




Tom Leatherwood
Shelby County Register

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06035932	
03/06/2006 - 11:55 AM	
19 PGS : R - SUB RESTRICTION	
LIZ 384452-6035932	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	95.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
TOTAL AMOUNT	97.00
TOM LEATHERWOOD	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	

Prepared by & Return to:
J. Terry Pitts
60 Germantown Court, Suite 101
Cordova, TN 38018

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
CREEKSIDE SUBDIVISION
PHASE II

This Declaration is made this 3rd day of March, 2006, by
Destiny Homes, LLC, a Tennessee Limited Liability Company;

Whereas, Declarant is the owner of certain real property
known as Creekside Subdivision, Phase II, as shown of record in
the Register's Office of Shelby County in Plat Book 224, Page 51,
and

Whereas, Declarant desires to provide for the maintenance of
a fence and certain areas shown on the recorded plat of Phase II,

Now, therefore, Declarant hereby declares that all lots of
Creekside Subdivision, Phase II as shown on plat of record in
Plat Book 224, Page 51, shall be held, transferred, conveyed,
sold, hypothecated, and used subject to the covenants and
restrictions hereinafter set forth and each owner of a lot shall
take title subject to and shall be bound by the following
covenants, conditions, and restrictions, which shall be covenants
that run with the land and shall likewise be binding on all
future owners;

Article I

DEFINITIONS

As used herein the following words shall have the meanings
as follows:

Section 1. "Association" shall mean Creekside Phase II
Homeowners' Association, Inc., a non profit, non stock
corporation, a copy of the Charter of which is attached hereto
marked Exhibit "A", and a copy of the By-Laws of which is
attached hereto marked Exhibit "B".

Section 2. "Declaration" shall mean the covenants,
conditions and restrictions set forth herein.

Section 3. "Owner" shall mean the record owner, whether one or more persons or entities of fee simple title to any of the lots of Creekside Subdivision, Phase II but excluding any person or entity which holds an interest to secure the repayment of an obligation.

Article II

COVENANTS FOR ASSESSMENTS

Section 1. Each person, persons or entity to whom title to any lot in Creekside Subdivision, Phase II is conveyed shall be deemed bound by the terms and conditions set forth in this Declaration, regardless of whether the instrument of conveyance references this Declaration, and shall be deemed at the time of acceptance of delivery of such instrument of conveyance as may be used to transfer an interest, to consent and agree to the payment of any and all maintenance assessments as may be levied by the Association as herein provided.

Section 2. The Owner of each lot shall pay to the Association such assessments and at such times as determined by the Association in accordance with its bylaws.

Section 3. Failure to pay any assessment within the time allowed by the Association and/or the costs of collection, shall create a continuing lien against the delinquent lot or lots.

Section 4. To evidence the lien of any unpaid and delinquent assessment, the Association, or an agent thereof, may prepare a written notice setting forth the amount of such unpaid indebtedness, the costs of collection, the description of the Lot(s) and the name of the Owner(s). Such a notice shall be signed by an agent or representative of the Association, and may be recorded in the Register's Office of Shelby County, Tennessee. The lien against said property shall be subordinate only to previously recorded first mortgages. The Association shall be entitled to reimbursement of any cost of collection, including but in no way limited to, any interest at the maximum legal rate, court costs and a reasonable attorney fee should any lot owner for any reason become delinquent on the payment of the annual assessment or a portion thereof.

Article III

PURPOSE OF ASSESSMENTS

Section 1. Brick and Wood Fence - Declarant has constructed or will construct a brick & wood fence across the south part of those lots adjacent to Wolf River Boulevard in Phase II. The fence shall be owned and maintained by the Association and there shall exist, a perpetual easement for the location and maintenance of said fence. No Owner shall place any object, paint, plant or any decorations on said fence or undertake the maintenance or repair of said fence without the consent of the Association.

Section 2. Area Outside Fence - The most southerly portions of those lots in Phase II adjacent to Wolf River Boulevard are separated by the brick and wood fence from the buildable area. Said areas outside the fence are and will be designated as landscape easements and shall be maintained exclusively by the Association in whose favor the easement shall exist. There shall exist a perpetual easement for pedestrians on and over said area. No lot owner shall erect any fence, structure, plant, etc. in said area outside the brick and wood fence constructed by Declarant, without the consent of the Association.

Section 3. Subdivision Entrance. Lots 67, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, and 112 are and will be encumbered by a landscape easement as shown on the recorded plat. Said easement shall run in favor of the Association, which shall have said easement in perpetuity for the location of subdivision entrance signs on lots 67 and 112 as well as landscaping and required irrigation and electrical panel for irrigation system on lots 67, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, and 112. No lot owner shall landscape or maintain that landscape area, and no owner shall paint, repair, add anything to or remove anything from subdivision entrance sign without the written consent of the Association.

