**DECLARATION OF COVENANTS, CONDITIONS**

**AND RESTRICTIONS OF BEAR CREEK HOLLOW VILLAS**

THIS DECLARATION of Covenants, Conditions and Restrictions of Bear Creek Hollow Villas, made this day of , 2000, by the Owner and Developer known as Bear Creek Hollow Villas (hereinafter referred to as "Owners" or "Members").

**ARTICLE I DEFINITIONS**

I.I "Association" shall mean and refer to BEAR CREEK HOLLOW VILLAS OWNERS ASSOCIATION, a Missouri not-for-profit corporation, its successors, and assigns.

1.2 "Building Lot" shall mean and refer to any **lot** or plot of !and shown upon any recorded subdivision map of the properties which describes the property upon which a building or buildings containing multiple Units is intended to be constructed. The portions of the Building Lot which are not part of the individual Lot(s) shall, from time to time be deeded to the Association by the Developer free and clear of encumbrance to be referred to herein as the Common Elements.

**i**.3 "Calamity" shall mean any catastrophe or disastrous event.

1 .4 "Common Elements" include:

a. The "Property," excluding "Units" and "Lots" but including without limitation, all easements appurtenant, open areas, access walkways, public sidewalks, landscaped and planting areas and lawns;

b. All sanitary and storm sewer facilities, and all utilities, installations, lines and connections for gas, electricity, light, telephone, water, plumbing, cable television wires, except those within the "Lots"; except such items which are subject to municipal ownership or jurisdiction and facilities owned by a public utility company;

c. All apparatus and installations, now or hereafter erected and intended for the

 benefit of and common use by all Owners;

d. All auxiliary buildings, parks, swimming pools, recreation facilities and/or buildings, if any, and any other structures, which may at any time, be erected on the Property. However, the Association is under no obligation to build such facilities;

e. All other appurtenances not herein specifically designated;

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f All such areas intended for the use of the Owners/Members as may be designated by the Developer;

g. The definition of "Common Elements" is for purposes of this Declaration only, and "Common Elements" shall not be construed, according to the Uniform Condominium Act of Missouri, Rev. Stat. Sections 448. 1-l01-4-120 RSMo.

I.5 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Property recorded in the office of the St. Charles County, Missouri recorder of deeds, as amended from time to time.

1 .6 "Developer" shall mean and refer to B & N Builders, LLC., a Missouri limited li ability company, or its successors, agents and assigns.

l.7 "Improvement" where capitalized shall mean an item or process of addition which is

added new to, or a remodeling of, existing facilities or Common Elements.

1 .8 "Limited Common Elements" shall mean any item located on the Property which benefit fewer than all of the Owners, or which is part of the exterior of a Unit, including the stoop (front porch), and sidewalk from the stoop to the driveway.

1.9 "Lot" shall mean and refer to any lot or plot of land shown upon any recorded subdivision map of the Property which contains a legal boundary of the individual Lots and describes the portion of the Property, upon which a single Unit (including a driveway, deck and patio, if applicable, is intended to be located), and is expected to have a boundary defined by the driveway, the front exterior surface of the building, and the outside sidewall (for an end Unit) or the center of a party wall (for a middle Unit), and distance of twelve feet ( 12') beyond the rear exterior wall as set out on the plat, and the centerline of the party wall forming the perimeter of the Unit.

1. 10 "Master Covenants" shall mean the Master Covenants, Conditions and Restrictions governing all of Bear Creek Subdivision.

1.11 "Member" shall mean an Owner of a fee simple title to a Lot/Unit in Bear Creek

Hollow Villas.

l.l2 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot/Unit which is part of the Property, but excluding those having such interest merely as security for the performance of an obligation. An Owner is automatically a Member of the Association effective upon recordation of deed. The term "Owner" shall not include renters.

