

This Instrument Prepared by
and Return to:
Paul F. T. Edwards
Evans & Petree
81 Monroe
Memphis, TN 38103

JX 7259

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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WHISPERWOODS SUBDIVISION
COLLIERVILLE, TENNESSEE**

PLAT BOOK 182, PAGE 18

THIS DECLARATION, made on the date hereinafter set forth by WHISPERWOODS LLC, a Tennessee limited liability company, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the Town of Collierville, County of Shelby, State of Tennessee, which is more particularly described as follows:

See Exhibit A attached hereto and made a part hereof by reference.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to WHISPERWOODS HOMEOWNERS ASSOCIATION, INC., its successors and assigns. The Charter and Bylaws are attached hereto as Exhibits "B" and "C", respectively.

Section 2. "Common Open Space" shall mean all real property for the common use and enjoyment of the Owners and shall include areas labeled "Common Open Space", as well as

the areas within the Landscape Easements as shown on the final plat of Whisperwoods Subdivision, as amended.

Section 3. "Declarant" shall mean and refer to Whisperwoods LLC, a Tennessee limited liability company, its successors and assigns.

Section 4. "Lot" shall mean and refer to any plot of land shown on any recorded Final Plat with the exception of the Common Open Space.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "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 Properties, but excluding those having such interest merely as security for the performance of an obligation provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

Section 7. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration by Declarant.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner whose lot is subject to this Declaration shall have a right and easement of enjoyment in and to the Common Open Space and the easement granted therewith which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(A) The right of the Association to make rules and regulations for the use of all Common Open Space and facilities;

(B) The right of the Association to suspend the voting rights and right to use the Common Open Space and facilities of an Owner for any period during which any assessment against his Lot remains, unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Open Space and facilities to any member of his family who is living with him.

Section 3. Exclusion of Non-Owners. Only those Owners who are subject to this Declaration shall have the right of enjoyment of the Common Open Space of the Association.

The Association, through its duly elected officers, shall have the right to establish procedures to exclude non-members from using the Common Open Space.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be Owners, as hereinbefore defined, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for any Lot in which ownership is held by more than one person shall be cast as determined by all of the persons having an ownership interest in said Lot. In no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to twelve (12) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or

(b) When the Declarant determines it to be in the best interest of the Association to cease Class B membership and elects to terminate said Class B membership.

ARTICLE IV COVENANT FOR MAINTENANCE 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 such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements and (3) emergency assessments, such assessments to be established and collected from time to time as hereinafter provided. The annual, special and emergency assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fee fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the improvements and maintenance of the Common Open Space, including the landscaping irrigation, brick entry structures and signage, fencing, lighting and all other improvements within the Common Open Space and the landscape easements as shown or provided for on the Plat, and the obligations of the Association.

Section 3. Annual Assessment. The Declarant shall have the sole authority to establish the amount of the initial annual assessment. Subsequently the amount shall be set by the Board.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Open Space, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the total votes in person or by proxy at a meeting duly called for this purpose.

Section 5. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of members or property of Members, the Board of Directors, acting pursuant to this section, may declare an emergency assessment in such amount 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 6. Notice & Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all Members not less than ten (10) days nor more than two (2) months in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, the Members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Rate of Assessment. The annual, special and emergency assessments must be fixed at a uniform rate for each Lot owned by an Owner.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence at the discretion of the Declarant.

The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written

notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a letter signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such letter shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Non-Payment of Assessment. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot 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, or 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, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Tennessee, and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the said Board may fix. The Association may bring an action at law 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 attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Open Space or abandonment of his Lot.

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 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 party legally entitled thereto. 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 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 10. Additional Default. Any recorded first mortgage secured on a Lot and improvements thereon may provide that any default by the mortgagor in the payment of any assessment levied pursuant to these covenants, conditions and restrictions, or any installment thereof, shall likewise be a default in such mortgage, but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such mortgage by reason of Section 11 shall not be diminished by reason of such failure.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer

shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Management Agreements. The Board of Directors shall be authorized to employ for the Association a management agent at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize including, but not necessarily limited to, the duties set out in Article VIII of the By-Laws. The Board shall be authorized to hire the Declarant or Boyle Investment Company or an affiliate thereof as such management agent so long as the above described compensation is commercially reasonable.

It shall be the duty of the Board of Directors of the Association to effect a new management agreement prior to the expiration of any management contract. Any or all management agreements shall be with a responsible party or parties having experience adequate for the management of a project of this type.

Section 13. Insurance.

(a) The Board of Directors shall maintain casualty or physical damage insurance on all buildings and improvements owned by the Association in an amount of not less than one hundred percent (100%) of full value. The said Board shall also carry public liability insurance, workman's compensation insurance, and any and all other forms of insurance and in any amounts as may be deemed appropriate by the Board of Directors.

All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, its Board of Directors, Declarant and Declarant's Owners and Managers.

(b) All policies shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to any and all insureds named thereon.

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ARTICLE V
GENERAL COVENANTS AND RESTRICTIONS
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Section 1. The Association shall have an Architectural Control Committee ("ACC") which shall consist of not less than three (3) members. So long as the Declarant holds an ownership interest in any portion of the Properties, the appointment of the members of the ACC shall be made exclusively by the Declarant and the Declarant shall have the exclusive right and power at any time and from time to time to create and fill vacancies on the ACC. Thereafter, appointments shall be made by the Board of Directors of the Association. Members of the ACC shall serve at the pleasure of the Declarant, and later at the pleasure of the Board. The vote of a majority of the members shall constitute the action of the ACC.

At the first meeting of the ACC, the ACC shall elect from among themselves a Chairman, a Vice-Chairman and a Secretary who shall perform the normal duties of their respective offices.

Section 2. All lots in this tract shall be known and described as residential lots.

Section 3. Lots are not to be re-subdivided.

Section 4. No structure shall be erected, placed, altered or permitted to remain on any lot in this subdivision other than one detached single family dwelling and its related buildings. The minimum heated floor area of the single family residence, exclusive of porches and garages, shall not be less than 3,200 square feet. Declarant may reduce the square footage requirement of specific homes by up to twenty (20%); however, such approval must be in writing and signed by Declarant prior to the start of construction.

Section 5. Building setback lines shall be as set forth on the Final Plat, as amended from time to time. Under special circumstances setbacks may be reduced to a lesser amount if authorized by ACC in writing prior to commencement of construction, but in no case shall any building setbacks be less than those specified by the Collierville and/or Shelby County Zoning Regulations, whichever is applicable. ACC reserves unto itself, its successors and assigns, the right to control absolutely the precise site and location of any house or other structure upon all lots in the subdivision. Such location shall be determined only after reasonable opportunity has been afforded the lot owner to recommend a specific site.

Section 6. Except for maintenance requirements herein imposed upon the Association, the Owner of any Lot shall, at his own expense, maintain the interior and exterior of any improvements on his Lot, including all driveways and any and all equipment, and fixtures therein situate, and its other appurtenances, in good order, condition and repair, and in clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his Lot and appurtenances. All exterior maintenance is subject to approval of the ACC.

The Owner of each Lot(s) shall also be responsible and held liable for maintaining, whether or not any improvement has been made thereon, the condition of his/its Lot(s), including but in no way limited to, clearing any trash or litter, having the grass cut to a reasonable length and keeping the property in a general state of repair so as not to disturb or aesthetically offend the character of the surrounding Lot(s).

If the Lot or improvements are not being properly maintained, written notice shall be given by mail to the record owner of said lot(s), and after ten (10) days from the mailing of said notice, Declarant, or its approved agent, reserves the right to enter the property and/or to take the appropriate measures to remedy and repair the problem(s). The Lot owner shall be assessed twice the cost to repair or remedy the said problem, including but in no way limited to, any cost incurred in the collection of this indebtedness and reasonable attorney fees in

connection therewith. Thirty (30) days after written notice has been mailed, the sum of any unpaid balance in connection with this paragraph shall become a lien, subject only to any previously recorded first mortgages upon the Lot(s) in question, upon the recording of such with the office of the Register of Shelby County, Tennessee.

Section 7. For the purpose solely of performing any of the repairs or maintenance required or authorized by these Declarations, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association, through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the Owner or occupant, to enter upon any Lot at any hour considered to be reasonable under the circumstances.

Section 8. These covenants are to run with the land and shall be binding on all the parties and all persons claiming under them until December 31, 2029, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless, by a vote of a majority of the then owners of the lots, it is agreed to change said covenants in whole or in part.

Section 9. No improvement or change, including but not limited to the construction, alteration or erection of any structure, terrain, change, fence, radio antenna, satellite dish, driveway, walkway, landscape screening, mailbox, outdoor lighting fixture, sanitary and/or storm sewer system, underground wiring, swimming pool, pool deck, or the removal of an existing tree or trees which are six inches (6") in caliper or larger when measured at a point two feet (2') above the ground, shall be commenced, erected, placed or permitted on any Lot in this subdivision until the plans, specifications and specific location (including elevation) of said improvements or change has been approved in writing, or the requirement for such approval has been waived in writing, by ACC or its authorized agent. ACC reserves the right to require the submission of designs, material selections and layouts of proposed improvements or changes at different stages of the design process, and further reserves the right to specify the information required therein as well as the format thereof. ACC or its assigns may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval payable at the time such plans and specifications are so submitted. The amount of such fee shall not exceed the cost of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

Generally, the following architectural design criteria must be met, unless otherwise approved in writing by the Architectural Committee:

(a) Carports shall not be allowed and each residence shall have a garage for at least two passenger vehicles, which garage shall not open directly to the street, except when the following conditions are met: (i) the garage is shielded from view from the street by landscaping, walls or other method; and (ii) the garage location and visual shielding are approved by the ACC.