Article IV

INITIAL DUES, MEETING, PLAN APPROVAL

Section 1. Organization Meeting and Dues. Upon the closing of each lot the purchaser shall pay Association fees of \$ 150.00 for the 2006 calendar year. There shall be no proration of the initial assessment regardless of the date of closing.

The organizational meeting of the Association shall take place at such time as all house construction is completed. The place of the organizational meeting shall be the Town of Collierville Community Center. At the meeting the Declarant shall relinquish control of the Association and provide an accounting of dues received.

Section 2. Plan Approval. Before construction may begin on any lot, Destiny Homes, LLC, the Declarant, must approve in writing all plans, including but not limited to the plot plan, front elevation and floor plan. Subsequent to such time as all lots have houses built thereon, and the Declarant has relinquished control of the Association at the organizational meeting, any construction plans including but not limited to additions must be approved by the Association. In the event plans are submitted to the Declarant or Association and no indication of approval or rejection is made within 30 days the plans shall be deemed approved.

Article V

ARCHITECTURAL GUIDELINES

The following restrictive covenants shall apply to all lots in Creekside Phase II and shall run with the land:

Section 1. No house with less than 2600 square feet of heated and finished area shall be constructed on any lot.

Section 2. All garages shall open to the side or the rear. No garage door opening may face the street, unless the Declarant, in his sole discretion, approves same in writing.

Section 3. All windows must be wood or vinyl with brick mould.

Section 4. All siding must be 4 inches to 8 inches in width. No 4 foot by 8 foot sheets of masonite or other siding

shall be permitted.

Section 5. Developer must approve exterior paint colors prior to the beginning of construction.

Section 6. All driveway inlets, driveways, walkways, and other concrete exposed to the street must be washed concrete.

Section 7. All mailboxes shall be Halle Fluted Wrought Iron.

Section 8. All yards, front, side, and rear must be solid sodded. On each corner lot a minimum of 3 trees at least 3 inches in diameter shall be planted. On all other lots a minimum of 2 trees not less than 3 inches in diameter shall be planted. Said trees must be planted in front of building set back line.

Section 9. All air conditioning units, meters, and transformers shall be screened from view from the street, by landscaping or fence.

Section 10. All fences must be approved by Declarant prior to the commencement of construction. All wood fences must be of cedar and not in excess of six feet in height. The face side of every fence must face the outside boundary line of each lot; no runners shall be placed on outside of fenced area.

Section 11. No statues or monuments shall be placed on the property so as to be visible from the street.

Section 12. Any holiday decorations must be removed not later than 30 days after the holiday.

Section 13. Declarant or its successor in interest must approve exterior paint colors.

Article VI

AMENDMENTS

This Declaration may be amended unilaterally by Declarant at any time prior to the orginazational meeting; thereafter, this Declaration may be amended by a vote of two-thirds (2/3) of lot owners.

IN WITNESS WHEREOF, the Declarant has caused this
instrument to be signed this the 3rd day of March 2006.

By: DESTINY HOMES, LLC

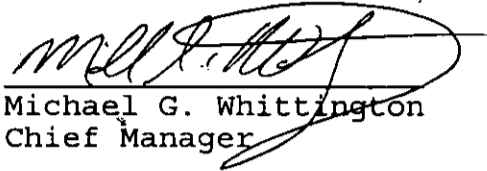
By: 
Michael G. Whittington
Chief Manager

EXHIBIT "A"

CHARTER

OF

CREEKSIDE PHASE II HOMEOWNERS' ASSOCIATION, INC.

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

1. The name of the corporation is CREEKSIDE PHASE II HOMEOWNERS' ASSOCIATION, INC.

2. The corporation is a mutual benefit corporation.

3. (a) The complete address of the corporation's initial registered office in Tennessee is 1250 Big Orange Road, Cordova, TN 38018.

(b) The name of the initial registered agent to be located at the address listed in 3 (a) is Michael G. Whittington.

4. The name and complete address of each incorporator is:

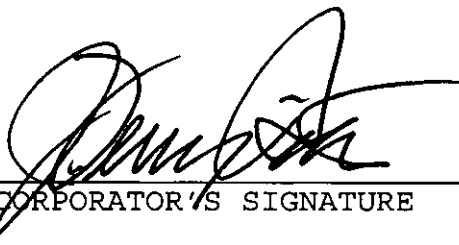
J. Terry Pitts
60 Germantown Court
Suite 101
Cordova, TN. 38018

5. The complete address of the corporation's principal office is: 1250 Big Orange Road, Cordova, TN 38018.

6. The corporation is not for profit. The corporation will have members.

7. Upon dissolution the assets of the corporation shall be distributed to the members in a manner not inconsistent with the law.