1.13 "Property or Properties" are the areas designated on the plat of Bear Creek Hollow subdivision (Plat Book , Page of the St. Charles Count y records as may be amended

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from time to time) for multi-family lots and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.1 4 "Rules and Regulations" shall mean those written Rules and Regulations enacted by the Board of Managers from time to time and are incorporated herein by this reference as if fully set forth.

1 .15 "System" shall mean any electrical, mechanical, structural. communication, gas, or

plumbing assembly or installation.

1.16 "Unit" shall mean the portion of any building or improvement located on any Lot forming a functional dwelling Unit to be used as a personal residence including the driveway, deck and patio (if applicable) and shall include all the floors, ceilings, doors, roofs, gutters and downspouts, walls, mechanical systems *(e.g.* heating and air conditioning systems, fireplace(s), plumbing, electric and gas systems), windows, foundation, and the portion of all party walls adjacent to such Unit to the centerline of such party walls. Such dwelling becomes a Unit upon completion of its construction and upon recording of the plat designating the Unit boundaries.

**ARTICLE II PROPERTY RIGHTS**

2.1 Ownership of Common Elements. Fee simple title to the Common Elements within each Building Lot and on all of the Property shall be conveyed by the Developer to the Association immediately following the approval by the City of Wentzville of the re-subdivision of that Building Lot, by separate conveyance of record which areas may in such conveyance be described by metes and bounds, or by reference to this instrument as the Common Elements of Bear Creek Hollow Villas or by any other means of description that the Developer may choose, including a plat. The title to each part of the Common Elements so conveyed by express grant shall be vested in the Association, or its successors or assigns under this instrument. Developer reserves an easement through, over, across and und er the Common Elements as may be reasonably necessary for the purpose of discharging Developer's obligations hereunder.

2.2 Owners' Enjoyment of Easements.

a. Every Owner of a Unit shall have a right and easement of enjoyment in and to any recreational facilities (if any should be constructed) which shall be considered a Common Element and the other Common Elements as defined herein.

b. Every Owner shall be a Member of the Bear Creek Hollow Villas Owners Association. Subject to the provisions of the Declaration, every Owner shall have the right to use and an easement in and to the Common Elements which shall be appurtenant to and shall pass with title to every Lot/Unit, subject to

assessments and to the following provisions:

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|  | (I) | Fee simple ownership of the Common Elements and Limited CommonElements shall vest in the Association and not in the Unit Owners. The |
|  | Association shall have the right and power to regulate the Common |
|  | Elements and provide for maintenance, upkeep and use of the Common |
|  | Elements; |
| (2) | The Association shall have the power to suspend an Owner's voting |
|  | privileges and/or the right to suspend an Owner's, his/her guests', or |
|  | invitees' right to the use of any recreational facilities or other Common |
|  | Elements for breach of the Declaration, the By-Laws or any of the |
|  | Association's published Rules and Regulations; |
| (3) | The right of the Association to dedicate or transfer all or any part of the |
|  | Common Elements to any institution, trustee, agency, authority, of |
|  | utility for such purpose and subject to such conditions as may b agreed |
|  | to by the Members. No such dedication or transfer shall be effective |
|  | unless a simple majority of all eligible voting members of theAssociation agree to such dedication or transfer at a duly authorized |
|  | meeting; |
| (4) | All Owners and their guests, and invitees shall strictly comply with any |
|  |  | use restriction, rules, and regulations of the Association including the |
|  |  | Declarations, By-Laws and Rules and Regulations promulgated |
|  |  | thereto. |
| 2.3 | Encroachme | nt. Through construction, settlement, shifting or an act of God, should any |

building, or any part of any building or Lot, encroach upon any part of the Common Elements or upon

any other Unit, an easement for the repair and/or replacement of such encroachment(s) and for the use of space required thereby, is hereby established and shall exist for the benefit of the Owner(s). If such encroachment can not be corrected, a perpetual easement may be granted for the maintenance of said encroachment and/or the use of the space required thereby. The Association shall replace or restore to the original condition any encroachment(s) which are due to the willful conduct of an Owner and said Owner shall be liable for all associated costs, payable to the Association for said work plus reasonable interest. All easements and rights herein established shall run with the land .and inure to the benefit of, and be binding upon the Developer, his successors or assigns, and any Owner, purchaser, mortgagee, of other person having an interest in any portion of the Property.

