committee shall be limited to the review of the exterior plans of any proposed Improvements.

By an affirmative majority vote of the members of the Architectural Control Committee, the Architectural Control Committee 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 and may issue statements of policy with respect to approval or 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 Architectural Control Committee at any time and no inclusion in or omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Control Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Architectural Control Committee'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 Architectural Control Committee 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.

In the event the Architectural Control Committee fails to approve or disapprove any plans and specifications or other requests as herein provided within thirty (30) days

after submission thereof, the same shall be deemed to have been approved as submitted and no further action shall be required.

If any structure, fence, or barrier shall be altered, erected, placed or maintained (including exterior maintenance) upon any Lot or any new construction or use commenced on any Lot, that is not in accordance with plans and specifications approved by the Architectural Control Committee 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 Architectural Control Committee or the Association any such structure, fence or barrier so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or altered, and such use shall be terminated so as to extinguish such violation.

If fifteen (15) days after the notice of such violation, the Owner or Owners of the Lot upon which such violation exists shall not have taken reasonable steps towards the removal or termination of the same, other Owners, the Declarant, the Association or the Architectural Control Committee 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 all costs and expenses thereof, including reasonable attorneys fees, if any, 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.

Upon completion of the construction or alteration of any structure and after completion of landscaping, the Owner's architect shall give its certification to the Architectural Committee in writing that the structure has been built in accordance with the approved plans and is substantially complete and that the landscaping has been completed in accordance with the approved plans. The Architectural Control Committee or Association shall, upon written request of the Owner thereof, issue a letter 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 and that such structure complies therewith. Preparation and recording of such letter shall be at the expense of the Owner or Owners of such Lot. Any letter 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 letter shall be conclusive evidence that all structures and the use or uses described therein comply with all the requirements of these restrictions and all other requirements as to which the Architectural Control Committee exercises any discretionary or interpretive powers.

The Architectural Control Committee may charge and collect a reasonable fee for

the examination of any plans and specifications submitted for approval pursuant to these restrictions payable at the time such plans and specifications are so submitted.

The Architectural Control Committee shall use its reasonable efforts in the exercise of its duties; however, the Committee, its members and the Association shall not be liable for any decision made in the exercise of its duties, or for any comments, suggestions and/or redesigns resulting from the design review process set forth in the foregoing provisions nor for any structural or other defects in any work done according to such plans and specifications.

Any agent of Developer or the Architectural Control Committee 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 persons shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

The Association or any Owner of any Lot contained within The Pinnacle 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. Failure by the Association or any Owner to enforce any of such proceedings shall in no event be deemed a waiver of the right to do so thereafter.

Should a request to the Architectural Control Committee come from an Architectural Control Committee member, the other members of the Architectural Control Committee shall select a disinterested Lot Owner to take the place of the Architectural Control Committee member making the request.

Section 3. Compliance with Building Codes. The applicable building codes in effect at the time of any construction shall apply to all construction within The Pinnacle.

Section 4. Non-Liability. Neither Declarant nor the Association, the Board, or the Architectural Committee 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 IX. PROVISIONS REGARDING BUILDERS

Section 1. Restriction of Builders. The Declarant and/or the Association may from time to time establish a list of required builders and architects. If so established, all construction, alterations and improvements shall be performed only by builders and architects set forth on the approved list. The Association and/or the Declarant shall have the right to prohibit certain builders from constructing residences on any Lot, based upon past problems with respect to such builder, which can include, without limitation, the constructing of unapproved field modifications, inadequate response to Architectural Committee directions, and/or failure to comply with Architectural Committee requirements.

Section 2. Construction Debris and Trash Removal. Each builder will be required to maintain a dumpster in a location approved by the Architectural Committee. This dumpster shall be emptied periodically, but prior to the point that construction materials reach the upper rim. The required dumpster may be shared between adjoining two builders and/or Owners, if said builders and Owners agree, and each shall be bound by the conditions noted herein.

Each day, all construction sites are to be cleaned so as to facilitate a pleasing appearance to Owners and visitors and to eliminate any hazards for the visitors who will be touring through the various construction projects.

Violations will be subject to fines and the Association also may have the violating site cleaned. The Owner will be charged two times the direct cost charged for the site clean-up.

Construction materials shall be kept out of the public right-of-way at all times and stored on the subject property. Streets and service drives (alleys) adjacent to said property shall be kept open for circulation at all times. This is for the protection of all parties and to allow emergency vehicles direct access to any part within the Property.

All wrappers, paper goods and light-weight building materials that may be blown onto adjacent properties shall be maintained, properly stored or deposited in trash receptacles on a daily basis.

Workers shall not utilize parks and common areas for lunch or breaks and shall remove all food wrappers, containers, etc., and deposit said debris in trash receptacles.

Section 3. Infrastructure. Within the Property, there are numerous forms of common infrastructure that may consist of curbs, streets, service drives, landscaping, street trees, street lights, sidewalks, irrigation systems, brick pads, benches, bridges, walking paths, parks, trash receptacles, etc., as well as other improvements not necessarily enumerated above. The builder and Owner of any Lot are responsible for protecting said infrastructure.

Damage to any infrastructure item will be, at the option of the Association, either repaired by the Owner responsible, at that Owner's expense, or repaired by the Association and back-charged to the Owner responsible at the direct cost and the Owner also may be fined.

Prior to commencing construction, the Owner must take Association-approved protective measures, which at a minimum shall include fencing around street trees adjacent to or within the subject site. All construction materials are to be kept away from these trees during construction so as to prevent any damage. These trees are a valuable asset to each property as well as the overall development.

Section 4. Construction Time. No builder or subcontractor shall commence construction work on a weekday before 7:00 a.m. or continue construction after 7:00 p.m. No builder shall commence construction work on a weekend day before 9:00 a.m. or continue construction after 6:00 p.m. These limitations are subject to modification by the Architectural Committee.

