

RETURN TO: Tom Leatherwood, Shelby County Register of Deeds: Instr. # 02037751
Memphis Title Company
7515 Corporate Centre
Germantown, TN 38138

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BENTWOOD CREEK SUBDIVISION**

Phase I, Lots 1 - 27

THIS DECLARATION is made, published and declared this 28th day of February, 2002, by Hyneman-Bronze, LLC (the "Declarant" or "Developer") and any and all persons, firms or corporations hereinafter acquiring any of the within described property:

WHEREAS, the Declarant was the fee simple owner of a certain tract of real property in Collierville, Shelby County, Tennessee, which property is more particularly described in Exhibit "A" attached hereto (the "Property"), and has transferred the ownership of the Property to the Association via a Quit Claim Deed recorded on 2/08/02, Deed Number 02025877, Exhibit "D"; and

WHEREAS, the Developer has caused to be prepared a plan for the development of the Property, to be known as "Bentwood Creek" into residential lots, together with certain common areas for the use, benefit and enjoyment of the owners of the lots in common with each other; and

WHEREAS, the Developer has caused a plat of the Property to be filed as follows: Phase I, Lots 1-27 in Plat Book 196, Page 51, Date: 12/21/01; in the Register's Office of Shelby County, Tennessee ("Plats"); Exhibit "A" 3 pages; and

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

NOW THEREFORE, in consideration of the premises, the Declarant does hereby publish and declare that all or any portion of the Property described in Exhibit "A" is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following obligations (and subject to all easements, conditions, restrictions, etc., as set out in Exhibit "A"), all of which are declared and agreed to be in furtherance of the plan for the development and improvement of the said Property, and the said covenants, conditions, restrictions, uses, limitations and obligations shall run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any person or legal entity acquiring or owning any interest in any

portion of the said Property or any improvements thereon, their grantees, successors, heirs, executors, administrators, devisees, and assigns.

ARTICLE I.
DEFINITIONS

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

Section 1. "Association" shall mean and refer to Bentwood Creek PD Homeowners Association, Inc., a nonprofit, non-stock corporation incorporated under the laws of the State of Tennessee, its successors and assigns. The Association's Charter and Bylaws are attached hereto-marked Exhibits "B" and "C", respectively, and made a part hereof.

Section 2. "Declarant" shall mean Hyneman-Bronze, LLC with offices at 1364 Cordova Cove, Germantown, TN 38088, its successors and assigns. "Declarant" shall be synonymous with "Developer" for purposes of the Declaration.

Section 3. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.

Section 4. "Lot" shall mean and refer to the plots of land designated with Numbers 1 through 27 for Phase I, and, at Declarant's sole discretion to include said lots, those lots planned for Phase II and Phase III. For all purposes hereunder, it shall be understood and agreed that Declarant shall be the Owner of all of said Lots, save and except only those particular Lots which Declarant conveys in fee simple title by recordable deed from and after the date hereof. Ownership of the Lot hereunder shall include an undivided pro rate interest in the Common Area owned by the Association.

Section 5. "Member" shall mean and refer to every Person 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 simply title to any Lot which is a part of the Property, including contract sellers, 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. "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 8. "Property" or "Properties" shall mean that real property described in Exhibit "A" attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 9. "Common Area" shall mean all real property and improvements thereon owned by the Association for the common use and enjoyment of the Members of the Association. The Common Area to be owned by the Association by the time of the conveyance to the first homebuyer in Bentwood Creek Phase I and shall include the entire Common Area described as follows:

All entrances, gates, fences, walls, irrigation, lighting, landscaping, if any, not located on individual lots, together with detention ponds referred to as common open space, Lot A, Lot B and Lot C, whether described in Exhibit A or otherwise defined by the Association.

Section 10. "Improvements" shall mean the structures, walls, pavement, plantings and other additions built or placed on the Lots. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within said Lot, except for party walls, as referred to hereafter. In the event that, by reason of construction, settlement, reconstruction or shifting of the Improvements, any minor part of the Improvements reasonably intended for a particular Lot lie outside that Lot, an easement of use shall apply thereto in favor of the Lot to be benefited.