2.4 Easements in Gross. The Property shall be subject to a perpetual easement in gross to the Association, its successors, and assigns, for ingress and egress to perform its obligations and duties as required by this Declaration. Should it be necessary to enter a Unit or Lot to maintain, service,

to entrance by exhibiting to the Owner an order from the Association. The Association shall

specifically have the authority to enter any Unit or Lot for the purpose of protecting any other Unit, property or Lot from fire, flood, or other casualty or catastrophe which will or could result from or arise from a mechanical, electrical, or other malfunction of another Unit. The Association is under no obligation, however to take such action. Nothing in this subsection shall be construed to require the Association to maintain, repair or replace anything which serves only one Unit. A Unit which is entered while performing the duties outlined in this section shall be returned to the condition as it existed prior to such entry. Care shall be taken to insure that the initial condition is carefully documented prior to any work being started, using photos or video as necessary.

2.5 Streets, Street Lights, Storm and sanitary Sewers, and Sidewalks. All streets, streetlights, storm and sanitary sewers, and sidewalks adjacent to the street have been dedicated to and accepted by the City of Wentzville, Missouri for public use.

2.6 Pursuant to Wentzville City ordinance, review standards there is dedicated to the City of Wentzville an easement over the common areas as may be required for any governmental access or maintenance.

**ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

3.1 Every Unit Owner shall be a Member of the Association. Membership must be appurtenant to, and may not be separated from ownership of any Unit or Lot.

3.2 The Association shall have one class of voting membership. Members must be Unit owners and shall be entitled to one vote for his/her Unit. When more than one person holds an interest in any Lot/Unit, all such persons shall be Members. In such case the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more then one vote be cast with respect to any Unit.

3.3. Member's voting privilege shall be revoked in the event such Owner is delinquent in payment of the assessment(s). Reinstatement of the right to vote shall be contingent upon said Owner becoming current in his/her assessment status.

**ARTICLE IV**

**BOARD OF MANAGERS**

4.1 Board of Managers. The affairs of the Association shall be managed by a board of three (3) Managers (the "Board"), to be elected by the Members. The first Board shall consist of managers appointed by the Developer. The first Board shall be appointed when the Developer turns over control of the Association to the Members. Prior to that time, the Developer shall make all decisions and have all of the power of the Board.

shall be as stated in the By-Laws of the Association.

4.3 Duties of the Managers. It shall be the duty of the Board of Managers to:

a. cause to be kept a complete record of all financial, tax and corporate affairs and to present a statement thereof to Members at the annual meetings of the Members;

b. establi sh a budget as provided by the Declaration and the By-Laws;

c. supervise all officers, agents, and employees of the Association;

d. procure and maintain adequate liability insurance for the Board whether elected or appointed;

e. cause all officers or employees having fiscal responsibilities to be bonded as they may deem appropriate;

f. cause the Common Elements and the buildings to be insured;

g. cause the exterior of the buildings and all Properties to be maintained in presentable and serviceable condition;

h. enforce compliance with the requirements of this Declaration the By-Laws and the Rules and Regulations; and

J. all other matters as determined by the Developers.

4.4 The Association and the Board of Managers shall act in accordance with the "Not-for- Profit Corporation Act" of the Missouri statutes.

ARTICLE V

COVEN ANT **FOR** ASSESSMENTS

*5.1* Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed for a Lot/Unit, whether or not it shall be so expressed i\_n such deed, covenants and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments. Such assessments to be established and collected as hereinafter provided. The annual and special assessments, fines, late fees, interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property Lot/Unit which each such assessment is made. Each such assessment, together with late fees, interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot/Unit at the time when the

assessment was levied. The personal obligation for delinquent assessments shall not pass to the

Owners' successors in title unless expressly assumed by the successor.