Section 5. Construction Audio Equipment and Noises. No audio equipment (radios, tape decks, C.D. players) shall be utilized on construction sites on weekdays before 9:00 a.m. or after 5:00 p.m. Use of audio equipment on construction site is strictly prohibited on Saturdays and Sundays. Audio equipment shall not be played so loudly as to disturb nearby residents at any time. Offensive language or other potentially offensive noise (other than typical construction machinery or procedures) is strictly prohibited.

Section 6. Concrete Delivery and Disposal of Excess Material. Concrete trucks are strictly prohibited from dumping any excess concrete anywhere within the Property. Concrete which is accidentally spilled on sidewalks, curbs or asphalt paving must be removed by the responsible party immediately.

Section 7. Surveys and Construction Staking. Each builder and Owner is responsible for establishing property corners and construction staking. No tolerance will be allowed for improperly locating property lines or proposed improvements. An experienced and qualified licensed engineer is required to survey the property and locate proposed improvements. The location of proposed improvements shall be double-checked prior to starting actual construction. Any questions or problems in the field shall be immediately reported to the managing agent of the Association. Once the foundation is laid, the contractor's engineer shall certify that all improvements are properly located. Any and all deviations shall be promptly corrected at that time. No exceptions will be allowed.

Section 8. Dump Sites. There are no dump sites within the Property. All construction refuse and debris removed from the premises during and upon completion of construction shall be properly disposed of, outside of the boundaries of the Property.

A minimum fine of Five Thousand Dollars (\$5,000.00) per occurrence shall be imposed on anyone dumping debris on any portion of the Property. This fine shall be charged against the Lot Owner from which the debris originated and be paid to the Owner of the Lot upon which the debris was deposited and a lien shall be filed against the violating Lot. The workman and company responsible for depositing such debris shall be prohibited from future work in the Property.

Section 9. Protection of Adjacent Property. Unless modified in writing, prior to construction to beginning on a Lot, the contractor is required to put up a solid black silt fence along the entire property line separating the proposed construction site from adjoining properties. This fence shall be maintained by the builder throughout construction and every effort must be made to keep any construction debris off of the adjacent property. The contractor shall not utilize the adjoining property in any manner unless prior approval and conditions have been granted by the adjacent property owner.

Section 10. Port-A-John. Each builder is responsible for his own Port-A-John or for making arrangements with nearby builders to share a unit between several construction sites. The Port-A-John shall be maintained on a regular basis and located at the rear of the construction site and the door of the Port-A-John shall not face any street, sidewalk or other public right-of-way.

## ARTICLE X. RESTRICTIVE COVENANTS

Section 1. Residential Use. Lots 1 through 16 inclusive, shall not be used except for private single family residential purposes.

Section 2. Prohibited Uses and Nuisances. In order to provide for a congenial occupation of the homes within The Pinnacle 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 provisions:

- (a) Said property is hereby restricted to residential dwellings for residential use. No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other building of temporary character shall be used on any portion of a Lot without prior written approval of the Architectural Control Committee.

(b) Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions, and provisions hereof and all easements, setbacks, restrictions, and covenants set out in the Plat attached hereto as Exhibit "B".

(c) No privacy fences or other solid fencing shall be permitted on a Lot except in the rear yard of a Lot on the back of a residence and shall not extend beyond the corners of the rear façade of the residence. All privacy fences are subject to the review and written approval of the Architectural Control Committee. In addition, all privacy fences, if permitted, shall be totally screened from public view and from the view of surrounding Lots.

(d) No parking shall be permitted on or along the private roads of the Development except in the areas specifically designated for vehicle parking on the Plat. Parking areas shall not be used for permanent or temporary storage of junk vehicles, recreational vehicles, private vehicles offered for sale, house trailers or commercial or industrial vehicles or other semi-mobile equipment. All parking requirements are subject to applicable ordinances of the City of Germantown.

(e) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of the sale of said 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 business office, storage area, construction yard, signs, model units, and sales office.

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

(g) No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way or for any purposes which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof.

(h) No business activity of any kind whatever shall be conducted in any building or in any portion of said Property; provided, however, the foregoing covenants shall not apply to (i) a home office so long as there is absolutely no traffic to and from the Lot as a result thereof, and (ii) the business activities, signs, and billboard or the construction and maintenance of buildings, if any, of

Declarant, its agents, and assigns, during the development and sales period of Lots in The Pinnacle.

(i) All equipment, utility meters, 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 adjacent Lots, the private drives and street.

(j) All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon. Debris and trash during the construction of an Owner's Improvements shall be collected by each Owner (or his or her representative) in containers approved by the Architectural Committee and periodically removed so that no unsightly condition occurs on the Lot or adjoining Lots.

(k) No recreation vehicles or commercial vehicles of any kind, including, but not limited to, trucks, vans, boats, boat trailers, R.V.s, campers, race cars, house trailers, camping trailers, motorcycles, all terrain vehicles, pick-up trucks, or similar type items, shall be kept other than in a closed garage or otherwise screened from the view of neighbors or the roads to the satisfaction of the Architectural Control Committee.

(l) Trees, shrubs, vines, debris, and plants which die shall be promptly removed from such Lots. Developer and/or the Association, at their option and their discretion, may have dead trees and debris removed from such Lots and the Owner of such Lot shall be obligated to reimburse Developer and/or the Association for the cost of such work should he refuse or neglect to comply with the terms of this paragraph. Such cost shall create a valid lien on said Lot which shall be enforceable as an assessment against the Lot should the Owner refuse or neglect to comply with the terms of this paragraph.

(m) All lawns shall be mowed and maintained in a uniform manner by a landscaping company selected by the Declarant and/or the Association, and the costs and charges associated therewith shall be charged as part of the annual assessments. Upon a vote of seventy-five (75%) or more of all Lots, the Owners may determine to no longer require uniform lawn maintenance.