Date: 3/3/06



INCORPORATOR'S SIGNATURE

J. TERRY PITTS

INCORPORATOR'S NAME (TYPED)

EXHIBIT "B"
BY-LAWS
OF
CREEKSIDE PHASE II HOMEOWNERS' ASSOCIATION, INC.

ARTICLE 1
GENERAL PROVISIONS

1.1 Name and Location. The name of the corporation is Creekside Phase II Homeowners' Association, Inc., a Tennessee Non For Profit Corporation. Meetings of the corporation for the conduct of its affairs may be held at such places within the State of Tennessee and County of Shelby as may be designated by the Board of Directors.

1.2 Administration of Association. The Administration of Creekside Homeowners' Association, Inc., shall be governed by the Articles of Incorporation of Creekside Homeowners' Association, Inc., and these By-Laws.

1.3 Application of By-Laws. All present and future Lot Owners, mortgagees, lessees, and occupants of Lots and their employees and any other persons who may use the facilities of the property in any manner are subject to the provisions of the Declaration, the Articles of Incorporation, these By-Laws, and all rules or regulations adopted hereunder. The acceptance of a Deed, or the entering into of a lease, or the act of occupancy of a Lot shall constitute and agreement of compliance with the provisions of the Declaration, the Articles of Incorporation, these By-Laws, and any rules and regulations duly adopted thereunder as such documents may be amended from time to time.

ARTICLE 2
ASSOCIATION OF LOT OWNERS

2.1 Members. Each Owner of a Lot shall be a member of the Creekside Phase II Homeowners' Association, Inc., hereafter "Association". The cessation of ownership of a lot shall terminate membership in the Association and any right to vote or to participate in the administration of the Association.

2.2 Purpose. The Association shall administer its affairs on a non-profit basis. Such administration shall be accomplished through a Board of Directors which shall be elected by the Association. It shall further be the purpose of the Association to amend and supplement the system of administration and these By-Laws as may be required from time to time.

2.3 Voting Rights. The Owner or Owners of a lot who have become such in compliance with the requirements and conditions established in the Declaration and these By-Laws, shall be entitled to attend and vote at all meetings of the Association. The Declarant shall be considered the Owner of each lot which is a part of the Project and unsold by it, and shall have the right to vote as specified in the Declaration.

A. List of Owners. The Board of Directors shall maintain a list of Owners which shall be updated regularly.

B. Disputes. Any dispute over the membership list shall be resolved by reference to the official records of the County Register of Shelby County, Tennessee.

C. Votes. At any meeting of the Association, each Owner shall be entitled to cast one (1) vote for each lot owned by such person or entity. If there is more than one Lot Owner with respect to a particular Lot any or all of such Lot Owners may attend any meeting of the Association. However, it shall be necessary for all such Lot Owners present to act unanimously in

order to cast the vote pertaining to their Lot.

D. Proxies. All votes may be cast either in person or by proxy. All proxies shall be in writing and signed by the Lot Owner and shall be delivered to the Secretary prior to voting.

ARTICLE 3
MEETINGS OF THE ASSOCIATION

3.1 Annual Meeting. The annual meeting of the Association shall be held at 7:00 p.m. on the first Monday, in January of each year at a place designated in writing in the notice mailed to each Lot Owner. It shall be the function of the members to elect a Board of Directors, approve any contract with a manager or managing company and approve the amount of any special or regular assessment.

3.2 Special Meetings. Special meetings of the Association shall be held whenever called by the president, by a majority of the Board of Directors, or by Lot Owners representing one-third (1/3) or more of the votes of the members of the Association.

3.3 Notice. Written notice shall be given to all Owners of Lots of any meeting of the Association. Such notice shall state the time and place of the meetings. If the notice is for a special meeting, such notice shall state the purpose of the meeting. The notice shall be mailed or delivered not less than ten (10) days before the meeting to the address of each Owner at the address appearing on the books of the Association. Proof of notice by mail or by delivery may be given by the written statement of the Secretary or other person giving notice. Written waiver of notice of the meeting may be given before or at a meeting.

3.4 Quorum. The presence in person or by proxy at any meeting of Owners holding at least fifty (50%) percent of the votes of the membership of the Association shall constitute a quorum. The affirmative vote of a majority of the votes represented at a meeting shall be required to adopt any resolution, elect or remove any director or officer, make any decision, or take any action except that the affirmative vote of owners holding at least two-thirds (2/3) of the votes represented by the Ownership shall be required to modify or amend these By-Laws.

3.5 Absence of Quorum. If the required quorum for conduct of business shall not be present at any meeting, a majority of the Lot Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting from time to time without further additional notice other than announcement at the meeting until the required quorum for transaction of business shall be present in person or by proxy.