Section 11. "Adjoining Lot Owners" shall mean and refer to the Owners of Lots that share a common boundary on which there is constructed a party wall.

ARTICLE II **PROPERTY**

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

ARTICLE III.
THE ASSOCIATION

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

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of a Lot, each Owner of a Lot being entitled to one (1) vote for each Lot owned, or as allowed for within this document. Lot(s) owned by Declarant or assigns shall be entitled to five (5) votes for each Lot.

Section 3. Secured Parties. No individual or legal entity holding title to a Lot as security for any debt or obligation shall be considered as Owner of such Lot, and such individual or entity shall not be entitled to membership in the Association or to cast a vote on any question or matter affecting the administration of the Association.

Section 4. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of the Members representing a fifty-one percent (51%) majority of the total votes cast, in person or by proxy (provided a quorum exists), shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute or of the corporate Charter, or this Declaration, or of the Bylaws, a different vote is required, in which case such express provision shall govern and control. The vote for any membership, which is owned by more than one, person, may be exercised by any of them present at any meeting unless any objection or protest by any other owner of such membership is noted at such meeting. In the event all of the co-owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

Section 5. Proxies. A Member may appoint any other Member or the Developer or any other person permitted by law or by the Bylaws as his proxy.

In no case may any Member (except the Developer) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's Bylaws.

Section 6. Quorum. The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total votes entitled to be cast shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and if the question of a lack of a quorum is raised; no business may thereafter be transacted; otherwise, business may be transacted.

ARTICLE IV. PROPERTY RIGHTS

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

- (a) The right of the Association to suspend any enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;
- (b) The right of the Association to provide for and establish easements and rights-of-ways on all streets, and to regulate parking, motorized and non-motorized vehicular traffic;
- (c) The right of the Association, in accordance with its Charter and Bylaws, to borrow money for the purpose of improving the Common Area which the Association is to maintain;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, transfer or mortgage shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes hereof has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance of such dedication or transfer.

Section 2. Additional Building. No building(s) shall be constructed on the Common Area.

ARTICLE V.
MAINTENANCE AND REPAIR

Section 1. Association Responsibilities. The Association shall provide and pay for all maintenance and expenses for the Common Area including the landscaping, maintenance, irrigation, lighting, property taxes, insurance and utilities for the Common Area. In addition, the Association will repair and/or replace any damaged street signs and stop signs located in the property, at its sole cost, in the style to match existing signs.

Section 2. Individual Lot Owners. Each Owner of a Lot shall be responsible for all interior and exterior maintenance, painting, repair and upkeep on his Lot and the improvements thereon.

If the event an Owner of any Lot in the Property shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, though not an obligation, through its agents and employees, to enter upon said Lot and to repair, maintain, or restore the Lot and the exterior of the building and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VI.
ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements; and (3) emergency assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual, special and emergency assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due.

Section 2. Annual Assessments and Carrying Charges of the Association. Each Member of the Association shall pay to the Association an annual sum (herein sometimes referred to as "assessments" or "carrying charges") equal to the Member's proportionate share of the sum required by the

Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

- (a) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any; and
- (b) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any; and
- (c) The cost of extended liability insurance and the cost of such other insurance as the Association may effect; and
- (d) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and
- (e) The estimated cost of repairs, maintenance and replacements of the Common Areas, and any other item the Association may be responsible for; and

Except as provided in Section 11 of this Article VII, the Board of Directors of the Association shall determine the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the Bylaws. Written notice of the annual assessment shall be sent to every Owner subject thereto. 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. The annual assessment for the first twelve months (12) shall be \$25.00 per month payable in advance for 12 months on a calendar year basis. Calculation of each owner's share is formulated by dividing the total number of lots by 100. At such time a future phase is developed, each owner's share will be re-calculated via the same formula as referred to herein. The Board of Directors hereby agree that the Builders who own lots shall pay for all costs and expenses to maintain and operate the Common Area until such time that the Homeowners Association fees are collected to fund said expenses.