(n) No standing or partially standing trees which are obviously dying or dead shall be allowed to remain within thirty (30) feet of any right-of-way. If a Lot Owner fails to remove said tree or trees, within thirty (30) days of written notification from the Association, the Association may, at its option, go onto the Lot, remove said tree or trees and assess the cost against the Lot Owner. Such cost shall create a valid lien on said Lot which shall be enforceable as an assessment against the Lot should the Owner refuse or neglect to comply with

the terms of this paragraph.

(o) Trees ten inches (10") or more in diameter may not be cut, trimmed, removed, transplanted or altered in any way without the prior written consent of the Architectural Control Committee. If any trees are cut, trimmed, removed, transplanted or altered in violation of this restriction, the Owner of the Lot upon which said trees were originally located shall replace said trees with trees of equal or greater size, type and quality.

(p) If a retaining wall is located on a Lot, Owner of said Lot shall be restricted from altering, changing, moving, relocating the retaining wall and shall be prohibited from constructing any Improvements within three (3) feet of the retaining wall.

(q) No noxious or offensive trade or activity shall be carried on upon any Lot in this development nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners within The Pinnacle.

(r) No building material of any kind or character shall be placed or stored upon any of said Lots until the Owner is ready to commence improvements. Building materials shall not be placed or stored in the private road or within thirty (30) feet of the edge of the road pavement. Building materials shall be kept in an organized and compact manner and appropriate measures taken daily to prevent unsightliness during construction. No construction shall be commenced until appropriate erosion controls are in place, and such shall be maintained during the time of construction.

(s) Exterior security or spot lights shall be directed toward the ground and not toward adjacent Lots or private roads.

(t) After the initial approval of a plan for Improvements, no trees indicated on the tree plan attached hereto as **Exhibit C** may be removed, unless such trees are dead and pose a threat to the safety and health of the individuals residing in the residence, without the prior written approval of the Architectural Committee.

(u) Easements for utility and drainage are reserved as shown on the Plat. No Owner shall, within any such easement areas or at other locations whether within or without designated easement areas, place or permit any structures, fencing, plants or other material which may damage or interfere with the installation and maintenance of utilities and/or interfere with the positive natural drainage established by Declarant. Further, no Owner shall install any Improvements or modify any existing grades in such a manner as would impair the positive, natural flow of water from or onto the Owner's Lot. The easement

area and drainage facilities on each Lot shall be maintained continuously by the Owners of such Lot.

(v) The minimum square footage for a residence shall be four thousand (4,000) heated and cooled square feet and the maximum square footage for a residence shall be six thousand five hundred (6,500) heated and cooled square feet. The minimum and maximum square footage requirements shall apply even in the event a residence is constructed on more than one Lot. The Architectural Committee shall, in its sole discretion, have the ability to vary the minimum or maximum square footage requirements or the Owners, upon a vote of seventy-five (75%) or more of all Lots, may change the square footage requirements.

(w) Auxiliary structures, as approved by the Architectural Control Committee, shall be located within the buildable setbacks. The square footage for auxiliary structures shall be subject to approval by the Architectural Control Committee.

(x) There shall be no further subdivision of the Lots.

(y) Any security gate installed by any Lot Owner on any Lot must meet the requirements of the fire code of the Shelby County Fire Department and be thirty (30) feet from the private road pavement.

(z) No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile, unused motor vehicles, or unsightly objects shall be allowed to be placed or to remain anywhere on any Lot. In the event that any Owner or occupant of any Lot in the Planned Development shall fail or refuse to keep the Lot free from weeds, underbrush, refuse piles, unused motor vehicles, or other unsightly growths or objects, then the agent of the Architectural Committee may enter upon the Lot and remove the same at the expense of the Owner and such entry shall not be deemed a trespass. In the event of such a removal, the Owner shall pay the expenses thereof.

(aa) Declarant or the Association, as the case may be, shall develop and maintain from time to time a set of rules and regulations governing the day to day use of the Lots and Common Area by the Owners within The Pinnacle. There shall be no violation of any such rules.

(bb) 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.

(cc) Owner is solely responsible for ensuring that (i) the Owner's Lot, once improved, will drain properly and sufficiently, (ii) no grading of or improvement to the Lot shall increase the natural flow of water onto the adjacent land, and (iii) that the drainage from surrounding Lots will not negatively impact the Owner's Lot. Owner shall in no event obstruct or impede the flow of water designed to run on, over or near the Lot pursuant to the grading plans for the Development.

(dd) No Lot nor any Improvement thereon shall be conveyed to, leased to, or occupied by a convicted sex offender that is listed or should be listed on any state or federal sex offender registry.

(ee) No swing sets, play sets, trampolines, or the like may be maintained on a Lot without the prior approval of the Architectural Committee unless said structures are not visible to neighboring Lots and public view.

(ff) Other than those displaying the American and Tennessee State flags (which shall in all events still be subject to the approval of the Architectural Committee), no flagpoles may be installed or kept on a Lot or on any residence constructed on any Lot unless said flagpoles are screened from public view and are not visible to neighboring Lots.

(gg) No statues or other lawn ornaments shall be permitted on a Lot without the prior written approval of the Architectural Committee except in the event the statue or lawn ornament is not visible to the public and to neighboring Lot Owners.

(hh) In election years, only one (1) yard sign per candidate shall be permitted on a Lot.

## ARTICLE XI. COMMON EASEMENTS

Section 1. Easements of Encroachment of Private Road. The private roads within the Development may vary in width to preserve trees and the natural character. If there is a variance between the metes and bounds description for a Lot and the edge of the pavement for the completed private road adjacent to a Lot, then the edge of such pavement shall be the actual perimeter and boundary of the Lot. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the private roadway adjacent thereto or as between adjacent Lots due to settling or shifting of Improvements constructed, reconstructed or altered thereon.

Section 2. Easement for Utilities, Etc. Easements for utilities are as shown on the Plat.

Section 3. Grant of Easement for General Services. An easement is hereby granted to all police, fire protection, ambulance, security, garbage collection, and U.S. Postal Service Persons to enter upon the streets and Common Areas in performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Areas, the Lots, and any dwelling to perform the duties of maintenance and repair of the dwelling or Common Area provided for herein. Should any utility request a specific easement by separate, recordable document, the Association shall have the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this section shall in no way affect any other recorded easements on said premises.