3.6 Conduct of Meeting.

A. Presiding Officer. The president of the Board of Directors may preside over and conduct all meetings of the Association.

B. Recording Officer. The secretary of the Board of Directors may take and keep the minutes of all meetings of the Association. Such minutes shall be kept in a book wherein all resolutions adopted at any meeting of the Association shall be recorded.

C. Refusal to Act. If the president and/or secretary refuse to act at an annual or special meeting, the members of the Association may select from their number, persons to preside over and conduct the meeting and to record the minutes of proceedings.

D. Order of Business. The order of business at all meetings shall be as follows:

1. Roll call and determination of presence of quorum;
2. Proof of notice of meeting;
3. Reading and consideration of minutes of preceding meeting;
4. Reports of officers, employees, or committees;
5. Election of judges of election (when necessary);
6. Election of members of Board of Directors (when necessary);
7. Unfinished business;
8. New business;
9. Adjournment.

ARTICLE 4
BOARD OF DIRECTORS

4.1 Number of Members. The Board of Directors shall consist of five (5) persons, each of whom shall be the Owner of a Lot or of an interest therein or in the event of ownership of a Lot by partnership, trustee, corporation or other entity, a partner, trustee, officer or other designated representative thereof.

4.2 Term. The period of service of each director shall commence at an annual meeting and extend for two (2) years and thereafter until the successor of such director is duly elected and qualified. Two (2) members of the Board of Directors elected at the first annual meeting shall serve for an initial term of one (1) year and the three (3) other members shall serve for two (2) years. The terms of no more than three (3) directors shall end each year.

4.3 Election. The Association shall, at its annual meeting, elect the members of the Board of Directors. Election of directors shall be by ballot unless unanimously dispensed with.

4.4 Removal. Any director may be removed from the Board of Directors with or without cause by vote of Owners of the Association at a meeting duly called for that purpose.

4.5 Resignation. Any director may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Any such resignation shall take effect on the date of receipt of such notice. Acceptance of the resignation by the Board of Directors shall not be necessary to make it effective.

4.6 Vacancies. Vacancies in the Board of Directors shall be filled by the remaining directors and any new director elected by them shall serve as a director until the next annual meeting.

4.7 Annual Organization Meeting. The organizational meeting of a newly elected Board of Directors shall be held within one (1) week of the election of such directors at such time and place as shall be fixed by the Board of Directors at the meeting at which they were elected, without further notice of such meeting, providing a quorum of the Board of Directors shall be present.

4.8 Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as shall be determined to be necessary by a majority of the Board of Directors.

4.9 Special Meetings. Special meetings of the Board of Directors may be called by the president and shall be called by the secretary upon receipt of written request of any two (2) members of the Board of Directors. Notice of any special meeting

shall be given personally, by mail or by telephone three (3) days before the day named. The notice of a special meeting shall state the time, place and purpose of the meeting.

4.10 Waiver of Notice. By a writing, any director may waive notice of a meeting before or at any meeting and such waiver shall be deemed the equivalent to the giving and receipt of notice.

4.11 Action Taken Without a Meeting. Pursuant to Tennessee Code Annotated, 48-1-1402, the Board of Directors shall have the right to take any action in the absence of a meeting which they could take a meeting by obtaining the written approval of all members of the Board of Directors. Any action so approved shall have the same effect as though taken at a duly called meeting of the Board of Directors.

4.12 Quorum. At any meeting of the Board of Directors, a quorum shall consist of those directors entitled to cast a majority of the votes of the entire Board. Any act or decision of the Board of Directors approved by the affirmative vote of a majority of votes present at a meeting at which a quorum of the Board of Directors is present shall constitute the act or decision of the Board of Directors, except as may specifically otherwise provided in the Articles of Incorporation, the Declaration, or elsewhere in these By-Laws. Proxies shall not be permitted.

4.13 Conduct of Meetings.

A. Presiding Officer. The president of the Board of Directors shall preside at all meetings of the Board of Directors.

B. Recording Officer. The secretary of the Board of Directors shall serve as the secretary of the meetings of the Board of Directors and shall record the acts and decisions of the Board of Directors in the minutes of the Board of Directors, which minutes shall be kept in a book for that purpose. Such minutes shall be kept separate and apart from the minutes of the Association.