Section 3. Special Assessments. In addition to the regular assessments authorized by this Article, the Association may levy in any assessment year a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement for which the Association is specifically responsible or for such other purposes as the Board of Directors may consider necessary, provided that such assessment shall have the assent of the Members representing two-thirds (2/3) of the total number of votes eligible to be cast. A meeting of the

appropriate Members shall be duly called for this purpose, written notice of which shall be sent to all Members at least ten (10) days but no more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting. No special assessment shall exceed \$1,000.00 per Lot for any one fiscal year.

Section 4. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of Members of Property of Members, the Board of Directors, acting pursuant to this section, may declare an emergency assessment in such amount and payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of the 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. No emergency assessment shall exceed \$1,000.00 per Lot for any one fiscal year.

Section 5. Non-Payment of Assessments. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent 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, 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 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 attorneys' fees.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if the 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 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 homestead, and dower and all other exemptions, all of which are lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the Property and the expenses of litigation, attorneys' fees, and sales commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust (unless sold subject to said mortgage or deed of trust); and third, to the payment of all amounts due the Association under the terms of the Declaration and Bylaws; and the balance, if any, to the Lot Owner whose Lot is sold, and his assigns. Upon any default in the payment of any assessment, the Board of Directors shall have the right to all rents, issues, and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession 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 of 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 equity.

The Association may notify the holder of the first mortgage on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the Owner

of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of ninety (90) days.

Section 6. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said

assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

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

- (a) General and special assessments for real estate taxes on a Lot; and
- (b) The liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Lot prior to the assessment of the lien thereon or duly recorded on said Lot after receipt of a written statement from the Board of Directors reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Section 8. Subordination and Mortgage Protection. NOTWITHSTANDING any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot shall be subordinate to and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment which said lien, if any, claimed shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof shall join in the execution of such amendment.

Section 9. Additional Default. Any recorded trust mortgage secured by a Lot in Bentwood Creek PD may provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any



and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions of these restrictions, and no such persons shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

The Association or any Owner of any Lot contained within Bentwood Creek PD shall have the right to enforce by any proceeding at law or in equity all conditions, restrictions, covenants, reservations and easements herein or hereinafter contained or otherwise contained in any deed to any Lot. Failure by any Owner to enforce any of such proceedings shall in no event be deemed a waiver of the right to do so thereafter.

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

ARTICLE VIII.
RESTRICTIVE COVENANTS

Section 1. Residential Use. Lots 1 through 27, Phase I, inclusive, shall not be used except for private residential purposes.

Section 2. Prohibited Uses and Nuisances. In order to provide for a congenial occupation of the homes within Bentwood Creek PD and to provide for the protection of the values of the entire development, the use of the residences shall be in accordance with the following provisions:

(a) Said property is hereby restricted to residential dwellings for residential use. All buildings or structures erected upon said Property shall be of new construction, and no buildings or structures shall be moved from other locations onto said Property, and no subsequent buildings or structures, other than single family houses shall be constructed. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any portion of said Property at any time as a residence, either temporarily or permanently.

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

(c) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant to maintain, during the period of the sale of said Lots, upon such portion of the premises as Declarant deems necessary, such facilities, as in the sole opinion of Declarant, may be reasonably

required, convenient or incidental to the sale of said Lots, including, but without limitation, a business office, storage area, construction yard, signs, model units, and sales office.

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

(e) No advertising signs (except one (1) of not more than five (5) square feet "for rent" or "for sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. No business activity of any kind whatever shall be conducted in any building or in any portion of said Property, provided, however, the foregoing covenants shall not apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agents, and assigns during the development and sales period of Lots in Bentwood Creek.

(f) All mobile equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of the streets and adjacent lot owners. All rubbish, trash, or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

(g) Without prior written approval and the authorization of the Architectural Control Committee, no exterior television or radio antennas of any sort shall be placed, allowed, or maintained upon any portion of the improvements to be located upon the Property nor upon any structure situated upon the Property other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

(h) No action shall at any time be taken by the Association or its Board of Directors, which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

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

(j) Upon completion of the construction of a new home, grass, weeds, vegetation and debris on each Lot shall be kept mowed and cleared at regular

intervals by the Owner thereof so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, debris and plants that die shall be promptly removed from such Lots. Declarant or Association, at its option and its discretion, may mow and have dead trees and debris removed from such Lots and the Owner of such Lot shall be obligated to reimburse the same for the cost of such work should he refuse or neglect to comply with the terms of this paragraph.