Section 4. General Easement. The Declarant, so long as it shall retain record title to any Lot or the Common Area, reserves the right and easement to the Common Area and any Lot or portion thereof as may be needed for repair, maintenance, construction, or marketing of the Development.

Section 5. Utility Easement in all Setback Areas. A utility easement for the Association is reserved within the front, rear and side setback areas of all Lots. Additional easements are reserved on the recorded plat(s), as amended from time to time. Within these easements, no construction of any kind shall be placed or permitted to remain which will in any way damage or interfere with the installation or maintenance of utilities.

Section 6. Easement for Lawn Maintenance. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Areas and the Lots, to perform the duties of routine lawn maintenance.

## ARTICLE XII. INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable common private improvements. The Board shall also obtain a public liability policy covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000.00) limit per occurrence, and a

Thirty Thousand Dollar (\$30,000.00) minimum property damage limit.

Premiums for all insurance for the Common Area Improvements shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost of the improvements. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance.

Cost of insurance coverage obtained by the Association for the Common Area Improvements for which the Association is responsible shall be included as an Assessment as defined in Article VII.

In addition to the other insurance required by this Section, the Association shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

Section 2. Individual Insurance - Repair and Reconstruction. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the Lot and structures constructed thereon for full replacement cost. In the event of damage or destruction by fire or other casualty, the Owner shall contract to repair or rebuild such damage or destroyed portions of the improvements in a workmanlike manner in conformance with the original plans and specifications of the Improvements (including landscaping). In the event the Owner refuses or fails to so repair or rebuild any and all such damage to his improvements within thirty (30) days, the Association, by and through its Board of Directors, is hereby authorized by such Owner to repair and rebuild the Improvements in a good and workmanlike manner in conformity with the original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repairs, and the Association will have a lien securing the payment of same identical to that provided for in Article VII, securing the payment of said sums expended and subject to the power of sale and foreclosure as set forth in said Article.

The individual Owners shall make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Association, other Lot Owners, and their respective tenants, servants, agents

and guests.

Upon request, the individual Owners shall furnish a certificate of insurance to the Association or its manager.

### ARTICLE XIII. MORTGAGEE' S RIGHTS

Upon request, the Association shall make available to any Lot Owner and lender, and to any holder, insurer, or guarantor of any first mortgage, current copies of this Declaration, the Bylaws, and other rules concerning the affairs and management of The Pinnacle, and the books, records, and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the unit number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

- (a) any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage;
- (b) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- (c) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed act that requires the consent of a specified percentage of mortgage holders.

### ARTICLE XIV. GENERAL PROVISIONS

Section 1. Duration and Amendment. 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 Association, or the Owner of any land 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. Unless specifically prohibited or otherwise provided herein, this Declaration may be amended by an instrument signed by Owners holding not less than sixty-seven percent (67%) of the votes of the membership at any time. Any amendment must be properly recorded to be effective. During the first two (2) years

from the date of the recording of this Declaration, any amendment must also be approved by the Declarant.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT FOR A PERIOD OF FIVE (5) YEARS FROM THE DATE HEREOF TO UNILATERALLY AMEND THIS DECLARATION TO THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL, AND FOR THE REQUIREMENTS OF ANY MORTGAGE LENDER OR FOR ANY REASON THAT THE DECLARANT DEEMS ADVISABLE FOR THE ORDERLY DEVELOPMENT OF THE PINNACLE. IF THIS PROVISION EXPIRES AND THEREAFTER ADDITIONAL PROPERTY IS INCLUDED WITHIN THE PINNACLE, THEN THIS PROVISION SHALL AUTOMATICALLY REVIVE ITSELF FOR A NEW FIVE (5) YEAR TERM PERTAINING TO THE ADDITIONAL PROPERTY.

Section 2. Notices. Any notice required to be sent to any Member 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 a Member on the records of the Association at the time of such mailing.

Section 3. 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 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 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 costs, expenses, and reasonably attorneys fees associated with enforcement incurred 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.

Section 4. Severability. 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.

Section 5. 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.

Section 6. Gender, Etc. 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 undersigned, being the Declarant herein, has caused these presents to be signed by the officer duly authorized so to do as of the day and year first above written.

B.K. Pinnacle, a Tennessee limited liability company

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

Title: \_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF TENNESSEE  
COUNTY OF SHELBY

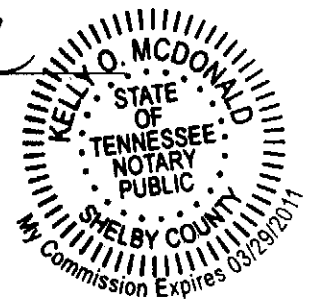
Before me, a Notary Public of the state and county mentioned, personally appeared DONALDAS H. DICKENS, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the CHIEF MAR. of B.K. Pinnacle, L.L.C., a Tennessee limited liability company, the within named bargainor, and that he as such CHIEF MAR., executed the foregoing instrument for the purposes therein contained, by signing the name of B.K. Pinnacle, L.L.C., a Tennessee limited liability company, by himself as CHIEF MAR..

WITNESS my hand, at office, this 17th day of July, 2007.