(b) Fences shall be made of wood, brick, plastic or ornamental metal material, or a combination thereof, and must be approved for each specific lot by type, design, location,

height and color. No chain link fences shall be erected unless located within an area surrounded by a wood or brick fence so as to not be visible from outside the fenced area. No fence shall be permitted within the front (and side on corner lots) setback areas.

(c) No trees existing on any Lot or Parcel shall be removed, damaged or destroyed without written permission of Declarant. Owner shall protect existing trees during the period of construction of a house and other improvements on its Lot by installing and maintaining protective fencing to prevent vehicles, construction materials and any debris from being placed near said trees. Said protective fencing shall be placed so as to protect at least the area under the "drip line" of said trees, extending to the outer edges of all branches. Declarant will not be responsible for any trees that die.

(d) The ACC may publish a list of Architectural Guidelines to deal with more specific design criteria, which may be revised from time to time, and which shall be incorporated herein by reference.

In the event that ACC fails to approve or disapprove a proposed improvement or change within a period of thirty (30) days after the plans, specifications and specific locations of the proposed improvement or change have been received by ACC, such approval will not be required, and this covenant will be deemed to have been fully complied with.

Section 10. If any improvement or change requiring approval shall be undertaken on a Lot and said approval has not been obtained from ACC or from a representative, assignee or a committee duly appointed by said ACC, or if any improvement or change which is not in conformance with approved plans and specifications shall be undertaken on a Lot, said improvements or change shall be deemed to have been undertaken in violation of these covenants, and upon written notice from ACC, its representative assignee or committee, any such improvement or change deemed to be in violation shall be promptly removed or altered so as to extinguish such violation. If, thirty (30) days after the notice, the owner or owners of the Lot in question shall not have taken reasonable steps toward the removal or alteration of same, Declarant, its representative, assignee or committee, shall have the right, through its agent, to take such legal steps as may be necessary to extinguish such violation and/or to impose a fine not to exceed \$500.00, and the cost thereof, including court costs, any fines imposed and reasonable legal fees shall be a binding obligation of the owner as well as a lien on the lot in question upon the recording of such with the office of the Register of Shelby County, Tennessee. Any lien so recorded shall be subordinate to the lien of any previously recorded first mortgage.

Section 11. Upon completion of any improvement or change on a lot undertaken and completed in accordance with plans and specifications approved by ACC, its representative, assignee or committee, and upon written request of the owner or owners of such lot, a certificate of compliance shall be issued in a form suitable for recordation. Preparation and recording of such certificate shall be at the expense of the owner or owners of such lot. Any certificate of compliance issued in accordance with the provisions of this paragraph shall be prima-facie

evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all improvements and changes described therein comply with all requirements of ACC, its representative or committee.

Section 12. Declarant reserves unto itself the right to impose additional and separate restrictions at the time of sale of any of the lots sold Declarant in this subdivision, which said restrictions may not be uniform, but may differ as to different lots.

Section 13. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 14. No trailer, basement, tent, shack, garage, barn or other outbuilding erected or located on a Lot shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

Section 15. No recreational vehicles or commercial vehicles, including but not limited to boats, boat trailers, house trailers, camping trailers, motorcycles, or similar type items shall be kept other than in a garage, or otherwise screened from view of neighbors and the streets. No tractor or trailer may be parked on any lot or in the street in front of any house.

Section 16. Vegetable gardening will be allowed only within a fenced area to the rear of the house. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats and other household pets may be kept, providing they are not bred or kept for any commercial purposes. No commercial breeding of pets will be allowed.

Section 17. Declarant reserves the right to assign any or all of its rights, obligations, privileges or undertakings imposed by these restrictions for improvements on any Lot(s) to a representative, assignee or committee appointed by it, hereby relieving Declarant of any and all liability or obligation for any cause that may arise on or after the time of said assignment.

Section 18. If the parties hereto, or any of them, or their heirs or assigns, shall violate any of the covenants herein, it shall be lawful for any other person or persons owning real property in said subdivision development to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either, through the court or other legal authority, prevent or enjoin him or them from so doing or to recover damages or other dues for such violation. Should the case be tried in a court of law, the losing party shall pay all court costs and reasonable attorney fees of the successful party.

Section 19. The following shall be a default hereunder: failure by an Owner or an Owner's agents, representatives or assigns ("Defaulting Party"), to observe or perform any of the covenants, conditions or obligations of this Declaration (except for Nonpayment of Assessment, Article 4, Section 9), (a) within thirty (30) days after the issuance of a written notice by Declarant

or the Association, their agents or assigns, specifying the nature of the default claim, or (b) within such additional reasonable time period as is necessary to cure the same if the default cannot be cured within said thirty (30) day period, provided that the Defaulting Party commences to cure the default within said thirty (30) day period and cures such default within ninety (90) days of such issuance of a written notice ("Default"). The Declarant, the Association or their agents, representatives or assigns, shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto or any other person violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration and recover damages for any such violation or default. Such proceedings shall include the right to restrain by injunction any violation or threatened violation of any of the terms, covenants or conditions of this Declaration or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition is not adequate. The Declarant, the Association, or their agents, representatives or assigns shall also have the right to impose a fine not to exceed Five Hundred Dollars (\$500.00) for a one-time occurrence and a fine not to exceed Fifty Dollars (\$50.00) per day for a continuing default. Reasonable attorney fees shall be paid by the Owner or other party violating or attempting to violate the conditions and terms of this Declaration. Any fines imposed and reasonable legal fees shall be a binding obligation of the Owner as well as a lien on the Lot in question upon recording of such with the office of the Register of Shelby County, Tennessee. Any lien so recorded shall be subordinate to the lien of any previously recorded first mortgage.

Section 20. If Declarant, its agent or assigns, attempts to enforce through any legal means any of the covenants, restrictions or liens therein, the cost of said enforcement, including but in no way limited, to, reasonable attorney fees shall be paid by the owner or other violating or attempting to violate said restrictions and covenants.

Section 21. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 22. Declarant reserves the right to unilaterally add property to be covered by and be subject to the provisions of the Declaration, with the lots owned by Declarant in all property then currently subject to this Declaration being voted as Class B members, whether or not the Class B membership had earlier been converted to Class A membership. The Class B membership shall cease as set forth in Article III Section 2. Declarant reserves the right to unilaterally add Common Open Space to the Properties to be subject to the provisions of this Declaration. Declarant shall have the right to convey to the Association any Common Open Space in the Whisperwoods Subdivision.

Section 23. Neither Declarant, the Association, the ACC, their representatives, assignees or committees, nor any owners, architects, employees or agents thereof, shall be responsible in any way for any defects in any plans or specifications, for houses or improvements on any Lot(s), submitted, revised, or approved in accordance with the provisions contained herein, nor for any structural or other defects in any work done according to such plans and specifications.

ARTICLE VI
MISCELLANEOUS PROVISIONS

JX 7259

Section 1. Gender and Grammar. The singular whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men and women, shall in all cases be assumed as though in each case full.

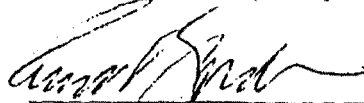
Section 2. Amendments by Owners. This Declaration may be amended by the affirmative vote of the Owners holding not less than two-thirds (2/3) of the votes of the membership. Any such amendment shall be reduced to writing and recorded in the Register's Office of Shelby County, Tennessee.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT, UNTIL DECEMBER 31, 2004, TO UNILATERALLY AMEND THIS DECLARATION TO THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL, FOR THE REQUIREMENTS OF ANY MORTGAGE LENDER OR FOR ANY REASON THAT THE DECLARANT DEEMS ADVISABLE IN ITS SOLE SUBJECTIVE DISCRETION FOR THE ORDERLY DEVELOPMENT AND MANAGEMENT OF WHISPERWOODS SUBDIVISION AND/OR THE ASSOCIATION.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 22ND day of December, 1999.

WHISPERWOODS LLC,
a Tennessee limited liability company

By:



Russell E. Bloodworth, Jr.
Executive Manager

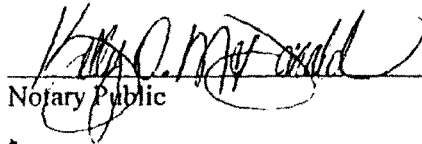
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ACKNOWLEDGEMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public of the state and county aforesaid, personally appeared **Russell E. Bloodworth, Jr.**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Executive Manager of WHISPERWOODS, L.L.C., the within named bargainor, a Tennessee limited liability company, and that he as such Executive Manager, executed the foregoing instrument for the purpose therein contained, by signing the name of the said WHISPERWOODS, L.L.C., a Tennessee limited liability company, by himself as Executive Manager.

WITNESS my hand and seal this 22nd day of December, 1999.



Notary Public

My Commission expires: JUNE 28, 2003



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JOINDER OF MORTGAGEE

JX 7259

Boyle Investment Company, herein called the Mortgagee, the holder of a Purchase Money Deed of Trust on the property described as on Exhibit "A" attached hereto and known as Whisperwoods Subdivision, of record in Plat Book 182, Page 18, in the Register's Office of Shelby County, Tennessee, which Deed of Trust is recorded under Instrument Number HU 1209 in the aforesaid Register's Office, joins in submitting said property to the said Declaration of Covenants, Conditions and Restrictions. Said Deed of Trust remains prior to any liens created by said Declaration of Covenants, Conditions and Restrictions.