(k) No obnoxious or offensive trade or activity shall be carried on upon any Lot in this planned development nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners within Bentwood Creek.

(l) No building material of any kind or character shall be placed or stored upon any of said Lots until the Owner is ready to commence improvements. Building materials shall not be placed or stored in the street or between the curb and property lines.

(m) Minimum heated square footage shall be no less than 3,000 square feet. Each home shall have at least a 2-car garage.

(n) There shall be no violation of any rules, which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the Bylaws authorized to adopt such rules.

ARTICLE IX. COMMON EASEMENTS

Section 1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to unintentional placement or settling or shifting of Improvements constructed, reconstructed or altered thereon.

Section 2. Easement for Utilities, Etc. Declarant hereby reserves for itself and its designees (including without limitation, the City of Collierville, County of Shelby or any utility company) blanket easements upon, across, over and under all of the Common Area and to the extent shown on any plat over the Lots for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, security, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the

assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Property described on Exhibit "A."

ARTICLE X.
INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area (including perimeter fences). The Board shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respected bodily injury and property damage, a One Million Dollar (\$1,000,000.00) limit per occurrence, and a One Hundred Thousand Dollar (\$100,000.00) minimum property damage limit.

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

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

The Association's Board of Directors shall make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
- (iii) that no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a

reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgage;

(iv) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(v) that no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

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

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

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

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

ARTICLE XI.
MORTGAGEE'S RIGHTS

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

Upon request, the Association shall furnish to any holder of a first mortgage a financial statement for the Association's immediately preceding fiscal year.

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

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

The consent of at least sixty-seven percent (67%) of the votes and of the Declarant, as long as it owns any land subject to this Declaration, and the approval of the eligible holders of first mortgages on Lots to which at least sixty-seven percent (67%) of the votes subject to a mortgage appertain, shall be required to terminate the Association.

The consent of at least sixty-seven percent (67%) of the votes and the Declarant, as long as it owns any land subject to this Declaration, and the approval of eligible holders of first mortgages on individual Lots to which at least fifty-one percent (51%) of the votes subject to a mortgage appertain, shall be required to materially amend any provisions of the Declaration, Bylaws, or Charter of Incorporation of the Association, or to add any material provisions

thereto, which establish, provide for, govern, or regulate any of the following: (i) voting; (ii) assessments, assessment liens, not including a subordination of said lien; (iii) reserves for maintenance, repairs, and replacement of the Common Area; (iv) insurance or fidelity bonds; (v) rights to use of the Common Area; (vi) responsibility for maintenance and repair of the Property; (vii) boundaries of any residential Lot; (viii) imposition of any right of first refusal or similar restrictions of the right of any Owner to sell, transfer or otherwise convey his Lot; (ix) any provisions included in the Declaration, Bylaws, and Charter of Incorporation which are for the express benefit of holders, guarantors or insurers of first mortgages on residential units, which provisions do not set out a required number of votes to amend the particular provision.

ARTICLE XII.

GENERAL PROVISIONS

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten (10) years each. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Owners holding not less than sixty-seven percent (67%) of the votes of the membership at any time. During the first three (3) years from the date of the recording of this Declaration, any amendment must also be approved by the Declarant.

Section 2. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

Section 3. Enforcement. The Declarant, the Association, or any Member, shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure by the Association or any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot

violating these covenants and restrictions and shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

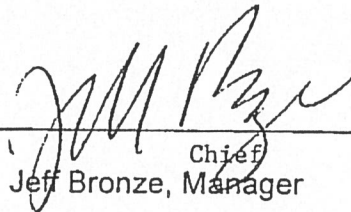
Section 5. Waiver. No restriction, condition, obligation or provision of the Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 6. Gender, Etc. Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

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

Hyneman-Bronze, LLC

By:



Chief
Jeff Bronze, Manager