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

My Commission expires:

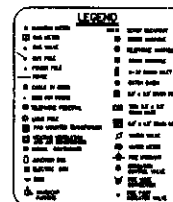
3/29/2011



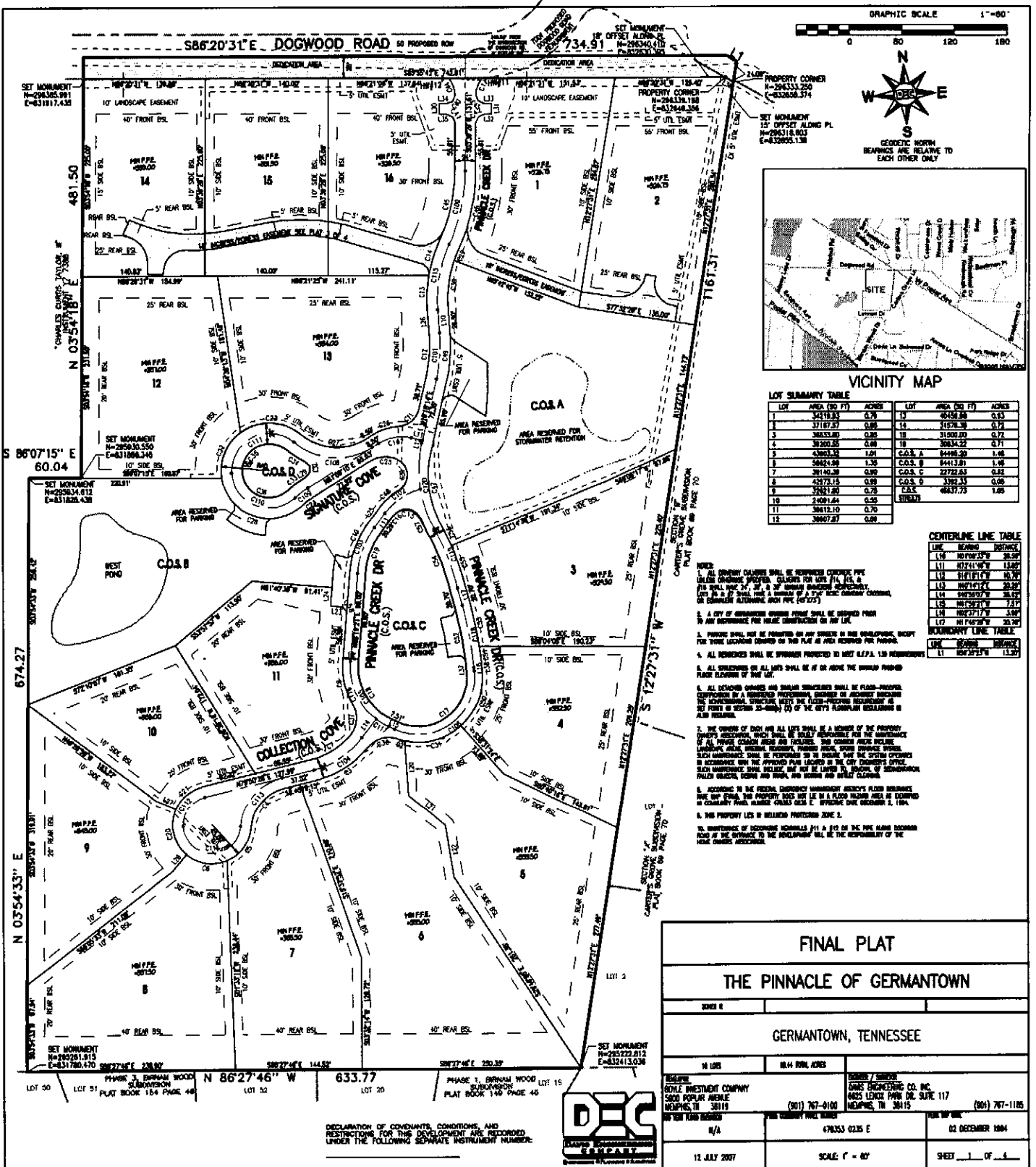


## EXHIBIT A

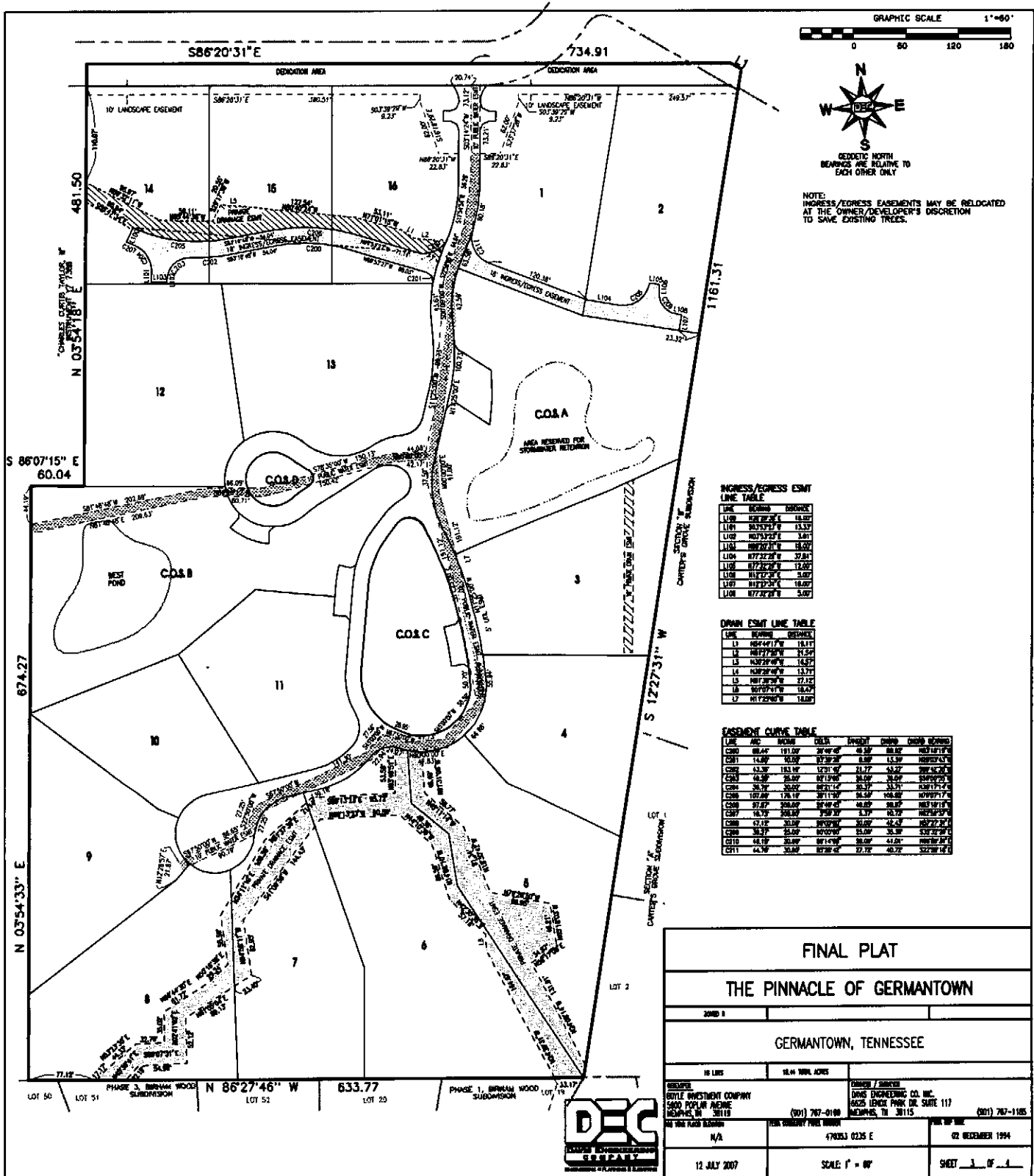
$P_{\text{DOM}} = 30\%$



## EXHIBIT B







**OWNER'S CERTIFICATE**

I (WE), \_\_\_\_\_, THE UNDERSIGNED OWNER(S) OF THE PROPERTY SHOWN, HEREBY ADOPT THIS PLAT AS MY (OUR) PLAN OF DEVELOPMENT AND DEDICATE THE STREETS, RIGHTS-OF-WAY, AND DRAIN EASEMENTS AS SHOWN AND/OR DESCRIBED TO THE PUBLIC USE FOREVER. I (WE) CERTIFY THAT I (WE) AM (ARE) THE OWNER(S) OF THE SAID PROPERTY IN FEE SIMPLE, DULY AUTHORIZED TO ACT, AND THAT SAID PROPERTY IS NOT ENCUMBERED BY ANY TAXES OR MORTGAGES WHICH HAVE BECOME DUE AND PAYABLE.

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

**NOTARY'S CERTIFICATE**STATE OF TENNESSEE  
COUNTY OF SHELBY

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE SAID STATE AND COUNTY AFORESAID, DULY COMMISSIONED AND QUALIFIED, PERSONALLY APPEARED \_\_\_\_\_ WITH WHOM I AM PERSONALLY ACQUAINTED AND WHO, UPON OATH, ACKNOWLEDGE HIMSELF (HERSELF) TO BE \_\_\_\_\_ OF THE \_\_\_\_\_ THE WITHIN NAMED BARGAINER, AND THAT HE (SHE) EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSE THEREIN CONTAINED. IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY NOTARIAL SEAL AT MY OFFICE IN MEMPHIS, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

NOTARY PUBLIC \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_\_