Boyle Investment Company

By: Charles H. Clarke

Title: Treasurer

ACKNOWLEDGEMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public, in and for said State and County, duly commissioned and qualified, personally appeared CHARLES CLARKE, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the TREASURER of Boyle Investment Company, a Tennessee corporation, and that he as such TREASURER, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by subscribing the name of the corporation by himself as such TREASURER.

WITNESS my hand and Notarial Seal at office this 23rd day of December, 1999.

Kathy O. McCall
Notary Public

My Commission Expires:
JUNE 28, 2003

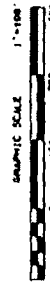
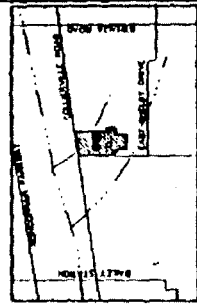


1" = 100'

FROM THE NORTH CORNER OF THE INTERSECTION OF COLLEEN ROAD AND FLEMING ROAD, 3.13 FEET WEST OF THE WEST EDGE OF FLEMING ROAD, ALSO 4 FEET SOUTH OF CHANEL DRIVE, ELEVATION 135.87

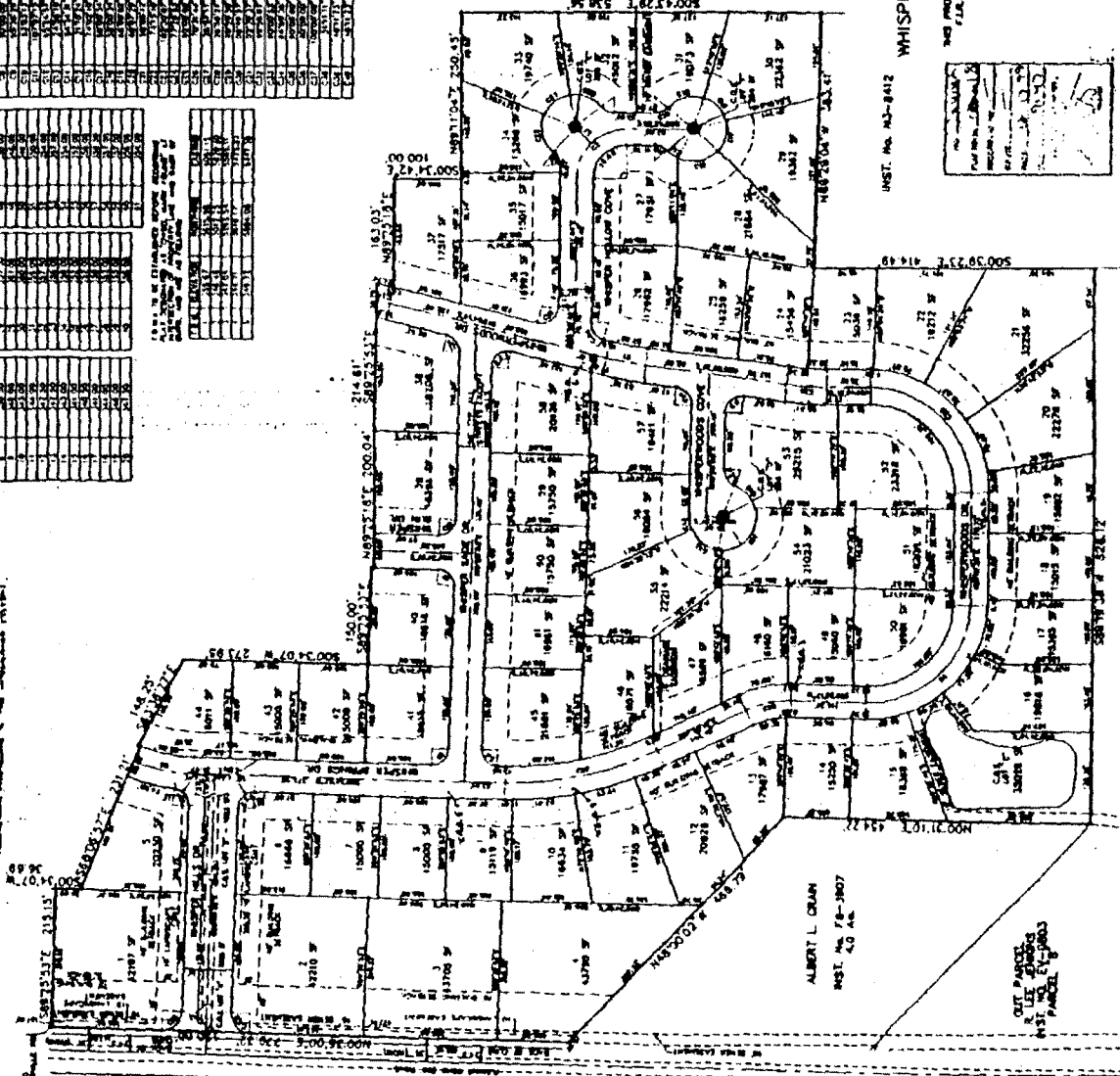
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FINAL PLAT
WHISPERWOODS SUBDIVISION, PHASE I
COLLEENVILLE, TENNESSEE
100 YEAR FLOOD ELEVATION: 100
NO PROPERTY IS NOT LOCATED IN THE 100-YEAR FLOOD PLAIN
PLANNED BY: WHISPERWOODS LLC
DEVELOPER: WHISPERWOODS LLC
PLANNER: DAVIDOFF, THOMAS DAVIS
ENGINEER: W. H. PORTER & CO., INC.
4821 AMERICAN HWY. SUITE 100
MEMPHIS, TENNESSEE 38118
SCALE: 1" = 100' DATE: 12/99
61 LOTS 34.080 ACRES
ZONED: RESIDENTIAL

THESE LOTS ARE BEING OFFERED FOR SALE BY THE DEVELOPER, WHISPERWOODS LLC, AS PART OF THE WHISPERWOODS SUBDIVISION, PHASE I, IN COLLEENVILLE, TENNESSEE. THE LOTS ARE BEING OFFERED FOR SALE AS IS, WITHOUT WARRANTY, AND THE BUYER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE DEVELOPER MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF THE INFORMATION CONTAINED HEREIN, AND THE BUYER SHALL BE RESPONSIBLE FOR VERIFYING THE INFORMATION. THE LOTS ARE BEING OFFERED FOR SALE AT A PUBLIC AUCTION, AND THE HIGHEST BIDDING PARTY SHALL BE THE OWNER OF THE LOTS. THE DEVELOPER MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF THE INFORMATION CONTAINED HEREIN, AND THE BUYER SHALL BE RESPONSIBLE FOR VERIFYING THE INFORMATION. THE LOTS ARE BEING OFFERED FOR SALE AT A PUBLIC AUCTION, AND THE HIGHEST BIDDING PARTY SHALL BE THE OWNER OF THE LOTS.



W. H. PORTER & CO., INC.
4821 AMERICAN HWY. SUITE 100
MEMPHIS, TENNESSEE 38118

MARTHA JANE PRATHER
4000 AC
INST. NO. 77-4872

ALBERT L. ORAN
INST. NO. 78-3807
40 AC

MELBA C. STEWART
1100 AC
INST. NO. 78-3807

OUT PARCELS
2 LOTS 1.000 AC
INST. NO. 78-3807

THIS INSTRUMENT PREPARED BY AND RETURN TO:
E. WOODS WEATHERSBY
STOKES BARTHOLOMEW EVANS & PETREE, P.A.
1000 RIDGEWAY LOOP ROAD, SUITE 200
MEMPHIS, TN 38120

ASSIGNMENT OF RIGHTS AND OBLIGATIONS OF DECLARANT OF WHISPERWOODS SUBDIVISION

WHEREAS, for value received, **WHISPERWOODS LLC**, as assignor, desires to assign and convey all of its rights, privileges, duties and obligations as "Declarant" related to and arising out of the Declaration of Covenants, Conditions and Restrictions for Whisperwoods Subdivision dated December 22, 1999, recorded in the Register's Office of Shelby County, Tennessee as Instrument No. JX 7259 (the "Declaration"), as amended by the Amendment to Declaration of Covenants, Conditions and Restrictions for Whisperwoods Subdivision dated April 24, 2000, recorded in the Register's Office of Shelby County, Tennessee as Instrument No. KD 7380 ("First Amendment") to **Whisperwoods 2&3, LLC**, as assignee; and

WHEREAS, the parties hereto desire to enter into an agreement acknowledging and consenting to said assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follow:

1. Whisperwoods, LLC, as "Declarant", hereby assigns, transfers, and conveys to **Whisperwoods 2&3, LLC** all of its rights and privileges related to, arising out of and granted by said Declaration and First Amendment.
2. **Whisperwoods 2&3, LLC** hereby accepts the assignment of all rights and privileges and agrees to assume any and all obligations and duties related to, arising out of and imposed by the Declaration and First Amendment and to be bound by the terms and conditions of the Declaration and First Amendment as successor "Declarant".
3. **Whisperwoods 2&3, LLC** shall succeed as "Declarant" to all of the rights and

THIS INSTRUMENT PREPARED BY AND RETURN TO:
E. WOODS WEATHERSBY
STOKES BARTHOLOMEW EVANS & PETREE, P.A.
1000 RIDGEWAY LOOP ROAD, SUITE 200
MEMPHIS, TN 38120

obligations of the Declaration and the First Amendment herein conveyed.