5.2 Purpose of Assessments. The assessments levied by the Association shall be used for the improvement and maintenance of the Common Elements and the exterior of all buildings, except decks, patios (if applicable), driveways, and Limited Common Elements, for those items mentioned in Article VI, for payment of Association taxes, for the cost of all insurance carried by the Association as required in Article IX of the Declaration, for the provision of utilities in the Common Elements, for the administration and management costs of the Association, for legal, accounting, and auditing fees of the Association, and to build the reserves of the Association. Further, such funds may be used generally to promote the recreation, health, safety, and welfare of the Owners.

5.3 The Budget. The Board of Managers shall deliver the budget for review to the Association membership no later then August 15th of each year. The budget shall include (i) those items of expenditures for the maintenance of Common Elements, and any building maintenance required, (ii) a total amount the Board deems necessary to pay the costs of carrying out the Association's duties, and (iii) a responsible amount to be retained for build-up of a reserve account to prepare for contingencies and/or anticipated maintenance, all in sufficient detail to reasonably inform the Owners. The delivery of the budget shall include a notice of the date for the annual meeting.

*SA* Budget Review at Annual Meetings. The Board of Managers shall also set the date for an annual meeting of the Owners to review the budget This meeting shall take place on or before October l51h\_ The purpose of the meeting will be (i) for the Board of Managers to review the budget and answer questions from the Owners concerning any item of the budget, (ii) to introduce the nominees for election to the Board of Managers and entertain additional nominations from the floor, and (iii) to conduct any other business the Board deems necessary or desirable.

5.5 Meetings to Reconsider the Budget On or before November l, the Association owners may request by petition and signed by not less then sixty percent (60%) of the Owners entitled to vote, a meeting of the Association to reconsider the proposed budget. Upon receipt of such request, the Board of Managers shall schedule such meeting, during the month of November, and shall notify each Owner, in writing, of the time and place of such meeting and the purpose therefore. At the meeting held to reconsider the budget:

a. Owners present representing at least ten percent (I 0%) of the total eligible

votes shall constitute a quorum.

b. The Board of Managers shall discuss and the Owners shall have the opportunity to ask questions about items of expenditure in the proposed budget Thereafter the budget shall be submitted to a vote of the Owners and shall be approved by a vote of a simple majority of the Owners present and voting thereon.

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of Managers may levy, at any time in an assessment year, a special assessment for any Common Element Improvement, other than maintenance or repair provided that any such assessment shall have the assent of the Owners who are voting by Ballot either personally, by proxy or by mail. The vote shall be implemented in accordance with Section 5 herein. The Board of Managers may authorize any Special Assessment required due to any type of calamity, essential repair, or essential maintenance that exceeds the available funds for such purpose.

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|  | c. | After the items in the proposed budget have been discussed and voted upon, the Board of Managers shall accept for discussion proposals of additional items |
|  | of expenditure from the Owners present. These items shall be discussed and |
|  | voted upon as provided hereinabove. |
| d | Each approved change or addition accepted by a majority vote of the Owners |
|  | present and voting thereon shall be added to and become part of the budget for the next succeeding fiscal year. |
| e. | On or before December 1s•h each year, the Board of Managers shall determine |
|  | the final budget by incorporating any budget adjustments deemed appropriate |
|  | as a result of input from the Owners at the annual meeting as provided herein |
|  | or as approved at a special meeting and then notify each Owner subject to the |
|  | assessment, in writing, of the amount of the assessment pursuant to the |
|  | Declaration, if different from the preceding annual assessment. The required |
|  | budget assessment fee income shall be divided by the total number of Lots |
|  | subject to assessment, and the result shall constitute the next annual assessment for each Owner. |
| f. | Any budgeted facility or Common Element Improvement exceeding five |
|  |  | percent (5%) of the total annual assessment income shall be subject to approval |
|  |  | by a majority vote of the Association Members eligible to vote or a majority |
|  |  | of a quorum at any annual or special meeting. |
| 5.7 | S pe | ial Assessments. In addition to the annual assessment authorized above, the Board |