**CERTIFICATE OF SURVEY**

IT IS HEREBY CERTIFIED THAT THIS IS A CATEGORY J SURVEY AND THAT THE RATIO OF PRECISION OF THE UNADJUSTED TRAVERSE IS 1: 10,000 OR GREATER. THAT THIS PLAT HAS BEEN PREPARED BY ME OR UNDER MY INDIVIDUAL SUPERVISION AND CONFORMS WITH APPLICABLE STATE LAWS AND LOCAL ZONING ORDINANCES, SUBDIVISION REGULATIONS AND THE SPECIFIC CONDITIONS IMPOSED ON THIS DEVELOPMENT RELATING TO THE PRACTICE OF SURVEYING.

BY \_\_\_\_\_

TENNESSEE CERTIFICATE NO. \_\_\_\_\_

**ENGINEER'S CERTIFICATE**

IT IS HEREBY CERTIFIED THAT THIS PLAT IS TRUE AND CORRECT, IS IN CONFORMANCE WITH THE DESIGN REQUIREMENTS OF THE ZONING ORDINANCE, THE SUBDIVISION REGULATIONS AND THE SPECIFIC CONDITIONS IMPOSED ON THIS DEVELOPMENT, AND TAKES INTO ACCOUNT ALL APPLICABLE FEDERAL, STATE AND LOCAL BUILDING LAWS AND REGULATIONS.

BY \_\_\_\_\_

TENNESSEE CERTIFICATE NO. \_\_\_\_\_

**PLANNING COMMISSION CERTIFICATE**

I, \_\_\_\_\_ DO HEREBY CERTIFY THAT THE CITY OF GERMANTOWN PLANNING COMMISSION HAS APPROVED THIS PLAT OF SUBDIVISION FOR RECORDING.

DATE \_\_\_\_\_

SECRETARY, PLANNING COMMISSION  
CITY OF GERMANTOWN

APPROVED BY THE CITY OF GERMANTOWN

BY \_\_\_\_\_

MAYOR

DATE \_\_\_\_\_



FINAL PLAT		
THE PINNACLE OF GERMANTOWN		
ZONED R		
GERMANTOWN, TENNESSEE		
10 LOTS	16.44 TOTAL ACRES	
OWNER: BATTLE INVESTMENT COMPANY 5000 POPULAR AVENUE MEMPHIS, TN 38119	OWNER / DESIGNER: BANS ENGINEERING CO., INC. 8025 LEXINGTON PARK DR. SUITE 117 MEMPHIS, TN 38115	
AS PER T&E DESIGN	PER T&E DESIGN FILE NUMBER	PER DFP FILE
N/A	470353 0235 E	02 DECEMBER 1994
12 JULY 2007	SCALE: 1" = 60'	SHEET 4 OF 4