4. **Whisperwoods 2&3, LLC** and Whisperwoods Homeowners Association, Inc., a Tennessee nonprofit corporation, agree to indemnify and hold Whisperwoods, LLC harmless from and against all losses, damages, expenses, and claims that may arise by reason of its duties as "Declarant" arising out of, imposed by or related to the Declaration and the First Amendment from and after the date of execution of this Assignment
5. This Assignment of Rights and Obligations of Whisperwoods Subdivision shall be binding upon the parties, their heirs, personal representatives, successors and assigns.

EXECUTED as of the 9th day of February, 2004.

ASSIGNOR:

WHISPERWOODS, LLC, a Tennessee
limited liability company

By: [Signature]

Title: Executive Manager

ASSIGNEE:

Whisperwoods 2&3, LLC

By: [Signature]

Title: member

THIS INSTRUMENT PREPARED BY AND RETURN TO:
E. WOODS WEATHERSBY
STOKES BARTHOLOMEW EVANS & PETREE, P.A.
1000 RIDGEWAY LOOP ROAD, SUITE 200
MEMPHIS, TN 38120

To acknowledge its obligations pursuant to
this Assignment,

**WHISPERWOODS HOMEOWNERS
ASSOCIATION**, a Tennessee nonprofit
corporation

By: [Signature]

Title: President

ACKNOWLEDGEMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

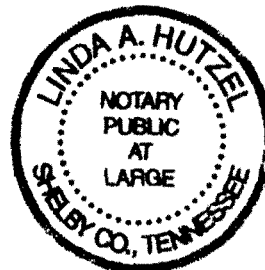
Before me, a Notary Public of the state and county aforesaid, personally appeared Gary Thompson with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be President of WHISPERWOODS, L.L.C., the within named bargainor, a Tennessee limited liability company, and that he as such President, executed the foregoing instrument for the purpose therein contained, by signing the name of the said WHISPERWOODS, L.L.C., a Tennessee limited liability company, by himself as President.

WITNESS my hand and seal this 18 day of February, 2004.

Linda A. Hutzel
Notary Public

My Commission expires:

My Commission Expires
April 27, 2004



THIS INSTRUMENT PREPARED BY AND RETURN TO:
E. WOODS WEATHERSBY
STOKES BARTHOLOMEW EVANS & PETREE, P.A.
1000 RIDGEWAY LOOP ROAD, SUITE 200
MEMPHIS, TN 38120

STATE OF TENNESSEE
COUNTY OF SHELBY

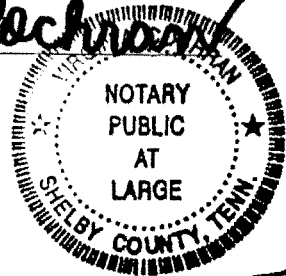
Before me, a Notary Public of the state and county aforesaid, personally appeared **J. Kevin Hyneman**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be a member of **Whisperwoods 2&3, LLC**, the within named bargainor, a Tennessee limited liability company, and that he as such member, executed the foregoing instrument for the purpose therein contained, by signing the name of the said **Whisperwoods 2&3, LLC**, a Tennessee limited liability company, by himself as a member.

WITNESS my hand and seal this 9th day of February, 2004.

Virginia A. Cochran
Notary Public

My Commission expires:

Sept 1, 2004



STATE OF TENNESSEE
COUNTY OF SHELBY

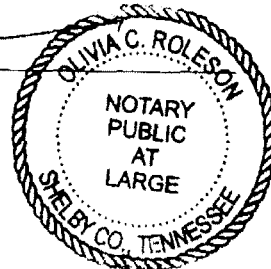
Before me, a Notary Public of the state and county aforesaid, personally appeared Russell E. Anderson with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Exec. Mgr. of Whisperwoods LLC, the within named bargainor, a Tenn. limited liability and that he as such Exec. Mgr., executed the foregoing instrument for the purpose therein contained, by signing the name of the said Whisperwoods LLC, a Tenn. limited liability, by himself as Exec. Mgr. Co.

WITNESS my hand and seal this 18th day of Feb., 2004.

Olivia C. Roleson
Notary Public

My Commission expires:


MY COMMISSION EXPIRES
DECEMBER 1, 2007





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.

	
04042969	
03/15/2004 - 03:54 PM	
4 PGS : E - MISCELLANEOUS	
JERRY 214089-4042969	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	20.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
TOTAL AMOUNT	22.00
TOM LEATHERWOOD	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	

This Instrument Prepared by and Return to:
Paul F. T. Edwards
Evans & Petree
81 Monroe
Memphis, TN 38103

**AMENDMENT
TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WHISPERWOODS SUBDIVISION
COLLIERVILLE, TENNESSEE**

PLAT BOOK 182, PAGE 18

THIS FIRST AMENDMENT, made as of the 20th day of April, 2000, by WHISPERWOODS LLC, a Tennessee limited liability company, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Whisperwoods Subdivision, Collierville, Tennessee, was recorded in the Register's Office of Shelby County, Tennessee as Instrument No. JX 7259 (the "Declaration"); and

WHEREAS, Declarant is the owner of more than two-thirds (2/3) of the Lots and Declarant deems it advisable for the orderly development and management of the Whisperwoods Subdivision to amend the Declaration as required by Article VI, Section 2, to amend the Declaration; and

NOW, THEREFORE, Declarant hereby amends the Declaration as set forth herein:

1. Article V, Section 9, as set forth in the Declaration shall be deleted in its entirety and replaced with the following:

Section 9. No improvement or change, including but not limited to the construction, alteration or erection of any structure, fence, radio antenna, satellite dish, driveway, walkway, landscape screening, mailbox, outdoor lighting fixture, sanitary and/or storm sewer system, underground wiring, swimming pool, pool deck, earthwork, grading or the removal of an existing tree or trees which are six inches (6") in caliper or larger when measured at a point two feet (2') above the ground, shall be commenced, erected, placed or permitted on any Lot in this

subdivision until the plans, specifications and specific location (including elevation) of said improvements or change has been approved in writing, or the requirement for such approval has been waived in writing, by ACC or its authorized agent. ACC reserves the right to require the submission of designs, material selections and layouts of proposed improvements or changes at different stages of the design process, and further reserves the right to specify the information required therein as well as the format thereof. ACC or its assigns may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval payable at the time such plans and specifications are so submitted. The amount of such fee shall not exceed the cost of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

Generally, the following architectural design criteria must be met, unless otherwise approved in writing by the Architectural Committee:

(a) Carports shall not be allowed and each residence shall have an enclosed garage for at least two passenger vehicles, which garage shall not open directly to the street, except when the following conditions are met: (i) the garage is shielded from view from the street by landscaping, walls or other method; and (ii) the garage location and visual shielding are approved by the ACC.

(b) Fences shall be made of wood, brick, plastic or ornamental metal material, or a combination thereof, and must be approved prior to construction for each specific lot by type, design, location, height and color. No chain link fences will be allowed, unless located within a wood fence so as not to be visible from outside the yard. Wood fences shall be of cedar or cypress, shadow box or board-to-board with smooth side out (if visible from street) and shall not exceed six (6) feet in height. No fence shall be constructed in a sideyard closer to the street than the rear of the house or the rear of the house on the adjacent lot, whichever is closer to the street, except that it is permissible to include a side entry door within the rear portion of the sideyard. Notwithstanding anything to the contrary herein, no fence shall be permitted within the front (and side on corner lots) setback areas.

(c) No trees existing on any Lot or Parcel shall be removed, damaged or destroyed without written permission of Declarant. Owner shall protect existing trees during the period of construction of a house and other improvements on its Lot by installing and maintaining protective fencing to prevent vehicles, construction materials and any debris from being placed near said trees. Said protective fencing shall be placed so as to protect at least the area

under the "drip line" of said trees, extending to the outer edges of all branches. Declarant will not be responsible for any trees that die.

(d) Sidewalks shall be installed by each Owner as specified by the Town of Collierville within twelve (12) months after Declarant's installation of asphalt top coat on the streets. If said sidewalks are not installed by Purchaser within the specified time period, Declarant may, at its option, install said sidewalks and charge the cost of same to the Owner. If said costs are not paid within thirty (30) days from the date of billing, then said costs, plus court cost, attorney fee and interest and the maximum legal rate shall become a lien on the property.

(e) The ACC may publish a list of Architectural Guidelines to deal with more specific design criteria, which may be revised from time to time, and which shall be incorporated herein by reference.

In the event that ACC fails to approve or disapprove a proposed improvement or change within a period of thirty (30) days after the plans, specifications and specific locations of the proposed improvement or change have been received by ACC, such approval will not be required, and this covenant will be deemed to have been fully complied with.

2. Article V, Section 10, as set forth in the Declaration shall be deleted in its entirety and replaced with the following:

Section 10. If any improvement or change requiring approval shall be undertaken on a Lot and said approval has not been obtained from ACC or from a representative, assignee or a committee duly appointed by said ACC, or if any improvement or change which is not in conformance with approved plans and specifications shall be undertaken on a Lot, said improvements or change shall be deemed to have been undertaken in violation of these covenants, and upon written notice from ACC, its representative assignee or committee, any such improvement or change deemed to be in violation shall be promptly removed or altered so as to extinguish such violation. If, thirty (30) days after the notice, the owner or owners of the Lot in question shall not have taken reasonable steps toward the removal or alteration of same, Declarant, its representative, assignee or committee, shall have the right, through its agent, to take such legal steps as may be necessary to extinguish such violation and/or to impose a fine not to exceed \$5,000.00, and the cost thereof, including court costs, any fines imposed and reasonable legal fees shall be a binding obligation of the owner as well as a lien on the lot in question upon the recording of such with the office of the Register of Shelby County, Tennessee. Any lien so recorded shall be subordinate to the lien of any previously recorded first mortgage.