5.8 Notice and Vote for Any Action Authorized Hereunder. Written notice of any meeting called for the purpose of taking any action authorized pursuant to this Article except those issues relating to Improvements or special assessments, shall be sent, along with a ballot to all members not less than ten (I0) days nor more than thirty (30) days in advance of a special meeting. The Improvement(s) and/or the special assessment(s) of this Article shall be accepted by approval of not less than fifty-one percent (51%) of the eligible Owners voting by ballot either personally, by proxy or by mail and present at a meeting called for this purpose.

5.9 Uniform Rate of Assessment Both annual and special assessments (except as allowed in Article VI) shall be fixed at a uniform rate for all Lots and shall be collected on a monthly basis, or for such other period as may be determined by the Board.

5.10 Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on a monthly basis with respect to any Owner on the first month following the recording of the deed from the Developer or prior Owner by which the Lot is transferred to the new Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The monthly due dates shall be established by the Board. The Association shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid.

5.11 Effect of Non-Payment of Assessments: Remedies of the Association. Failure of any Owner to pay any Assessment shall be subject to the provisions for nonpayment and collection as provided in the By-Laws.

5.12 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage. Sale or transfer of a Lot shall cause a lien to become immediately payable. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall cause the lien to become immediately payable. No sale or transfer shall relieve such Owner from liability for any assessments thereafter becoming due or relieve the Owner's Lot from the lien thereof

ARTICLE VI EXTERIOR MAINTENANCE

6.1 Association Responsibility for Maintenance.

a. The Association shall be responsible for the maintenance to the Common Elements. The Association shall also be responsible for the exterior maintenance of each Unit/Lot which i s subject to assessment hereunder as follows: paint and caulk exterior doors and frame, garage doors and frames, care for trees, shrubs, grass, tie-walls and other landscape improvements which are approved by the Board of Managers. In addition, the Association shall be responsible for the maintenance including repair or replacement as necessary of gutters, downspouts, roofs, and the exterior building siding, including exterior brickwork. The Association shall also be responsible for. the exterior treatment and protection against termites and or insect intrusion into any and all buildings/structures on the Property. Such exterior maintenance shall not include patios (i f applicable), decks, stoops, walks from stoop to driveway, exterior door glass (including garage door glass), and wiridow glass, but shall include driveways.

b. Maintenance of the Common Elements shall be the responsibility of the Association and shall comply with all requirements of the City of Wentzville sign standards and any other ordinances or similar standard set by local governmental entitles.

6.2 Owner's Responsibilities for Maintenance.

a. An Owner shall have the right and responsibility to perform maintenance or repairs on the deck, patio (if applicable), driveway, sidewalk from the stoop to driveway, and the stoop using only materials and color selections approved by the Board of Managers, or its agents. The Owner shall be responsible for the interior protection of his/her Unit against infestation by insects.

b. In the event that the need for maintenance, repair or clean-up is caused through accidental, willful, or negligent action or inaction by the Owner, the Owner's family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become part of the assessment to which said Lot Owner is subject. In the event that it becomes necessary for the Board otherwise to act to maintain the exterior of any Unit which would be the responsibility of the Unit Owner, then the costs of such maintenance or repair shall be assessed to the Unit Owner and shall constitute a lien and an additional assessment on said Unit/Lot. Failure of the Unit/Lot Owner to pay the maintenance and repair costs upon presentation of same shall subject the Unit/Lot Owner to the late fees, fines and interest, including collection fees and liens as set herein and in the By-Laws.