C. Order of Business. The order of business at any meeting of the Board of Directors shall be:

1. Calling of roll; determination of quorum;
2. Proof of due notice of meeting or written waiver thereof;
3. Reading and disposal of any unapproved minutes;
4. Reports of officers and committees;
5. Election of interim director (when necessary);
6. Election of Officer (when necessary);
7. Unfinished business;
8. New business;
9. Adjournment;

4.14 Failure to Attend Meeting. Any member of the Board of Directors who fails to attend three (3) consecutive meetings of the Board of Directors, either regular or special, or fails to attend at least twenty-five (25%) percent of the meetings of the Board of Directors, either regular or special held during any calendar year shall forfeit his membership on the Board of Directors and shall create a vacancy. It shall be the affirmative duty of the Board of Directors to keep records of attendance of the members of the Board of Directors at each meeting, either regular or special and to record same in the minutes of the Board of Directors and to declare a vacancy upon such failure to attend by any Directors.

4.15 Proof of Membership in the Board of Directors. After the election of the members of the Board of Directors at the first meeting of the Association, the elected members of the Board of Directors shall execute, acknowledge and record an

Affidavit stating the names of the members of the newly elected Board of Directors. Thereafter any two (2) persons who are designated of record as being members of the most recent Board of Directors, regardless of whether or not they shall still be members may execute, acknowledge and record an Affidavit stating the names of all of the members of the then current Board of Directors. The most recently recorded of such Affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the Board of Directors and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

4.16 Indemnification. The Owners shall indemnify and hold harmless any person, his heirs and personal representatives from and against all personal liability and all expenses including counsel fees incurred or imposed arising out of or in settlement of any threatened, pending or completed action, suit, or proceeding whether civil, criminal, administrative or investigative instituted by any one or more unit Owners or any other person or entity to which he shall be, or shall be threatened to be made, a party by reason of the fact that he is, or was, a member of the Board of Directors other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith. Such right of indemnification shall not be deemed to be exclusive of any other right to which such person may be entitled as a matter of law or agreement or vote of the Association or of the Board of Directors or otherwise. Indemnification by the Owners as established herein shall be paid by the Board of Directors on behalf of the Owners and shall constitute a common expense and shall be assessed and collected as such. Members of the Board of Directors shall not be liable to Owners as a result of their activities as such member of the Board of Directors except for their own willful misconduct or gross negligence. Members of the Board of Directors and Officers shall have no personal liability to an Owner or any other person or entity under any agreement, instrument or transaction entered into by the Board of Directors or Officers. Members of the Board of Directors and Officers shall have no personal liability to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them or acts performed for them in their capacity as such members of the Board of Directors or Officers. Members of the Board of Directors and Officers shall have no personal liability arising out of the use, misuse or condition of the property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as members of the Board of Directors or Officers.

4.17 Compensation. No member of the Board of Directors shall receive compensation for services. Upon approval by the Board of Directors, any member of the Board may be reimbursed for reasonable expenses actually incurred by him.

ARTICLE 5 OFFICERS

At its organizational meeting, the Board of Directors shall elect a president, a vice president, a secretary, and a treasurer. The Board of Directors may elect such other assistant officers as it may deem necessary.

5.1 President. The president shall be a Lot Owner and shall be a member of the Board of Directors. The president shall be the chief administrative officer of the Association and of the Board of Directors, and shall preside at all meetings of the Owners and of the Board of Directors, shall execute contracts and agreements in the name and on the behalf of the Board of Directors when so directed, and shall sign on behalf of the Owners, all leases, mortgages, deeds and other written instruments of material importance to the conduct of the business of the Association and perform such other duties as the Board of Directors may from time to time require.

5.2 Vice President. The vice president shall be a Lot Owner and shall be a member of the Board of Directors. The vice president shall act in place of the president in the event of the absence, inability or refusal to act of the president, and shall discharge such other duties as may be required by the Board of Directors.

5.3 Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and the Association, shall attend to the giving and serving of all notices to the Directors and Owners required in these By-Laws, and shall keep all other records of the Owners and the Board of Directors.

5.4 Treasurer. The treasurer shall have custody of all the property of the Board of the Directors and of the Owners, including the funds, assessment roles and accounts, and shall keep proper books of account and perform all other duties incident to the office of the treasurer.

5.5 Compensation. No officer shall receive compensation for serving as such; however, any officer shall be reimbursed for reasonable expenses actually incurred.

5.6 Term. Each officer shall be elected at the annual organizational meeting of the Board of Directors and shall serve until the succeeding annual organizational meeting and thereafter until their successors are duly elected and qualified.

5.7 Resignation and Removal. Each officer may be removed from office with or without cause by vote of a majority of the Board of Directors or the Association at a meeting duly called for that purpose. Any officer may resign at any time by giving written notice to the Board of Directors. Any such resignation shall be effective upon the date of receipt of such notice and shall not require acceptance by the Board of Directors to become effective. Vacancies created by resignation or removal of any officer shall be filled by the Board of Directors and any new officer so elected shall complete the term of the replaced officer.