KD 7350

3. **Exhibit "A"** as set forth in the Declaration shall be deleted in its entirety and replaced with the **Exhibit "A"** attached hereto.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 24th day of April, 2000.

WHISPERWOODS LLC,
a Tennessee limited liability company

By: 

Russell E. Bloodworth, Jr.
Executive Manager

ACKNOWLEDGEMENT

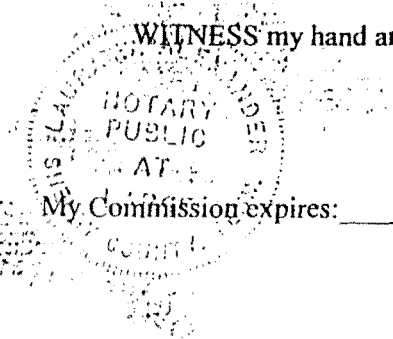
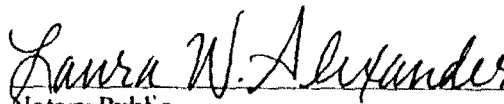
STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public of the state and county aforesaid, personally appeared **Russell E. Bloodworth, Jr.**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Executive Manager of WHISPERWOODS, L.L.C., the within named bargainer, a Tennessee limited liability company, and that he as such Executive Manager, executed the foregoing instrument for the purpose therein contained, by signing the name of the said WHISPERWOODS, L.L.C., a Tennessee limited liability company, by himself as Executive Manager.

WITNESS my hand and seal this 24th day of April, 2000.

My Commission expires: _____

My Commission Expires May 16, 2001

Notary Public

JOINDER OF MORTGAGEE

KD 7350

Boyle Investment Company, herein called the Mortgagee, the holder of a Purchase Money Deed of Trust on the property described as on Exhibit "A" attached hereto and known as Whisperwoods Subdivision, of record in Plat Book 182, Page 18, in the Register's Office of Shelby County, Tennessee, which Deed of Trust is recorded under Instrument Number IHU 1209 in the aforesaid Register's Office, joins in submitting said property to the said Declaration of Covenants, Conditions and Restrictions and this Amendment thereto. Said Deed of Trust remains prior to any liens created by said Declaration of Covenants, Conditions and Restrictions.

Boyle Investment Company

By: Charles Claiborne

Title: Treasurer

ACKNOWLEDGEMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public, in and for said State and County, duly commissioned and qualified, personally appeared CHARLES CLAIBORNE, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the TREASURER of Boyle Investment Company, a Tennessee corporation, and that he as such TREASURER, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by subscribing the name of the corporation by himself as such TREASURER.

WITNESS my hand and Notarial Seal at office this 24th day of APRIL, 2000.

Kelly A. McDaniel
Notary Public

My Commission Expires:
My Commission Expires June 28, 2003



EXHIBIT "A"

Parcel 1: Part of Parcel "A", Jenkins, et al, property in Collierville, Tennessee, recorded in Instrument No. EV 0803 in the Register's Office of Shelby County, Tennessee, and being more particularly described as follows:

Beginning at a found P.K. nail at the centerline intersection of Collierville Road (40' wide) and Fleming Road (40' wide); thence south 00 degrees 35 minutes 00 seconds west along the centerline of Fleming Road a distance of 1345.80 feet to a point at the northwest corner of Albert Crain property as recorded in F8 3907 S.C.R.O.; thence south 48 degrees 00 minutes 02 seconds east along the north line of said Crain property a distance of 512.13 feet to a point at the northeast corner of the said Crain property and at a found steel post; thence south 00 degrees 31 minutes 10 seconds west along the east line of the said Crain property a distance of 454.22 feet to a point at the southeast corner of the said Crain property and at a found steel post; said point also being in the north line of Parcel "B" of Jenkins, et al, EV 0803; thence north 89 degrees 19 minutes 38 seconds east, a distance of 828.12 feet to a point in the west line of the James Burkeen property recorded in N3 8412 S.C.R.O.; thence north 00 degrees 39 minutes 23 seconds west along the said Burkeen west line a distance of 943.24 feet to a point; thence north 00 degrees 43 minutes 13 seconds west along the said Burkeen west line a distance of 1565.05 feet to a point in the centerline of Collierville Road; thence South 75 degrees 52 minutes 46 seconds west along the centerline of Collierville Road a distance of 371.95 feet to a point; thence south 70 degrees 25 minutes 00 seconds west along the centerline of Collierville Road a distance of 848.74 feet to the point of beginning, containing 58.25 acres of land, more or less and

Parcel 2: Part of the James Burkeen and wife property in Collierville, Tennessee recorded in Instrument N3 8412 in the Shelby County Register's Office in Memphis, Tennessee, more particularly described as follows:

Beginning at a point in the centerline of Collierville Road (40' wide) at the northeast corner of Parcel "A" Jenkins et al. recorded in EV 0803 in the S.C.R.O. and 1220.69 feet east of a found P.K. nail at the intersection of Collierville Road and Fleming Road as measured along the centerline; thence south 00°43'13" East along Jenkins east line a distance of 1565.05 feet to a point; thence south 00°39'23" east along Jenkins east line a distance of 528.74 feet to a point; thence south 89°27'31" east, a distance of 382.11 feet to a point in the west line of the Mark Harris property recorded in Deed Book 6156, Pg. 88 in the S.C.R.O.; thence North 00°42'38" west along the said Harris west line a distance of 536.64 feet to a point in the south line of the Sheahan property recorded in Instrument CZ 5846 S.C.R.O.; thence south 89°27'10" west along the said Sheahan south line a distance of 237.53 feet to a point at the southwest corner of the said Sheahan property; thence north 01°10'00" west along the west line of the said Sheahan property and the west line of the Liles tract recorded in Instrument DT 0588 S.C.R.O. a distance of 1596.20 feet to a point in the centerline of Collierville Road; thence south 75°53'42" west along the centerline of Collierville Road a distance of 135.23 feet to the point of beginning, containing 9.67 acres, more or less.

KD 7380

THIS PAGE ATTACHED FOR RECORDING INFORMATION ONLY.

Plate	
Subdivision Restrictions	
KD 7380 62	
O/C: 16 - MICHELLE ANDREWS	
VALUATION	N / A
IN MORTGAGE TAX	N / A
IN TRANSFER TAX	N / A
RECORDING FEE	20.00
JP FEE	2.00
REGISTER'S FEE	N / A
WALK THRU FEE	N / A
TOTAL AMOUNT	30.00
PAGE COUNT: 7	PAGE ADDED: No (SEEN TO: 1)
STATE of TENNESSEE, COUNTY of SHELBY	
Guy B. Bates, REGISTER	

KD7380.

Page 7

SHELBY COUNTY
REGISTER OF DEEDS
00 APR 25 AM 11:34

THIS INSTRUMENT PREPARED BY AND RETURN TO:
E. WOODS WEATHERSBY
STOKES BARTHOLOMEW EVANS & PETREE, P.A.
1000 RIDGEWAY LOOP ROAD, SUITE 200
MEMPHIS, TN 38120

**SECOND AMENDMENT
TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WHISPERWOODS SUBDIVISION
COLLIERVILLE, TENNESSEE**

PLAT BOOK 182, PAGE 18

THIS SECOND AMENDMENT is made as of the 18th day of Feb., 2004,
by WHISPERWOODS LLC, a Tennessee limited liability company.

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Whisperwoods Subdivision, Collierville, Tennessee, was recorded in the Register's Office of Shelby County, Tennessee as Instrument No. JX 7259 (the "Declaration") as amended by the Amendment to Declaration of Covenants, Conditions and Restrictions for Whisperwoods Subdivision dated April 24, 2000, recorded in the Register's Office of Shelby County, Tennessee as Instrument No. KD 7380; and

WHEREAS, Whisperwoods LLC holds more than two-thirds (2/3) of the votes of the Membership in the Association as required by Article VI, Section 2, to amend the Declaration; and

WHEREAS, Whisperwoods LLC deems it advisable for the orderly development and management of the Whisperwoods Subdivision to amend the Declaration.

NOW, THEREFORE, Whisperwoods LLC hereby amends the Declaration as set forth herein:

1. Pursuant to Article V, Section 17, Whisperwoods LLC has exercised its right to assign any or all of its rights, obligations, privileges or undertakings imposed by the Declaration by assigning the Declaration to **Whisperwoods 2&3, LLC**. Any reference to "Declarant" subsequent to the date of execution of this Second Amendment shall refer to **Whisperwoods 2&3, LLC**. Article I, Section 3, as set forth in the Declaration, therefore, shall be deleted in its entirety and replaced with the following:

Section 3. "Declarant" shall mean and refer to **Whisperwoods 2&3, LLC**, a Tennessee limited liability company, its successors and assigns.

2. Article VI, Section 2, as set forth in the Declaration shall be deleted in its entirety and replaced with the following:

Section 2. Amendments by Owners. This Declaration may be amended by the affirmative vote of the Owners holding not less than two-thirds (2/3) of the votes of the membership. Any such amendment shall be reduced to writing and recorded in the Register's Office of Shelby County, Tennessee. Notwithstanding the foregoing, if the amendment is approved by the votes of the Declarant, the amendment shall be submitted to Whisperwoods, LLC for approval prior to the amendment becoming effective. Whisperwoods, LLC agrees not to unreasonably withhold its approval provided that the proposed amendment is consistent with the ideals, goals and purposes of the Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 18 day of Feb., 2004.

