

**DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**BENT TREE BLUFFS**

THIS DECLARATION, made on the date hereinafter set forth by Bent Tree Development Company, a Missouri corporation of the County of Jackson, State of Missouri, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in the County of Jackson, State of Missouri more particularly described as:

A part of the Southeast 3 of Section 34, Township 48, Range 32, in Lee's Summit, Jackson County, Missouri, described as follows: All that part of the West half of said Southeast 3 lying east of the Chicago, Rock Island and Pacific Railroad right of way, except the South 400 feet thereof; also the Southeast 3 of the Southeast 3 of Section 34, except that part lying South of the centerline of Chipman Road end except all but the East 1144 feet of the South 400 feet thereof; and except the following described tract: beginning at the southeast corner of said Southeast 3; thence North 1E12'40" West 661.5 feet to the Northeast corner of Lot 1, ELMWOOD FARM, a subdivision; thence Northwesterly along a curve to the right, having a radius of 291.72 feet, a distance of 87.03 feet; thence South 47E30'00" West 232.39 feet; thence South 9E26'37" West 155.11 feet; thence continuing South 9E26'37" West to a point on the Northeasterly curved line of Lot 5, in said ELMWOOD FARM; thence Northwesterly end Westerly along a curve to the left, having a radius of 128.89 feet, to the Northwest corner of said Lot 5; thence West along the North line of Lots 2, 3 and 4, ELMWOOD FARM and the projection thereof, a distance of 383 feet; thence North 70 feet; thence West 195.3 feet; thence South 400 feet to the South line of said Southeast 3; thence East

952.43 feet to the point of beginning. The above description includes all of Lot 6, ELMWOOD FARM, a subdivision.

WHEREAS, Declarant will convey said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

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, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all other parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

## **ARTICLE I**

### DEFINITIONS

Section 1. "Association" shall mean and refer to Bent Tree Bluffs, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the comon use and enjoyment of the members of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

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 a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to Bent Tree Development Company, a Missouri corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## **ARTICLE II**

### **MEMBERSHIP**

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is

not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

### **ARTICLE III**

#### VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article II with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to approval and exercise veto power in conjunction with all votes by the Association=s members including all votes by the members of the Association Board of Directors, so long as the Class B membership holds ownership in eleven percent (11%) of the platted subdivision Lots, provided, that, the Class B membership shall cease and be converted to a Class A membership in the event the Class B membership owns less

than eleven percent (11%) of all platted subdivision Lots. Said approval and veto power may be exercised by the President or Secretary of the Declarant.

**ARTICLE IV**

PROPERTY RIGHTS

Section 1. Member's Easements of Enjoyment. Every member 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, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgage in said properties shall be subordinate to the rights of the homeowners hereunder;

(b) 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 a majority of the members subject to the veto power of the Class B membership, if a Class B membership is then existing.

Section 2. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, upon the sale and conveyance of twenty-five percent (25%) of all Lots of the First Plat

planned for sale in conjunction with the real property described herein.

## **ARTICLE V**

### COVENANT FOR MAINTENANCE AND 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 of other conveyance is deemed to covenant and agree to pay the Association an annual assessment or charge for purposes of maintenance of the Common Area. The annual assessment together with such interest thereon and cost of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with such interest, cost and reasonable attorney's fees shall also be the personal obligation of the person who is the owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the maintenance of Common Areas and of structures situated upon the Properties where authorized.

Section 3. Basis of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot

to an Owner, the annual assessment shall be Twenty-five and no/100ths Dollars (\$25.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year provided that any such change shall have the assent of a majority of votes of the Association Board of Directors subject to the approval of the Class B member, if a Class B membership is then existing.

Section 4. Uniform Rate of Assessment. All assessments must be fixed at a uniform rate for all conveyed Lots and may be collected on a monthly basis.

Section 5. Date of Commencement of Assessments. The assessments provided for herein shall commence as to all conveyed lots on the first day of the month following conveyance of all Common Areas to the Association. Written notice of the assessment shall be sent to every owner subject thereto.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to



the amount of such assessment. No Owner shall waive or otherwise escape liability for the assessments provided for herein for non-use of Common Areas or abandonment of his Lot.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof 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.

## **ARTICLE VI**

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made including exterior color, until the plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external appearance, design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee

composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within seven (7) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## **ARTICLE VII**

### EXTERIOR MAINTENANCE

In the event a need for maintenance or repairs is caused through the wilful or negligent act of an Owner, his family or guest or invitees, the cost of such maintenance which shall include but not be limited to paint, repair, replace, care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvement but shall not include glass surfaces, may be assessed against the Owner if such maintenance or repairs are implemented by the Association and if so assessed shall be added to and become a part of the assessment to which the Lot is subject.

## **ARTICLE VIII**

### USE RESTRICTIONS

#### Section 1. Protective Covenants.

(a) Residential Use. All property in this classification shall be used, improved and devoted exclusively to residential use. Nothing herein shall be deemed to prevent the

Owner from leasing a living unit to a single family, subject to all provisions of this declaration.

(b) Nuisances. No nuisance shall be permitted to exist or operate upon any property so as to be detrimental to any other property in the vicinity thereof or to its occupants.

(c) Restriction on Further Subdivision. No Lot upon which a living unit has been constructed shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of such Lot, nor any easement or other interest therein shall be conveyed or transferred by an Owner.