**CHARTER  
OF  
THE PINNACLE 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: The Pinnacle Homeowners Association, Inc.
2. This corporation is a mutual benefit corporation.
3. This corporation is not a religious corporation.
4. The complete address of the corporation's initial registered office in Tennessee is:  
5900 Poplar Avenue, Suite 100, Memphis, Tennessee 38119.
5. The name of the initial registered agent, to be located at the address listed in Item 4 is Charles Claiborne.
6. The name and complete address of each incorporator is:  
  
E. Woods Weathersby  
1000 Ridgeway Loop Road, Suite 200  
Memphis, Tennessee 38120
7. The complete address of the corporation's principal office is:  
  
5900 Poplar Avenue, Suite 100  
Memphis, Tennessee 38119
8. This corporation is a non-profit corporation.
9. This corporation will have members.
10. Upon dissolution or other termination of the corporation, all property and proceeds of the corporation, subject to the discharge of valid obligations of the corporation, shall be distributed on a reasonable and equitable basis to the members of the corporation.
11. The personal liability of the directors to the corporation or its shareholders for monetary damages for breach of fiduciary duty as directors shall be eliminated; provided, such liability shall not be eliminated for:
  - (a) any breach of the director's duty of loyalty to the corporation or its shareholders;

(b) acts or omissions not in good faith which involve intentional misconduct or a knowing violation of the law; or

(c) any liability for unlawful distributions as set forth in Section 48-18-304 of the Tennessee Code Annotated, as the same may be amended from time to time.

12. The corporation may indemnify and advance expenses to a director or to an officer, employee, or agent of the corporation who is not a director as if such officer, employee or agent was a director, to the full extent permitted by public policy and as set forth in its by-laws or approved by general or specific action of its Board of Directors, or as agreed to by contract.

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
E. Woods Weathersby, Incorporator

**BYLAWS  
OF  
THE PINNACLE HOMEOWNERS ASSOCIATION, INC.  
(Not-for-Profit)**

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**ARTICLE I**

The name of this corporation is The Pinnacle Homeowners Association, Inc. (The "Association"). Its Principal office shall be located in Memphis, Shelby County, Tennessee. The Association may have such other offices within or without Memphis, Shelby County, Tennessee as the Board of Directors of the Association may from time to time designate. The Association shall have such registered agent for service of process initially as its Charter shall designate, and thereafter, as the Board of Directors may appoint from time to time.

**ARTICLE II**

**Incorporation of Declaration of Covenants, Conditions and Restrictions**

There is hereby incorporated by reference the provisions of Declaration of Covenants, Conditions and Restrictions for The Pinnacle of Germantown, dated July 18, 2007, recorded at Instrument No. 07120852 in the Register's Office of Shelby County, Tennessee, as the same may be amended from time to time (the "Declaration"), which, among other things, provides for the organization and management of the Association. To the extent that any provision of these Bylaws conflicts with any provisions of the Declaration, the provision of the Declaration shall control.

All capitalized terms not otherwise defined herein shall have the meanings given them in the Declaration.

**ARTICLE III**

**Members**

**1. Members.**

Membership in the Association, as well as voting and other rights of the Members and their Representatives, shall be governed by the provisions of Article IV of the Declaration.

**2. Evidence of Membership.**

The Association shall not issue certificates of membership. A copy of the most recently recorded deed of conveyance as filed of record in the Register's Office of Shelby County, Tennessee, conveying any Property to any Owner, shall constitute evidence of membership in the Association.

## ARTICLE IV Meetings of Members

### 1. Place of Meeting.

Meetings of the Members shall be held at the principal office or place of business of the Association or at such other suitable place as may be designated by the Board of Directors.

### 2. Annual Meetings.

Annual meetings of the Members of the Association shall not be held until the Board of Directors votes affirmatively to commence holding annual meetings. Once commenced, the time for such annual meetings shall be determined by the President or the Board of Directors. At each annual meeting there shall be elected by written ballot of the Members a Board of Directors in accordance with the requirements of Article V of these Bylaws. The members may also transact such other business of the Association as may properly come before them.

### 3. Special Meetings.

It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Board of Directors or upon a petition signed by Members representing at least twenty percent (20%) of the total number of votes outstanding. Special meetings by petition of the Members shall not be permitted until annual meetings of the Association have commenced. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

### 4. Notice of Meetings.

It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member, at his/its address as it appears on the membership book of the Association, or if no such address appears, at his last known place of address, at least ten (10) but not more than sixty (60) days prior to such meeting or by the delivery of any such notice to the Representatives of each Member at the address shown on the records of the Association.

### 5. Quorum.

The number of votes specified in Article IV, Section 4, of the Declaration shall constitute a quorum at each annual or special meeting of the Association. If the number of votes eligible to be cast at a meeting drops below the quorum and the question of a lack of quorum is raised and confirmed, no business may be thereafter transacted.

### 6. Adjourned Meetings.

If any meeting of the Association cannot be held or continued because a quorum is not present, a majority of the voting power which is 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.

7. Voting.

At each annual or special meeting of the Association, voting shall be conducted in the manner provided for in Article IV, Section 5 of the Declaration.

8. Proxies.

Each Representative shall be irrevocably appointed a proxy to vote or otherwise act on behalf of the Members electing or appointing such Representative in the manner provided for in Article IV, Section 6, of the Declaration.

9. Actions by Written Ballot.

Any action required or permitted by applicable law, the Charter of the Association, the Declaration or these Bylaws to be taken at a meeting of Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matters to be voted on, which ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be the act of the Association when the number of votes cast by ballots equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting.

## ARTICLE V Directors

1. Number and Qualification.

The affairs of the Association shall be governed by a Board of Directors composed of at least three (3) natural persons and not more than seven (7) natural persons, who need not be Members of the Association.

2. Powers and Duties.

The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Members.

3. Election and Term of Office.

As long as the Declarant has a majority of votes, Members of the Board of Directors shall service until replacements are elected thereafter. The Board of Directors shall be divided as nearly as equally into three classes, each of which class shall serve for a term of three years from the date of their election, except that upon the election of the first Board of Directors, Class One

Directors shall initially serve for a period of one (1) year, Class Two Directors shall initially serve for a period of two (2) years, and Class Three Directors shall serve for a period of three (3) years.