WHISPERWOODS LLC,
a Tennessee limited liability company

By: 

Russell E. Bloodworth, Jr.
Executive Manager

ACKNOWLEDGEMENT

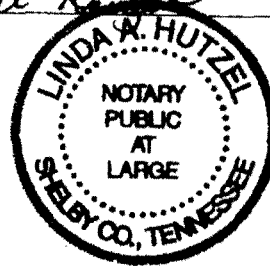
STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public of the state and county aforesaid, personally appeared **Russell E. Bloodworth, Jr.**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Executive Manager of WHISPERWOODS, L.L.C., the within named bargainor, a Tennessee limited liability company, and that he as such Executive Manager, executed the foregoing instrument for the purpose therein contained, by signing the name of the said WHISPERWOODS, L.L.C., a Tennessee limited liability company, by himself as Executive Manager.

WITNESS my hand and seal this 18 day of February, 2004.

Linda R. Hutzel
Notary Public

My Commission expires: 4/22/04



JOINDER OF MORTGAGEE

Boyle Investment Company, herein called the Mortgagee, the holder of a Purchase Money Deed of Trust on the property known as Whisperwoods Subdivision, of record in Plat Book 182, Page 18, in the Register's Office of Shelby County, Tennessee, which Deed of Trust is recorded under Instrument Number HU 1209 in the aforesaid Register's Office, joins in submitting said property to the said Declaration of Covenants, Conditions and Restrictions and this Amendment thereto. Said Deed of Trust remains prior to any liens created by said Declaration of Covenants, Conditions and Restrictions.

Boyle Investment Company

By: *Russell Blomworth*

Title: *EVP*

ACKNOWLEDGEMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

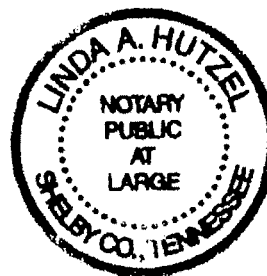
Before me, a Notary Public, in and for said State and County, duly commissioned and qualified, personally appeared *Russell Blomworth*, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the *Executive Vice President* of Boyle Investment Company, a Tennessee corporation, and that he as such *EVP*, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by subscribing the name of the corporation by himself as such *EVP*.

WITNESS my hand and Notarial Seal at office this *18* day of *February*, 2004.

Linda A. Hutzel
Notary Public

My Commission Expires:

Commission Expires
April 27, 2004



JOINDER OF WHISPERWOODS 2&3, LLC, ASSIGNEE

Whisperwoods 2&3, LLC, the assignee of all rights and obligations imposed by the Declaration of Covenants, Conditions and Restrictions for Whisperwoods Subdivision, Collierville, Tennessee, was recorded in the Register's Office of Shelby County, Tennessee as Instrument No. JX 7259 (the "Declaration") as amended by the Amendment to Declaration of Covenants, Conditions and Restrictions for Whisperwoods Subdivision dated April 24, 2000, recorded in the Register's Office of Shelby County, Tennessee as Instrument No. KD 7380, joins in the execution of the Second Amendment to Declaration of Covenants, Conditions and Restrictions for all intents and purposes.

Whisperwoods 2&3, LLC

By: _____

J. Kevin Hyneman
J. Kevin Hyneman

Title: Member

ACKNOWLEDGEMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

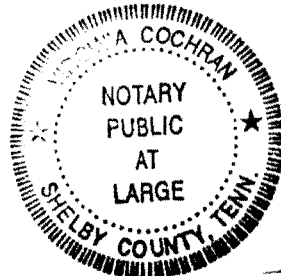
Before me, a Notary Public of the state and county mentioned, personally appeared **J. Kevin Hyneman**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be a Member of Whisperwoods 2&3, LLC, a Tennessee limited liability company, the within named bargainer, and that he as such Member, executed the foregoing instrument for the purposes therein contained, by signing the name of Whisperwoods 2&3, LLC, a Tennessee limited liability company, by himself as Member.

WITNESS my hand, at office, this 17th day of February, 2004.

Virginia A. Cochran
Notary Public

My Commission expires:

Sept 1, 2004






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.

	
04042970	
03/15/2004 - 03:54 PM	
5 PGS : E - SUB RESTRICTION	
JERRY 214089-4042970	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	25.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
TOTAL AMOUNT	27.00
TOM LEATHERWOOD	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	

Return to:
FNTG
Chicago Title | Commonwealth Land Title |
Fidelity National Title
6060 Poplar Avenue, Ste LL37
Memphis, TN 38119

THIS INSTRUMENT PREPARED BY AND RETURN TO:
M. Wayne Mink, Jr.,
DINKELSPIEL, RASMUSSEN & MINK, PLLC
1669 Kirby Parkway, Suite 106
Memphis, TN 38120

**THIRD AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR WHISPERWOODS
SUBDIVISION COLLIERVILLE, TENNESSEE PLAT BOOK 182, PAGE 18
AND THE BYLAWS OF WHISPERWOODS HOMEOWNERS
ASSOCIATION, INC.**

THIS THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHISPERWOODS SUBDIVISION COLLIERVILLE, TENNESSEE PLAT BOOK 182, PAGE 18 AND THE BYLAWS OF WHISPERWOODS HOMEOWNERS ASSOCIATION, INC. (this "Amendment") dated as of ~~15th~~ August, 2011, but effective as of April 5, 2011, by WHISPERWOODS HOMEOWNERS ASSOCIATION, INC., a Tennessee non-profit corporation (the "Association").

WITNESSETH:

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions for Whisperwoods Subdivision Collierville, Tennessee Plat Book 182, Page 18 (as amended, the "CCRs"), dated December 22, 1999, and recorded in the Register's Office of Shelby County, Tennessee (the "Register's Office"), as Instrument No. JX 7259, as amended by those certain Instrument Nos. KD 7380 and 04042970, governs that certain residential development situated in the Town of Collierville, Shelby County, Tennessee, more commonly known as "Whisperwoods", which is administered by the Whisperwoods Homeowners Association, Inc., a Tennessee non-profit corporation (the "Association"); and

WHEREAS, the Association is governed by those certain "Bylaws of Whisperwoods Homeowners Association, Inc." (the "Bylaws") attached to the CCRs as "**EXHIBIT C**"; and

WHEREAS, the Association intends to amend the CCRs and Bylaws as more particularly provided herein; and

WHEREAS, Article VI, Section 2 of the CCRs provides that the CCRs may be amended at a meeting of the membership of the Association by an affirmative vote of two-thirds (2/3) of the votes entitled to be cast by the Members of the Association; and

WHEREAS, Article X of the Bylaws provides that the Bylaws may be amended at a meeting of the membership of the Association by an affirmative vote of two-thirds (2/3) of the votes entitled to be cast by the Members of the Association, but only after thirty (30) days' prior written notice has been provided to the institutional holders of all first mortgages in Whisperwoods; and

WHEREAS, the notice required by Article X of the Bylaws has been provided; and

WHEREAS, a meeting of the membership of the Association has been held and this Amendment was properly approved at such meeting by an affirmative vote of two-thirds (2/3) of the votes entitled to be cast by the Members of the Association.

NOW, THEREFORE, the CCRs and Bylaws are hereby amended as follows:

1. **RECITALS:** The foregoing recitals are true and accurate.
2. **CAPITALIZED TERMS:** All capitalized terms not otherwise defined in this Amendment shall have the same meanings provided for in the CCRs and Bylaws.
3. **COMPOSITION OF THE ARCHITECTURAL CONTROL COMMITTEE:** Article V, Section 1 of the CCRs is hereby amended to delete the first paragraph and substitute the following in its place:

Section 1. The Association shall have an Architectural Control Committee ("ACC") which shall consist of not less than three (3) members. Members of the ACC shall be appointed by, and shall serve at the pleasure of, the Board of Directors of the Association. Members of the ACC must be eligible voting Members of the Association. The vote of a majority of the members of the ACC shall constitute the action of the ACC.

4. **CONSTRUCTION OF SHEDS:** Article V, Section 4 of the CCRs is hereby amended to delete the existing provision and substitute the following in its place:

Section 4. No structure nor shed shall be erected, placed, altered or permitted to remain on any lot in this subdivision other than one detached single family dwelling and its related buildings. All related buildings must be architecturally identical to the single family dwelling and constructed of identical and matching materials. The minimum heated floor area of the single family residence, exclusive of porches and garages, shall not be less than 3,200 square feet.

5. **CHILDREN'S PLAY EQUIPMENT:** Article V, Section 6 of the CCRs is hereby amended to delete the first paragraph and substitute the following in its place:

Except for maintenance requirements herein imposed upon the Association, the Owner of any lot shall, at his own expense, maintain the interior and exterior of any improvements on his Lot, including all driveways and any and all equipment and fixtures therein situate, and its other appurtenances, in good order, condition and repair, and in clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his Lot and appurtenances. A good appearance also requires that children's play equipment be located in the back yard behind a fence. All exterior maintenance is subject to approval of the ACC.

6. **ANNUAL MEETING:** Article IV, Section 2 of the Bylaws is hereby amended to delete the first sentence and substitute the following in its place:

The annual meetings of the Members of the Association shall be held in the month of April.

7. **QUORUM:** Article IV, Section 5 of the Bylaws is hereby deleted in its entirety with the following substituted in its place:

Quorum. The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total votes of each class of Members entitled to cast with respect to any question shall be requisite for the transaction of business at all meetings of the Members except for the election of directors. For the purpose of director elections, thirty percent (30%) of the total eligible votes shall constitute a quorum. If the number of Members at a meeting drops below the quorum, no business may thereafter be transacted.