(d) Other Restrictions.

1) No residences shall be erected on any platted subdivision Lot or upon any property legally described herein having less than one thousand seven hundred (1,700) square feet of living area for any single level structure with attached garage; two thousand (2,000) square feet of living area for any two-story structure; two thousand (2,000) square feet of living area for any single level residential structure with a basement garage;

2) No structure of a temporary character or any house trailer, mobile home, basement, tent, or shack shall be permitted to placed upon said property.

3) No kennel or dog runs shall be permitted to operate or maintained on said property and household pets shall not be raised in such numbers as to create a public nuisance.

4) No overnight parking shall be permitted on any dedicated streets or roadways.

5) No campers, trailers or boats may be parked on the exterior portions of any lots or on any streets or roadways or in any common areas.

6) No outside antennas, signs, outdoor drying lines or satellite dishes shall be permitted.

7) All residential structures must be constructed with a wood roof or other material approved by the Home Owners Association Board of Directors and Class B member, if any, with no composition roofs being permitted or subject to any approval.

8) No trees may be removed from any property described herein without the approval of the Association Board of Directors and the Class B member, if any.

9) No fences shall be erected on any platted Lots or on any of the common areas without the approval of the Association Board of Directors and the Class B member, if any. Such approval shall be based upon standards of general appearance and the necessity of preserving all walkway easements of record.

(e) Upon conveyance of the first Lot to an Owner, the Architectural Control Committee shall adopt general rules to implement purposes sets forth under Article VI, designated Architectural Control and shall adopt general rules interpreting the covenants and restrictions contained herein including but not limited to rules regulating animals, trash

containers, planting, maintenance and removal of vegetation on the Properties. Such general rules may be amended by a two-thirds (2/3) vote of the Board of Directors of the Home Owners Association following a public hearing with due notice to all members of the Home Owners Association and subject to approval of the Class B member, if any. General rules may be amended by a two-thirds (2/3) vote of the Architectural Review Board following a public hearing which due notice has been provided pursuant to an affirmative vote of two-thirds (2/3) of the Board of Directors all of which rules shall be subject to approval of the Declarant as long as the Declarant is the Owner of three (3) Lots of the subdivision.

(f) Maintenance of Property. Each Owner shall keep all Lots owned by him and all improvements thereon in good order and repair, and free of debris including but not limited to seeding, watering and mowing of all lawns; pruning and cutting of all trees and shrubbery and painting (or other appropriate external care) of all buildings and other improvements, all in a manner and such frequency as consistent with good property management. In the event the Owner of any Lot in the Properties shall fail to maintain the premises and improvements situated thereon, the Board of Directors shall have the right through its employees or agents to enter upon said Lot, correct or repair, maintain or restore said Lot and the exterior of any buildings or other improvements erected thereon. All costs related to such

corrections or repairs shall be added to and become an assessment against said lot as provided for herein.

## **ARTICLE IX**

### **EASEMENTS**

There is hereby created a blanket easement upon, across, over, through, and under the above-described premises for ingress, egress, installation, replacing, repairing, and maintaining all utility and service lines and systems including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems, etc. By virtue of this easement it shall be expressly permissible for providing utility or service companies to install or maintain facilities and equipment on said property, to excavate for such purposes and to affix and maintain wire, circuits, conduits on, in and under the roofs and exterior walls of said residences providing the utility service company restores the disturbed areas to the condition in which they were found. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities, service lines or facilities for such utilities may be installed or relocated on said premises except as programmed and approved by the developer (the Declarant) prior to the conveyance of the first Lot in a parcel to an Owner or by the Board of Directors thereafter. This easement shall in no way affect any other recorded easements on

the premises. This easement shall be limited to improvements as originally construed.

**ARTICLE X**

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. 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 Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an



instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly recorded.

Section 4. Approval by Class B Member. As long as there is a Class B membership, the following actions, which are in addition to the those as are set forth herein, will require prior approval of said Class B member:

- (a) Annexation of additional Properties;
- (b) Dedication of Common Areas;
- (c) Amendment of this Declaration of Covenants,

Conditions and Restrictions.

Section 5. These restrictions hereby encompass by reference as if fully stated the license laws of the City of Lees Summit as they now exist and may be from time to time amended.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 28<sup>th</sup> day of February, 1986, for purposes of adopting and recording these Declarations of Covenants, Conditions and Restrictions of Bent Tree Bluffs in lieu of and in place of Declarations of Covenants, Conditions and Restrictions of Bent Tree Bluffs previously recorded as Instrument No. 1-668480 at Book 1-1503 at Page 201 in the Office of the Recorder of Deeds of Jackson County, Missouri at Independence for purposes of the same being modified and filed by the owner of record.

Bent Tree Development Company  
Declarant

By /s/ Richard D. Link, Pres.

Richard D. Link, President

          /s/ Joe Ben Stone            
Joe Ben Stone, Secretary

State of Missouri     )  
                                  ) ss.  
County of Jackson    )

On this 28<sup>th</sup> day of February, 1986, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard Link, President, of Bent Tree Development Company, known to me to be the person who executed the within Declarations of Covenants, Conditions and Restrictions of Bent Tree Development Company in behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

          /s/ Marsha K. Brown            
Notary Public

My Commission Expires:

Marsha K. Brown

November 4, 1988