4. Vacancies.

Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected by the Members at the next annual meeting.

5. Removal of Directors.

At any annual meeting, or special meeting duly called for such purpose, any Director may be removed with or without cause by the affirmative vote of the majority of all votes entitled to be cast at such meeting, and any successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by Members shall be given an opportunity to be heard at the meeting. The term of any Director who is, or has been designated by, an Owner which is more than sixty (60) days delinquent in payment of any assessments and/or carrying charges due the Association may be terminated by the affirmative vote of two-thirds (2/3) of the remaining Directors then in office, and the remaining Directors shall appoint his successor as provided in Section 4 of this Article.

6. Compensation.

No compensation shall be paid to Directors for their services as directors. After the first annual meeting of the Association no remuneration shall be paid to any Director who is also a Member of the Association for services performed for the Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

7. Organizational Meeting.

The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

8. Regular Meetings.

Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph at least six (6) days prior to the day named for such meeting.

9. Special Meetings.

Special meetings of the Board of Directors may be called by the President on three (3) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in a like manner and on like notice on the written request of at least one-third (1/3) of the Directors.

10. Waiver of Notice.

Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of such notice by him of the time, place and purpose thereof. If all the Directors are present and remain present at any meeting of the Board of Directors, no notice shall be required, and any business may be transacted at such meeting.

11. Quorum.

At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present, shall be the acts of the Board of Directors, unless specifically provided otherwise herein. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

12. Actions without Meeting.

Any action of the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all the members of the Board of Directors shall individually or collectively consent in writing to such action. If all Directors consent to taking such action without a meeting, the affirmative vote of the number of Directors that would be necessary to authorize or take such action at a meeting shall be the act of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

13. Fidelity Bonds.

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

## ARTICLE VI Officers

1. Officers.

The officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors by a majority vote. The officers of the Association need not be Members of the Association. The Directors may appoint an assistant secretary and an assistant treasurer and such other officers as in their judgment may be necessary. The offices of Secretary and Treasurer may be held by the same person.

2. Election of Officers.

The officers of the Association shall be designated by the Board of Directors and shall hold office at the pleasure of the Board of Directors. Vacancies in any office arising from any cause may be filled by the Board of Directors at any regular or special meeting of said Board of Directors.

3. Removal of Officers.

Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

4. President.

The President shall be the chief executive officer of the Association. In the event he is also a member of the Board of Directors, he shall preside at all meetings of the Members and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of President of a corporation, including, but not limited to, the power to appoint committees from among the membership from time to time as he may, in his discretion is appropriate to assist in the conduct of the affairs of the Association.

5. Vice President.

The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors.

6. Secretary.

The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; he shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct, and he shall, in general, perform all the duties incident to the office of Secretary.

7. Treasurer.

The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors.

## ARTICLE VII Liability and Indemnification

### 1. Liability and Indemnification of Officers and Directors.

The Association shall indemnify every officer and director of the Association against any and all expenses, including counsel fees reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of Directors of the Association) to which he may be made a party by reason of being or having been an officer or director of the Association, whether or not such person is an officer or director at the time such expenses are incurred. 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 or as provided for by applicable law. The officers and directors of the Association shall have no personal liability with respect to any contract or any 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), 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 or director of the Association, or former officer or director of the Association may be entitled.

### 2. Common or Interested Directors or Officers.

The directors and officers shall exercise their powers and duties in good faith and with a view to the interest of the Association. No contract or other transaction between the Association and one or more of its directors or officers, or between the Association and any corporation, firm or association in which one or more of the directors of this Association are directors or officers or are pecuniarily or otherwise interested, is either void or voidable because such director(s) or officer(s) are present at the 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, if any of the conditions specified in any of the following subparagraphs exists:

(a) The fact of the common directorate, office or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; and

(b) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Common or interested directors 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, and may vote to authorize any contract or transaction with like force and effect as if he were not such director or officer of such other corporation or not so interested.

## ARTICLE VIII Fiscal Years, Books and Accounts

### 1. Fiscal Year.

The fiscal year of the Association shall begin on the first day of January of every year, except for the first fiscal year of the Association, which shall begin at the date of incorporation.

### 2. Books and Accounts.

Accurate books and accounts of the Association shall be kept under the direction of the Treasurer, which shall include an annual balance sheet and income statement.

### 3. Inspection of Books.

The books, accounts and records of the Association shall be available for examination by the Members and/or their duly authorized agents or attorneys, and to the institutional holder of any mortgage on any property and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interests as Members. The Association shall cause to be entered upon the said books, accounts and records of the Association, a just and true account of all the transactions, dealings, assessments, charges, expenses and all matters and things whatsoever for, in relating to, or on account of the Association.

## ARTICLE IX Amendments

### 1. Amendments.

These Bylaws may be amended by the affirmative vote of a majority of all votes cast at any meeting of the Directors or Members duly called for such purposes. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

## ARTICLE X Miscellaneous

1. Registered Agent.

The Registered Agent shall be designated as the person authorized to accept service of process in any action relating to the Association.

2. Notices.

Unless another type of notice is herein elsewhere specifically provided for, any and all notices called for in the Declaration or in these Bylaws shall be given in writing.

3. 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.

4. Waiver.

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

5. Captions.

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 the terms and provisions of these Bylaws.

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.


---

E. Woods Weathersby, Incorporator



*Tom Leatherwood*  
Shelby County Register

As evidenced by the instrument number shown below, this document  
has been recorded as a permanent record in the archives of the  
Office of the Shelby County Register.

	
<b>07120852</b>	
<b>08/03/2007 - 12:31 PM</b>	
50 PGS : R - SUB RESTRICTION	
CHRIS 510353-7120852	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	250.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
<b>TOTAL AMOUNT</b>	<b>252.00</b>
<b>TOM LEATHERWOOD</b>	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	