8. **PROXIES:** Article IV, Section 8 of the Bylaws is hereby deleted in its entirety with the following substituted in its place:

Proxies. Any Member may appoint any other eligible voting Member as his proxy. In no case may any Member 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 these Bylaws.

9. **NUMBER AND QUALIFICATIONS OF DIRECTORS:** Article V, Section 1 of the Bylaws is hereby deleted in its entirety with the following substituted in its place:

Number of Qualification. The affairs of the Association shall be governed by the Board of Directors composed of at least three (3) persons and not more than seven (7) persons. All persons serving in elected positions shall be qualified voting Members of the Association.

10. **NOMINATION OF DIRECTORS:** Article V, Section 4 of the Bylaws is hereby amended to delete the last sentence of the section and substitute the following in its place:

All nominations shall be made by eligible voting Members of the Association and all nominees shall be eligible voting Members of the Association.

11. **AMENDMENT OF BYLAWS:** Article X of the Bylaws is hereby amended to delete the last half of the first sentence, being the following language:

...and only after thirty (30) days' prior written notice to the institutional holders of all first mortgages on the Lots in Whisperwoods Subdivision.

12. **FULL FORCE AND EFFECT:** Except as modified herein, all other terms and provisions of the CCRs and Bylaws shall remain in full force and effect as if this Amendment had been incorporated in the CCRs and Bylaws as originally executed.

13. **CONFLICT:** In the event of any conflict between the terms and provisions of this Amendment and the CCRs or the Bylaws, the terms and provisions of this Amendment shall control.

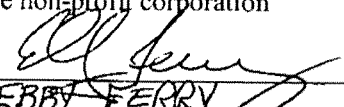
[THE FOLLOWING PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, this Amendment to the CCRs and Bylaws was properly approved at a meeting of the Members of the Association by an affirmative vote of two-thirds (2/3) of the votes of the Members of the Association and after any and all due notice required by the Bylaws and executed and certified by the President of the Association.

THE ASSOCIATION:

WHISPERWOODS HOMEOWNERS
ASSOCIATION, INC.

a Tennessee non-profit corporation


By: 
Name: EBBY FERRY
Title: President

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, of the state and county mentioned, personally appeared EBBY FERRY, President of WHISPERWOODS HOMEOWNERS ASSOCIATION, INC., a Tennessee non-profit, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be President of WHISPERWOODS HOMEOWNERS ASSOCIATION, INC., a Tennessee non-profit, the within named bargainor, a corporation, and that such she/he as such President, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as its President.

WITNESS MY HAND AND OFFICIAL SEAL at office, this 15th day of August, 2011.





NOTARY PUBLIC
My Commission Expires: AUGUST 11, 2013



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.

	
11081299	
08/19/2011 - 04:16 PM	
4 PGS	
KATHY 868471-11081299	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	20.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
TOTAL AMOUNT	22.00
TOM LEATHERWOOD	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	

"EXHIBIT C"

**BYLAWS
OF
WHISPERWOODS
HOMEOWNERS ASSOCIATION, INC.**

JX 7259

ARTICLE I.

Section 1. Name. The name of this corporation is Whisperwoods Homeowners Association, Inc. Its principal place of business is 5900 Poplar Avenue, Memphis, Tennessee 38119. The corporation may have such other offices within or without the State of Tennessee as the Board of Directors or the Members may from time to time designate.

ARTICLE II.

Section 2. Applicability. These Bylaws and each provision thereof shall be applicable to all Lots and Members, as defined in the Declaration of Covenants, Conditions and Restrictions for Whisperwoods Subdivision.

ARTICLE III.

Section 1. Eligibility. The Owner or Owners, as defined in said Declaration of Covenants, of a Lot, who have become such in compliance with all of the requirements and conditions contained in the Declaration of Covenants, including these Bylaws, shall be entitled to attend and vote at all meetings of the Association. The Declarant shall be considered the Owner of each Lot which is unsold by it. Ownership of a Lot shall be the sole qualification for membership in the Association.

Section 2. Classification of Members and Voting Rights. Members shall be divided into two classes, denominated as Class A Members and Class B Members, defined as follows:

Class A. Class A members shall be Owners and shall be entitled to one (1) vote for each Lot owned at all meetings of the Association. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote allocated to that Lot shall be cast by the one authorized by such two or more Owners, and in the event of failure of such authorization, no vote shall be recorded for that Lot. Where only one of two or more Owners of a Lot is present in person at a meeting, such one shall be presumed to be authorized by all Owners of said Lot and shall be entitled to cast the vote with respect for that Lot. Where one person or a group of persons owns more than one Lot, such person or group shall be entitled to cast one (1) vote for each Lot owned. In no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class member(s) shall be the Declarant and shall be entitled to twelve (12) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or

(b) When the Declarant determines it to be in the best interest of the Association to cease Class B membership and elects to terminate said Class B membership.

ARTICLE IV.

Section 1. Place of Meeting. Meetings of the membership shall be held at the principal office or the place of business of the Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. Annual Meetings. The annual meetings of the Members of the Association shall be held at 6:00 P.M. on the first Tuesday in April of each year, beginning in 2001. At such meeting there shall be elected by secret written ballot of the Members a Board of Directors in accordance with the requirements of Section 5 of Article V of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

Section 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 ten percent (10%) of the total number of votes entitled to be cast on any issue proposed to be considered at the proposed special meeting having been presented to the Secretary. 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.

Section 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 of record, at his address as it appears on the membership book of the Association, if any, or if no such address appears, at his last known place of address, at least ten (10) days but no more than two (2) months prior to such meeting. Service may also be accomplished by the delivery of any such notice to the Member at his last known address by deposit in the box or slot for the United States mail. Notice by either such method shall be considered as notice served. Attendance by a Member at any meeting of the Members shall be a waiver of notice by him of the time, place and purpose thereof.

Section 5. Quorum. The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total votes of each class of Members entitled

to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

Section 6. Adjourned Meeting. If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. 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 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 provision of statute or of the Charter of Incorporation, or the Declaration, or of these Bylaws, a different vote is required, in which case such express provision shall govern and control. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

Section 8. Proxies. Any Member may appoint any other Member or the Developer or any other person permitted by law or by these Bylaws as his proxy. In no case may any Member (except the Developer) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by these Bylaws.

Section 9. Action Without Meeting. Whenever the vote of Members at a meeting thereof is required or permitted to take any action in accordance with any statute, the Declaration or these Bylaws, such meeting and vote may be dispensed with if all Members who would have been entitled to vote upon such action receive a written ballot from the Association. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approvals shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equal or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Section 10. Order of Business. The order of business at all regularly scheduled meetings of the Members shall be as follows:

- (a) Roll call and certificate of proxies.
- (b) Proof of notice of meeting or waiver of notice.

- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers, if any.
- (e) Reports of committees, if any.
- (f) Unfinished business.
- (g) New business.
- (h) Election or appointment of inspectors of election.
- (i) Election of directors.

JX 7259

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

ARTICLE V.

Section 1. Number of Qualification. The affairs of the Association shall be governed by the Board of Directors composed of at least three (3) persons and not more than seven (7) persons, a majority of whom (after the second annual meeting of Members) shall be Members of the Association.

Section 2. Initial Directors. The initial Directors shall be elected by the Developer and need not be Members of the Association. The names of the Directors who shall act as such from the date upon which the Declaration is recorded in the Register's Office of Shelby County, Tennessee, until the first annual meeting of the Members or until such time as their successors are duly chosen and qualified are as follows:

Section 3. Power and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and the subdivision 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. The powers and duties of the Board of Directors shall include, but not be limited to, the following:

To provide for:

1.2

(a) Care and upkeep of the Common Open Space and any other properties charged to the care of the Association, including establishing reserves for repairs or replacements.

(b) Establishment and collection of assessments and/or carrying charges from the Members and for the assessment and/or enforcement of liens therefor in a manner consistent with law and the provisions of these Bylaws and the Declaration.

(c) Designation, hiring and/or dismissal of the personnel necessary for the good working order of Whisperwoods and to provide services for the community in a manner consistent with law and the provisions of these Bylaws and the Declaration.

(d) Promulgation and enforcement of such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of Whisperwoods, all of which shall be consistent with law and the provisions of these Bylaws and Declaration.

Section 4. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 5. Election and Term of Office. The term of the Directors named herein shall expire when their successors have been elected at the first annual meeting of Members and are duly qualified. At the first annual meeting of the Members, the Members shall determine the number of Directors consistent with these Bylaws, who shall constitute the Board of Directors to serve until the next annual meeting and until their successors have been elected and duly qualified. The term of office of each Director thereafter shall be for a period of one (1) year and until their successors shall have been elected and hold their first meeting.

Section 6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the membership 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.

Section 7. Removal of Directors. At a regular meeting, or special meeting duly called for such propose, any Director may be removed with or without cause by the affirmative

vote of the majority of the entire membership of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than sixty (60) days delinquent in payment of any assessments and/or carrying charges due the Association shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 6 of this Article.

Section 8. Compensation. No compensation shall be paid to Directors for their services as Directors. After the first annual meeting of the members, no remuneration shall be paid 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.

Section 9. Organizational Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 10. 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 two (2) such meetings 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 two (2) days prior to the day named for such meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President on two (2) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the date, time and place (as hereinabove provided), but not necessarily the purpose, of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third ($\frac{1}{3}$) of the Directors.

Section 12. 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 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.

Section 13. 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. 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.

