




*Tom Leatherwood*  
Shelby County Register

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<b>10122091</b>	
<b>11/22/2010 - 03:44 PM</b>	
6 PGS	
KARY 795652-10122091	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	30.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	6.00
<b>TOTAL AMOUNT</b>	<b>38.00</b>
<b>TOM LEATHERWOOD</b>	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	

Prepared by and return to:  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
6075 Poplar Avenue, Suite 500  
Memphis, TN 38119-0102  
(901) 680-7200

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
OAK GROVE PD PHASE 4  
WOODGROVE SECTION B**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR OAK GROVE PD PHASE 4 WOODGROVE SECTION B (the "Amendment") is made and executed effective as of November 22, 2010 (the "Amendment Date"), by HEARTHSTONE INVESTMENTS, LLC, a Tennessee limited liability company ("Hearthstone"). All initially capitalized terms used but not defined herein shall have the meanings assigned thereto in the Declaration (hereinafter defined).

**RECITALS:**

WHEREAS, Hearthstone, Woodgrove Homes, LLC, a Tennessee limited liability company, and Woodgrove Investments, LLC, a Tennessee limited liability company made and executed that certain Declaration of Covenants and Restrictions filed of record as Instrument No. 10071931 in the Register's Office of Shelby County, Tennessee (the "Declaration");

WHEREAS, the Declaration authorizes Hearthstone to unilaterally amend the covenants and restrictions set forth in the Declaration for any reason; and

WHEREAS, Hearthstone desires to amend the covenants and restrictions set forth in the Declaration applicable for all lots covered under thereunder, except for lot numbers 57, 58, 59, 117, 118, and 119 (collectively, the "Excluded Lots").

NOW, THEREFORE, Hearthstone hereby amends the covenants and restrictions set forth in the Declaration with respect to all of the property included in the Declaration except for the Excluded Lots, as follows:

1. *Minimum Square Footage.* Section 5 of Exhibit A to the Declaration is hereby amended by deleting it in its entirety and simultaneously inserting the following in lieu thereof: Notwithstanding anything to the contrary in this Section 5 or in the Declaration, the minimum heated floor area for each residence constructed on a lot after the Amendment Date, exclusive of open porches and garages, shall be 4,260 square feet unless Hearthstone, in its sole and absolute discretion, has granted an exception to the foregoing minimum square footage requirement; provided, however, such exception shall (a) be in writing and recorded prior to the commencement of construction in the Register's Office of Shelby County, Tennessee; and (b) in no event shall such exception permit the square footage to be less than 2,400.

2. *Successors and Assigns.* Notwithstanding anything to the contrary in the Declaration, the rights of Hearthstone under the Declaration are assignable only to the Permitted Declarant Parties. For purposes of this Declaration, the term "Permitted Declarant Parties" means: (a) any successor-by-merger of Hearthstone; (b) any Permitted Assignee of Hearthstone; or (c) the Association. For purposes of this Declaration, the term "Permitted Assignee" means

any person or entity: (i) to which Hearthstone voluntarily assigns, in writing, its rights, powers and obligations under the Declaration; and (ii) that accepts and assumes, in writing, such assignment.

3. *Declarant Rights Upon Dissolution.* Upon the dissolution and termination of Hearthstone, the rights, powers and obligations of Hearthstone under the Declaration shall be transferred, assigned and conveyed, without further action, writing or recording, to the Association.

4. *Completion of Construction.* Section 31 of Exhibit A to the Declaration is hereby deleted in its entirety and the following is simultaneously inserted in lieu thereof: A lot owner shall have twelve (12) months following its purchase of a lot to complete construction of the residence thereon and obtain a certificate of occupancy from the appropriate governmental authority(ies); provided, however, upon written request to Hearthstone for an extension, Hearthstone may, in its reasonable discretion, provide an extension of time not to exceed twelve (12) months to complete such construction and obtain such certificate of occupancy.

5. *Approval of Building Plans.* If and when the Association has the responsibility for the approval of building plans and architectural guidelines, the terms and provisions set forth on Schedule I attached hereto shall apply (notwithstanding anything to the contrary in the Declaration).

6. *Miscellaneous.* All exhibits and schedules attached hereto, or to be attached hereto and all other agreements and instruments referred to herein are hereby incorporated by reference into this Amendment as fully as if copied herein verbatim. The section headings contained in this Amendment are for reference purposes only and shall not affect the interpretation of this Amendment. If any provision of this Amendment or the Declaration is held to be unlawful, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable, and this Amendment or the Declaration shall be construed and enforced without giving effect to such unlawful, invalid or unenforceable provision. Furthermore, if any provision of this Amendment or the Declaration is capable of two (2) constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning which renders it valid. This Amendment is binding on the heirs, successors and assigns of all parties hereto. This Amendment may be modified or amended as herein provided; however, each and every modification and amendment of this Amendment must be in writing and except as otherwise provided herein, signed by all the parties hereto. Except as set forth in this Amendment, all other terms, provisions and conditions set forth in the Declaration remain unaffected hereby.

7. *Scrivener's Error.* This Amendment hereby corrects the scrivener's error in Section 21 of Exhibit A to the Declaration by deleting the word "plat" each time it is used and simultaneously substituting in lieu thereof the word "Declaration."

[remainder of page intentionally left blank]

[Signature Page to First Amendment to Declaration]

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be executed by its duly authorized representative as of the Amendment Date.