**ARTICLE VII PARKING**

Parking on the development streets is subject to the rules and ordinances of the City of Wentzville. Designated private parking consists of the Owners' personal driveways and garages which are part of the Owners' Lot. Parking on l awns or public sidewalks is strictly prohibited. See also paragraph l 0.5 herein.

**ARTICLE VIII**

**COMMITTEES AND STANDARDS**

8.1 Establishment of Committees. The Board of Managers, may, as the need presents itself, appoint Committees to promote the general well-being of the Association and to assist in the general operation of the Association.

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8.2 Standards Committee. The Board of Managers shall appoint a Standards Committee consisting of at least three (3) members of the Association. The committee shall include at least one Board member. The chairperson need not be a Board Member.

a. Review and Enforcement. The Standards Committee shall be responsible for observing and reviewing Owners' compliance with the Association's standards for architectural integrity, structural quality, and aesthetic appearance.

b. Guidelines. The Standards Committee may adopt reasonable guidelines to facilitate the review of proposed changes. Any recommendation(s) to the Board of Managers for approval of an addition, change, or alteration by the Standards Committee shall include a target completion date to which the Owner requesting said addition, change, or alteration has agreed. The Board's approval to the Owner shall include a completion date for the subject work. In the event the work does not proceed at a pace reasonably consistent with the approved completion date or appears to be abandoned or stopped, the Board of Managers may withdraw the approval and require the structure or area to be restored to its original condition at the Owner's expense. The cost of restoration shall be enforceable as an assessment as provided in this Declaration and in the By-Laws.

c. Fees for Review. If the Standards Committee should require outside professional analysis of any proposed changes, the Board of Managers may establish a reasonable fee to be paid by the Owner for review of such proposed changes.

8.3 Standards for Addition , Changes or Alterations. No building , fence, wall , plumbing, wiring, or other structure or system shall be commenced, erected, installed in, or maintained upon the Property, nor shall any exterior addition to or change or alteration be made to buildings or grounds until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board of Managers. Such review and approval shall take into consideration the harmony of the external design and location in relation to surrounding structures and topography by the Board of Managers. Additions, changes, or alterations shall not begin prior to the Board of Manager's approval A request for change, addition, or alteration, shall include three (3) sets of plans depicting the detail s of construction including material identification and specifications. These shall be delivered to the managing agent for the Association. A receipt shall be provided to the Owner indicating the .date of the request. One (1) set of plans shall be placed in the Owner's file, one (1) set shall be forwarded to the Standards

Committee for its review, and the last set shall be returned to the Owner with the Board of Managers decision. In the event the Board of Managers fails to act on the additions, changes or alterations as detailed above, within sixty-five (65) days following submittal of said plans and specifications, the project and plans shall be deemed approved without further action of the Board of Managers or the Owner.

8.4 Owner Installed and Maintained System(s).

a. Restri ctive Easement. The Board of Managers may grant a restrictive easement tor an Owner installed and owned System to be installed in or on the Common Elements. This restrictive easement shall be provided in two steps: I) a temporary easement may be granted on receipt of all appropriate plans and specifications for the installation of the System; 2) on final inspection and acceptance by the appropriate governmental authorities the final restrictive easement may be granted and shall be subject to the provisions of this section.

b. The Owner shall meet all applicable conditions outlined herein as determined by the Board of Managers. Failure of an Owner to do so shall be cause for the restrictive easement to be terminated and revoked and ownership of said System shall then be automatically transferred to the Association. The Association shall then remove or disable said System and assess the Owner for all costs incurred for such action;

c. The Owner shall obtain and maintain liability insurance for damage to property and persons to protect surrounding Owners, Common Elements, and the Association from any and all damages resulting from installation, operation, maintenance or failure of said System. Said insurance shall cover any and all liabilities;

d. The Owner shall name the Association as an additional insured party of said insurance policy and provide for notice of renewal or cancellation of the policy to the Board. Failure to maintain adequate insurance shall be grounds for revocation of the restrictive easement;

e. The Owner shall also insure the System for damage to the System itself for the full replacement and repair cost of the System.