Section 14. Action 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 of the members of the Board of Directors shall individually or collectively consent in writing to take such action without a meeting. Such written consent or consents describing the action taken and signed by each Director shall be filed with the minutes of the proceedings of the Board of Directors. If all Directors consent to taking such action without a meeting, the affirmative vote of the number of Directors that would be necessary to take such action at a meeting is the act of the Board.

Section 15. Fidelity Bonds. The Board of Directors may require that all officers and employees of the Association handling or responsible for the Association's trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

ARTICLE VI.

Section 1. Designation. The principal officers of the Corporation shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. Prior to the first annual meeting of Members, the officers of the Association need not be Members of the Association. The Directors may appoint an assistant secretary and as assistant treasurer and such other officers as in their judgment may be necessary. The offices of Secretary and Treasurer may be filled by the same person.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board of Directors.

Section 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.

Section 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 an association, including, but not limited to, the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

Section 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 shall appoint some other member of the

Board 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.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Members of the Association; he shall have custody of the seal of the Association, if any; 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 duties incident to the office of Secretary.

Section 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.

Section 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 of the Association for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The officers and Directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association of Whisperwoods Subdivision (except to the extent that such officers or Directors may also be Owners of Lots within the subdivision), and the Association shall indemnify and forever hold each such officer and 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.

Section 2. Common or Interested Directors. The Directors shall exercise their powers and duties in good faith and with a view to the interest of the Association and the subdivision. No contract or other transaction between the Association and one or more of its Directors, or between the Association and any corporation, firm or association (including the Developer) 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 or Directors are present at a meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if any of the conditions specified in any of the following subparagraphs exist:

(a) The fact of the common directorate 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 with like force and effect as if he were not such Director or officer of such other corporation or not so interested.

ARTICLE VIII.

Section 1. Management and Common Expenses. The Association, acting by and through its Board of Directors, shall manage, and operate the affairs of the Association and, for the benefit of the Lots and the Owners thereof, shall enforce the provisions hereof and shall pay out of the common expense fund herein and elsewhere provided for, the following:

(a) The cost of such insurance as the Association may effect.

(b) The cost of providing such legal and accounting services as may be considered necessary to the operation of Whisperwoods Subdivision.

(c) The cost of any and all materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like, which the Association secures in the discretion of the Board of Directors or by the vote of the Members shall be deemed necessary or proper.

(d) The cost of the maintenance or repair on any Lot in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Open Space or to preserve the appearance or value of Whisperwoods Subdivision or is otherwise in the interest of the general welfare of all Owners of the Lots; provided, however, that no such maintenance or repair shall be undertaken without a resolution by the Board of Directors and not without reasonable written notice to the Owner of the Lot proposed to be maintained and provided, further, that the cost thereof shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be sent promptly to the then Owner of said Lot at which time the assessment shall become due and payable and a continuing lien and obligation of said Owner.

(e) All other items which are listed as responsibilities of the Association as found in the Declaration.

Section 2. **Duty to Maintain.** Except for maintenance requirements herein imposed upon the Association, the Owner of any Lot shall, at his own expense, maintain the interior and exterior of any improvements on his Lot, including all driveways and any and all equipment, and fixtures therein situate, and its other appurtenances, in good order, condition and repair, and in clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his Lot and appurtenances. All exterior maintenance is subject to approval of the Architectural Control Committee.

Section 3. **Right of Entry.** For the purpose solely of performing any of the repairs or maintenance required or authorized by these Bylaws, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association, through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the Owner or occupant, to enter upon any Lot at any hour considered to be reasonable under the circumstances.

ARTICLE IX.

Section 1. **Fiscal Year.** The fiscal year of the Association shall begin on the first day of January every year, except for the first fiscal year of the Association, which shall begin at the date of incorporation. The commencement day of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 2. **Books and Accounts.** Books and accounts of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practice. The same shall include books with detailed accounts, in chronological order, of receipts and of the expenditures affecting Whisperwoods Subdivision and its administration and shall specify the maintenance and repair expenses incurred. That amount of any assessment required for payment of any capital expenditures of the Association shall be credited upon the books of the Association to the "Paid-In-Surplus" account as a capital contribution by the Members.

Section 3. **Reports.** The Association shall furnish its Members, and the holder of first mortgages requesting same in writing within ninety (90) days from the date of close of each fiscal year, with an annual financial statement, including the income and disbursements of the Association.

Section 4. **Inspection of Books.** The books and accounts of the Association, and vouchers accrediting the entries made thereupon, shall be available for examination by the Members of the Association, and/or their duly authorized agents or attorneys, and to the institutional holder of any first mortgage on any Lot and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interest as Members.

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Section 5. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association by such officers, agents, or other persons as are from time to time so authorized by the Board of Directors.

Section 6. Employment of Management Company. The Association shall be authorized to employ a management company to aid the Association in carrying out its duties and responsibilities. Declarant, Boyle Investment Company, or an affiliate of either may be hired as the Management Company for a reasonable fee. Prior to passage of control of the Association from the Developer, no management or service contract shall be entered into unless there is a right of termination, without cause, upon ninety (90) days' written notice.

ARTICLE X.

Section 1. Amendments. These Bylaws may be amended by the affirmative vote of Members holding not less than two-thirds (2/3) (unless the Declaration calls for a greater number with respect to a particular clause) of all votes entitled to be cast at any meeting of the Members duly called for such purpose, and only after thirty (30) days' prior written notice to the institutional holders of all first mortgages on the Lots in Whisperwoods Subdivision. Amendments may be proposed by the Board of Directors or by petition signed by Members representing at least thirty percent (30%) of the total number of votes entitled to be cast. 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 XI.

Section 1. Notice to Board of Directors. Any Owner of any Lot in the subdivision who mortgages such Lot shall promptly notify the Board of Directors of the name and address of his mortgagee and, if requested so to do, shall file a conformed copy of such mortgage with the Board of Directors. The Board of Directors shall maintain suitable records pertaining to such mortgages.

Section 2. Definition. As used in this Article, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees and the term "mortgage" shall include a deed of trust. As used generally in these Bylaws, the term "institutional holder" or "institutional mortgagee" shall include banks, trust companies, insurance companies, savings and loan associations, pension funds and any corporation, including a corporation of, or affiliated with, the United States government, or any agency thereof.

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ARTICLE XII.

Section 1. Resident Agent. The resident agent shall be designated as the person authorized to accept service of process in any action relating to two or more Lots or to the Common Areas.

Section 2. Notices. Unless another type of notice is herein or elsewhere specifically provided for, any and all notices called for in the Declaration or these Bylaws shall be given in writing.

Section 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.

Section 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.

Section 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 the Bylaws.

Section 6. Gender, Etc. 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.

Section 7. CONFLICTS. THESE BYLAWS ARE SUBORDINATE TO ALL PROVISIONS OF THE DECLARATION. ALL OF THE TERMS HEREOF, EXCEPT WHERE CLEARLY REPUGNANT TO THE CONTEXT, SHALL HAVE THE SAME MEANING AS IN THE DECLARATION. IN THE EVENT OF ANY CONFLICT BETWEEN THESE BYLAWS AND THE DECLARATION, THE PROVISIONS OF THE DECLARATION SHALL CONTROL, AND IN THE EVENT OF ANY CONFLICT BETWEEN THE AFORESAID DECLARATION AND ANY OF THE LAWS OF THE STATE OF TENNESSEE, THE PROVISIONS OF THE STATUTE SHALL CONTROL.

Plate		JX 7259
Subdivision Restrictions		52
D/G: 4 - JERRY HERMANN		
VALUATION	N / A	
TN MORTGAGE TAX	N / A	
TN TRANSFER TAX	N / A	
RECORDING FEE		120.00
DP FEE		2.00
REGISTER'S FEE	N / A	
WALK THRU FEE		120.00
TOTAL AMOUNT		242.00
PAGE COUNT 38 PAGE ADDED: No SEEN ID:		
STATE OF TENNESSEE, COUNTY of SHELBY		
Guy B. Bates, REGISTER		

SHELBY COUNTY
REGISTER OF DEEDS

JX7259

99 DEC 28 PM 12:02

"EXHIBIT B"

JX 7259

**CHARTER
OF
WHISPERWOODS
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 Whisperwoods Homeowners Association, Inc.
2. This corporation is a mutual benefit corporation.
3. This corporation is not a religious corporation.
4. (a) The complete address of the corporation's initial registered office is 81 Monroe, Suite 600, Memphis, Shelby County, Tennessee 38103.
(b) The name of the initial registered agent, to be located at the address listed in 4(a), is Paul F. T. Edwards.
5. The name and complete address of the incorporator is:

Paul F. T. Edwards
81 Monroe, Suite 600
Memphis, Tennessee 38103
6. The complete address of the corporation's principal office is:

5900 Poplar Avenue
Memphis, TN 38119
7. This corporation is a nonprofit corporation.
8. The corporation will have members.
9. The corporation may be dissolved with the assent given in writing and signed by not less than sixty-seven percent (67%) of the members. Upon dissolution of the corporation, other than incident to a merger or consolidation, the assets of the corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this corporation was created. In the event that such dedication is refused acceptance, such assets shall

be granted, conveyed and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

10. No director shall be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director, except as otherwise provided in subparagraph (A), (B), and (C) of T.C.A. Section 48-52-102(b)(3). The foregoing shall not eliminate or limit the liability of a director for any action or omission occurring prior to the date when this paragraph becomes effective.

WITNESS my hand this _____ day of December, 1999.

Paul F. T. Edwards, Incorporator