HEARTHSTONE:

HEARTHSTONE INVESTMENTS, LLC

By: *G. Benjamin Clark*  
G. Benjamin Clark, Chief Manager

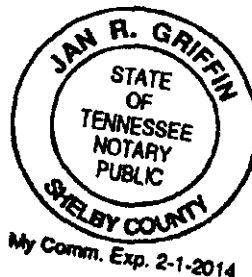
STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, a Notary Public of the State and County aforesaid, personally appeared G. Benjamin Clark, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the chief manager of HEARTHSTONE INVESTMENTS, LLC, the within named bargainor, a limited liability company, and that he, as such manager, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as such manager.

WITNESS my hand, at office, this 22<sup>nd</sup> day of November, 2010.

*J. R. Griffin*  
Notary Public

My Commission Expires:  
Feb. 1, 2014



## SCHEDULE I

### TO FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR OAK GROVE PD PHASE 4 WOODGROVE SECTION B

**Architectural Control Committee.** An architectural control committee shall be established by the Association and shall consist of at least three (3) individuals and no more than seven (7) individuals (the "Architectural Committee"). The affirmative vote of at least eighty percent (80%) of the membership of the Committee shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein.

#### **Necessary Approvals.**

Without the prior written consent of the Architectural Committee: (i) no structure or improvement of any kind or nature or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the lots subject to the Declaration (each, a "Lot"); (ii) no existing structure, improvement, fence or barrier upon any Lot shall be altered in any way which materially changes the exterior appearance thereof; and (iii) no new use shall be commenced on any Lot.

Plans and specifications of all such improvements and uses, prepared by a professional architect registered with the State of Tennessee and graduated from a school of architecture accredited by the American Institute of Architecture (or any successor organization), shall be submitted to (and retained by) the Architectural Committee at least seven (7) days prior to its next scheduled meeting, together with payment of a review fee reasonably determined by the Architectural Committee (which such fee shall be at least \$500.00). The plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Committee, but in any event shall include, without limitation, (i) a building plan and site plan showing the floor plans, exterior elevations, color scheme, kind, shape, height, materials, and location with respect to such Lot (including proposed front, rear and side setbacks) of all structures, fences or barriers, (ii) grading and landscape plans, and (iii) a drainage plan.

#### **Rules of Committee.**

The Architectural Committee may promulgate rules governing the forms and content of plans to be submitted for approval or requiring specific improvements on the Lots, including, without limitation, the exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Architectural Committee at any time, and no inclusion in or omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Architectural Committee's discretion as to any such matter; provided, however, no change of policy shall affect the finality of any approval granted prior to such change.

Approval for use on any Lot of any plans or specifications shall not be deemed a waiver by the Architectural Committee of its discretion to disapprove such plans, specifications, features or elements as are subsequently submitted for use on any other Lot.

Approval of any such plans and specifications relating to any Lot shall be final as to that Lot, and such approval may not be revoked or rescinded thereafter provided that the plans and specifications as approved and any condition attached to any such approval have been adhered to and complied with in regard to all structures, improvements, fences, or barriers on and uses of the Lot in question.

### **Remedies for Violation.**

If any structure, improvement, fence, or barrier shall be altered, erected, placed or maintained upon any Lot or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Architectural Committee as required herein, such alteration, erection, maintenance, or use shall be deemed to have been undertaken in violation of the restrictions herein and without the approval required herein.

Upon written notice from the Architectural Committee, any such structure, improvement, fence or barrier so altered, erected, placed or maintained upon any Lot, in violation hereof, shall be removed or altered, and such use shall be terminated, so as to extinguish such violation.

If the owner of a Lot (each, an "Owner") in question shall not have taken reasonable steps toward the removal, alteration or termination of the same within fifteen (15) days after the notice of such violation, the Association shall have the right through its agents and employees to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the costs thereof shall be a binding personal obligation of such Owner as well as lien upon the Lot in question upon the recording of such with the Register's Office of Shelby County, Tennessee.

Each Owner, by purchase of its Lot, acknowledges and agrees that any violation of the Declaration by such Owner or its builder will result in irreparable injury to the Property and the Association, that a remedy at law for any breach or threatened breach of the covenants contained herein will be inadequate and that in the event of any such breach, the Association, in addition to any other remedies or damages available to it at law or in equity, shall be entitled to temporary injunctive relief before trial from any court of competent jurisdiction as a matter of course and to permanent injunctive relief without the necessity of proving actual damages or securing or posting any bond. Nothing contained in this paragraph shall be construed as a waiver or election by the Association to forego any other remedy or remedies set forth above or that may be available to it hereunder or at law or in equity and, in the event of any breach or violation of the Declaration by Owner, and the Association shall also be entitled to recover any damages a court of competent jurisdiction may find appropriate, in addition to injunctive relief.

**Certificate of Compliance.** Upon completion of the construction or alteration of any structure in accordance with the plans and specification approved by the Architectural Committee, the Architectural Committee shall, upon written request of the Owner thereof, issue a letter of compliance identifying such structure and the Lot on which such structure is placed and stating

that the plans and specifications, location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation of such letter shall be at the expense of the Owner of such Lot. Any compliance letter 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 compliance letter shall be conclusive evidence that all structures and improvements described therein and the use or uses described therein comply with all the requirements of these restrictions and all other requirements as to which the Architectural Committee exercises any discretionary or interpretive powers. The Architectural Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to these restrictions payable at the time such plans and specifications are so submitted.

**Right of Inspection.** Any person representing the Architectural Committee may, at reasonable times, enter upon and inspect any Lot and any improvements thereon for the purposes of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures and improvements thereon are in compliance with the provisions of this Declaration, and no such Person shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**Compliance With Building Codes.** The applicable building codes in effect at the time of any construction shall apply to all construction.

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