ARTICLE 6

POWERS, DUTIES AND RESPONSIBILITIES OF BOARD OF DIRECTORS

The Board of Directors shall be charged with the administration, maintenance and management of the fence, landscape easement, and subdivision entry signs.

The Board of Directors shall have all the powers, duties and responsibilities as are now and may be hereafter provided by the Declaration, the Articles of Incorporation and these By-Laws. Including, but not limited to the following, the Board of Directors shall have the power and duty:

6.1 To operate, maintain, repair, improve and replace the sprinkler system, fence, and area outside the fence.

6.2 To determine and pay the common expenses.

6.3 To assess and collect from Owners funds to defray common expenses.

6.4 To open bank accounts on behalf of the Owners and to designate such bank or banks as shall be the depository for the funds of the Owners and to designate the signatures required for withdrawal of monies from such accounts, at least two (2) signatures being required by any check or draft.

6.5 To engage the services of a manager or managing company, accountants, attorneys, or other employees or agents and to pay such persons a reasonable compensation therefor.

6.6 To enter into contracts, deeds or other written instruments and to authorize the execution and delivery thereof by the appropriate officers of the Board of Directors.

6.7 To own, purchase or lease, hold, sell or otherwise dispose of on behalf of the Owners, items of personal property necessary to or convenient in the management of the affairs of the Owners and the Board of Directors and in the operation of the property including furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

6.8 To repair or restore the property following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation.

6.9 To make and enforce all rules and regulations necessary to the operation of the Association and to the safety and convenience of use of the common elements.

6.10 To bring, prosecute and settle litigation for itself, the Owners and the property provided that no settlement which results in liability against the Board of Directors or Owners or property shall be entered into without prior approval of a majority of Owners.

6.11 To keep adequate books and records and require an review of the accounts and books of the Board of Directors annually.

6.12 To borrow funds and enter into promissory notes.

6.13 To do all other acts necessary for the operation and maintenance of the property, including the maintenance and repair of any Lot if such maintenance or repair is necessary to protect or preserve the property.

6.14 To delegate to a manager or managing company all of the foregoing powers, duties and responsibilities, except that no delegation shall be made of the following:

- A. Final determination of common expenses, budgets, and assessments;
- B. The adoption and promulgation of rules and regulations.
- C. The power or authority to enter into any contract involving more than One Thousand (\$1,000) Dollars, in any one fiscal year;
- D. The opening of bank accounts;
- E. The power to bring, prosecute or settle litigation.

6.15 In the event that the Board of Directors delegates to a manager or managing company any of its duties relative to the handling of the funds of the Board of Directors or of the Association, fidelity bonds shall be required covering the persons to whom such delegation is made and the amount of such bond shall be determined by the Board of Directors, but shall not be less than one hundred fifty (150%) percent total amount of annual assessments against Owners for common expenses. The costs of such fidelity bonds shall be paid from the maintenance fund.

6.16 The Board of Directors by resolution may designate one or more special committees. Each committee shall consist of two (2) or more Lot Owners who shall have and exercise the authority set forth in the resolution establishing the special committee. Such special committees shall have such name or names as may be determined from time to time by the Board of Directors. Such special committee shall keep regular minutes of their proceedings and report the same to the Board of Directors when required or directed. The members of such special committee or committees designated shall be appointed by the Board of Directors. The Board of Directors may appoint unit Owners to fill the vacancy on each of said special committees occasioned by death, resignation,

removal or inability or refusal to act for any extended period of time.

6.17 It shall be the affirmative duty of the Board of Directors to make available upon request during regular business hours a copy of the most recent recorded Certificate of Incorporation, Declaration, By-Laws and rules and regulations adopted thereunder to any Owner or the mortgagee of any Owner.

6.18 If the Board of Directors decides to enter into any contract with a manager or managing company, such contract shall provide for termination for cause upon thirty (30) days notice and shall be renewable for periods limited to not more than two (2) years.

ARTICLE 7 COMMON EXPENSES AND ASSESSMENTS

The expense of the Association shall be determined as provided in this Article. All assessments to defray such expenses shall be made as provided in this Article.

7.1 Liability of Owner. Each Owner shall be liable with respect to each Lot he owns for a fractional share of the expenses, the numerator being one (1) and the denominator being the total lots in the subdivision.

7.2 Annual Estimate of Common Expenses. Before November 30th of each year the Board of Directors shall estimate the expenses and capital contributions which shall be required for the Association for the next year. Such estimates shall include a reasonable amount considered by the Board of Directors to be necessary for a reserve for contingencies and replacements.

7.3 Assessments. The estimated expenses and amounts necessary as a maintenance reserve shall be reserved to the Lot Owners as set forth in the Declaration. If the estimated expenses and reserve funds prove inadequate for any reason, including nonpayment of an Owner's assessments, the Board of Directors may, by resolution duly adopted, make additional assessments which shall be assessed to the Lot Owners in the same manner as the estimated expenses and reserve funds. Each Owner shall be obligated to pay to the Board of Directors assessments made pursuant to this Article and Section. Funds kept in either the capital account or in the common expense fund and shall be expended by the Board of Directors only in accordance with the provisions of the Declaration and these By-Laws.

7.4 Notice of Assessment to Owner. On or before December 5 of each year, the Board of Directors shall notify in writing each Lot Owner of the total amount of the annual assessment levied upon such Lot and Owner for the succeeding calendar year. It shall be the general duty of the secretary and treasurer to provide notice of assessment hereunder. Owners shall be notified of additional or special assessments as such may become necessary by the Board of Directors as soon as practical after such assessment or assessments shall have been made.

7.5 No Exemption. No Lot Owner may exempt himself from liability from common expenses or for assessments.

7.6 Duties of Treasurer. The Treasurer shall keep detailed records of all receipts and expenditures including expenditures affecting the common areas and facilities specifying and itemizing the maintenance, repair and replacement expenses incurred. In accordance with the actions of the Board of Directors in assessing expenses against the Lots and Owners thereof, the Treasurer shall keep an accurate record of such assessments and of the payments thereof by each Owner. The books and accounts of the Owners shall be kept in accordance with

generally accepted accounting procedures under the direction of the Treasurer. At the close of each year the books and records of the Board of Directors shall be reviewed. The books and accounts of the Association shall be available for inspection at the office of the Association by any Lot Owner or his authorized representative during reasonable and regular business hours.

7.7 Limitation Upon the Board of Directors. No single capital improvement exceeding the value or in cost the sum of Five Thousand (\$5,000) Dollars shall be made by the Board of Directors without the same having been first voted on and affirmatively approved by a majority of those votes represented and voting in person or by proxy at a meeting of the Association duly called pursuant to Article 3 of these By-Laws.

7.8 Failure to Estimate Expenses. Failure by the Board of Directors to fulfill its duty as described in Section 7.2 shall not constitute a waive or modification of this Article or a release of any Owner from the obligation of Section 7.1. In the event of failure by the Board of Directors to estimate the annual common expenses, the estimated expenses of the then current year shall continue until a new estimate is fixed.

ARTICLE 8 COLLECTION OF ASSESSMENTS

8.1 Due Date. Annual assessments for expenses as determined by the Board of Directors, may be paid by Owners upon notification that the assessments have been levied. The assessment for annual expenses may be paid in semi-annual installments, which shall be due on the first day of January and July of the year for which the annual expenses assessment is made. Additional assessments, if any, shall specify a due date in the resolution authorizing such assessment.

8.2 Delinquent Date. Assessments or any installment thereof not paid on or before ten (10) days after the due date shall be delinquent thereafter. Delinquent assessments shall bear interest at the maximum legal rate of interest then permissible under the laws of the State of Tennessee from the due date.

8.3 Right of the Board of Directors to Collect. The Board of Directors shall have the rights and remedies contained in the Declaration, and these By-Laws to enforce the collection of assessments for expenses. In all cases where all or any part of any assessment for expenses cannot be properly collected from the persons or entities liable therefor, the Board of Directors shall reassess the same as an expense without prejudice to the right of the Association or of the Board of Directors to collection against such persons or entities.

8.4 Lien for Unpaid Assessments. All sums assessed against any Lot pursuant to the Declaration and these By-Laws, together with the interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Board of Directors. Such lien shall be superior to all other liens and encumbrances on such Lot except only for valid tax and special assessment liens on the Lot in favor of any governmental assessing authority and encumbrances on the interest of the Lot Owner recorded prior to the date that notice of the lien provided for in the Declaration and these By-Laws is recorded which would by law be a lien prior to subsequently recorded encumbrances.

- A. Recording Lien. To evidence a lien for sums due and delinquent pursuant to this article the Board of Directors may prepare of cause to be prepared a written notice of lien setting forth the amount of the assessment, the due date, the amount unpaid, the name of the owner of the Lot a description of the Lot. Such notice shall be signed by the appropriate officer under these

By-Laws and may be recorded in the office of the County Register of Shelby County, Tennessee. No Notice of Lien shall be recorded until there is a delinquency in payment of the assessment.

- B. Enforcement of Lien. Liens created under the Declaration of these By-laws may be enforced by foreclosure by the Board of Directors in the same manner in which mortgages or deeds of trust on real property may be foreclosed in the State of Tennessee. In any such foreclosure of Lot Owner shall be required to pay the cost and expenses of such proceeding, the filing of Notice of Lien and reasonable attorney's fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The lien shall also secure and the Owner shall also be required to pay to the Board of Directors any assessments against the Lot which shall become due during the period of foreclosure.
- C. Release of Lien. A release of lien shall be executed by the Board of Directors and recorded in the Office of the County Register of Shelby County, Tennessee upon payment of all sums which have been made the subject of a recorded Notice of Lien hereunder.

8.5 Personal Obligation. The amount of any special assessment or annual assessment for expenses shall be the personal obligation of the Owner of the Lot. The Board of Directors may maintain a suit to recover a money judgement for such personal obligation without foreclosing or waiving the lien securing the obligation. The Board of Directors in such suit shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the Court hearing and deciding the case. The sale or conveyance of a Lot shall in all cases be subject to all unpaid assessments against the Owner thereof for his share in the expenses. The personal obligation created herein shall not pass to successors in title unless assumed by them.

8.6 Choice of Remedy. All rights and remedies for the collection of assessments granted to the Board of Directors pursuant to the Declaration and these By-Laws shall be deemed to be cumulative. The exercise of any one or more of such rights or remedies shall in no way be deemed to constitute an election of such right or remedy and shall in no way preclude exercise of such other and additional rights, remedies or privileges as may be granted by the Declaration and these By-Laws or at law or in equity.

8.7 Effect of Waiver of Use by Owner. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas and facilities of the Association or by abandonment of his Lot. The Board of Directors may restrict or deny use or enjoyment of any common area, element or facility to any Owner, his family, guests, or assigns who are delinquent in the payment of any regular or special assessment made under the Declaration or these By-laws.

8.8 Statement of Delinquency. Any person who shall have entered into a written agreement to purchase a Lot shall be entitled to obtain a written statement from the Board of Directors setting forth the amount of unpaid assessments charged against the Lot and its Owners.

ARTICLE 9 LITIGATION

9.1 Actions Against the Association. Complaints brought against the Association, its Board of Directors or its officers, employees or agents in their respective capacities shall be directed to the Board of Directors. The Board of Directors shall promptly give written notice of the bringing of the Complaint to

all Owners and their mortgagees. Such action shall be defended by the Board of Directors. The Owners and their mortgagees shall have no right to participate in such action other than through the Board of Directors.

ARTICLE 10

ENFORCEMENT OF RESTRICTIONS AND RESTRAINT OF VIOLATIONS

It shall be the affirmative duty of the Board of Directors to enforce the covenants and restrictions imposed upon Creekside in the Declaration and these By-Laws and any provision thereof as well as any administrative rules or regulations duly and properly adopted by the Board of Directors pursuant to the Declaration or these By-Laws.

10.1 Legal Proceedings. In order to abate and restrain violations by Owners of any provision of the Declaration these By-Laws or any rule or regulation adopted pursuant thereto, the Board of Directors shall have the right to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity any such breach.

10.2 Waiver by Failure to Enforce. The failure of the Association or of the Board of Directors to insist in one or more instances upon the performance of any of the terms, covenants, conditions or restrictions in the Declaration or these By-Laws, or to exercise any right or alternative herein contained or to serve any notice or institute any actions, shall not be construed as a waiver or relinquishment of such term, covenant, condition or restrictions. The receipt and acceptance by the Board of Directors or its agent or representative of the payment of any assessment from a Lot Owner with the knowledge of the breach of any covenant thereof shall not be deemed to waive such breach and no waiver of any provision hereof shall be deemed to have been made unless expressed in writing and signed.

ARTICLE 11

CONSTRUCTION OF BY-LAWS

11.1 Severability. The provisions of these By-laws shall be deemed independent and severable and the invalidity or partial unenforceability or any one provision or portion thereof shall not affect the validity or enforceability of any provision hereof.

11.2 Captions. The captions herein inserted constitute only a matter of convenience and for reference. Such captions do not define, limit or describe the scope of these By-Laws nor the intent of any provision thereof.

11.3 Conflict and Subordination. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE 12

AMENDMENT OF BY-LAWS

12.1 Vote Required. As provided herein in Article 3, Section 4, Owners representing two-thirds (2/3) of the votes represented by the Ownership may at a meeting duly called for that purpose modify the system of administration of the Association and may amend these By-Laws.

12.2 Effective Date of Amendment. No amendment to these By-Laws shall be effective or operative until such amendment is embodied in a recorded instrument which shall be recorded in the office of County Register of Shelby County, Tennessee in the same manner as the Declaration and original By-Laws of the Association.

12.3 Limitation on Amendment. These By-Laws may not be amended so as to omit any of the following particulars:

- A. a form of administration for the Association;
- B. a method of calling Owners to assemble, and that a majority of votes of Owners is required to adopt decisions;
- C. a method of care, upkeep and surveillance of the Association property;
- D. a manner of collecting from Owners the Owners the funds for payment of expenses.