f. In the event an Owner fails to properly operate, maintain or repair the System in a timely manner in accordance with state, city or local law, ordinances, Association rules, or abandons the System, the restrictive easements shall be revoked and terminated;

g. The Owner shall provide the Board of Managers with specific plans identifying the installation details including but not limited to, the location of all components, the relation of installed components to any existing utilities in the area and the location of emergency shut-off equipment. The Owner shall also provide the Association with access to the emergency shut-off equipment.

annual inspection and shall provide the Board of Managers with annual proof of inspection if said System requires such an inspection. Should state, city, or local laws or ordinances require said inspection be by certified technician the Owner shall utilize such properly Certified personnel. The Owner shall also utilize certified technicians for installation, maintenance or repair if such is required by state, city, or local law or ordinance. Copies of any state, city or local permits shall be provided to the Association by the Owner.

1. The Owner shall provide all connections for utilities to the System from the private utilities in the Owners' Unit.

J. The Owner, by accepting the restrictive easement for installation of the System agrees that the Association, its contractors, and/or employees shall not be held liable for any damage caused to the System due to mowing, other lawn care or general work around the Common Elements, unless said damage was done intentionally.

k. The Owner, by accepting the restrictive easement for installation of the System agrees that the Association, its contractors, and/or employees shall not be held liable for any damage which results due to ingress or egress in accordance with this Declaration or the By-Laws.

**ARTICLE IX**

INSURANCE

9. I Liability and Hazard Insurance. The Association shall procure and maintain adequate li ability and hazard insurance on all property owned by the Association. ' The Association is authorized to procure and maintain liability and hazard insurance including law and ordinance, flood and earthquake insurance on all building structures, components, appliances, and systems being part of the original Units or Lots (or a replacement of any part of any Unit or Lot), but excluding personal property not constituting a part of the Unit. If insurance upon any property not owned by the Association is procured and maintained by the Association, it shall be procured and maintained in a manner that provides substantially equal benefit to all Owners. Any and all property and casualty losses whether insured or not shall be divided equally among all Unit Owners. The Board of Managers shall review the cost and coverage of the Association's insurance at least annually.

9.2 Property to be Insured. Each Unit for the purpose of property insurance shall include the complete building structure, fixtures, installations, interior walls, floors and ceiling of the individual Units which are original installations or have been replaced according to the original plans. For the purpose of insurance, insured items are to also include such property which is to be maintained, repaired or replaced by the Owner as stated elsewhere in the By-Laws.

tile/carpeting, heating and air conditioning, cabinets, cooking ranges, electrical fixtures, dishwashers, fire extinguishing apparatus and plumbing fixtures.

9.4 Replacement Cost. The Association 's insurance shall provide full replacement cost up to the value of the entire development subject to the terms, conditions and exclusions of the policy. If at the time of a loss, further clarification is required as to insured items, it is to be determined by the Board of Managers.

9.5 Insurance for Board Members. The Association shall procure and maintain adequate liability and fidelity bonding insurance to cover the Board of Managers, whether elected or appointed.

ARTICLE X

USE RESTRICTIONS

l 0.1 Personal Residence. Each U nit shall be used for single family residential purposes only and shall be owner occupied. The maximum number of persons allowed to reside in any unit shall be limited to two (2) persons per bedroom in accordance with the ordinances of the City of Wentzville.

l 0.2 Fences. No fences or wall of any kind shall be erected , begun, or permitted to remain upon any Lot or U nit of the Property unless approved by the Board of Managers.

1 0.3 Business Enterprise.

a. In accordance with the residential zoning ordinances of the city of Wentzville, Missouri, no trade, or business may be carried on in a Unit.

b. Specific authorization for a garage, yard or estate sale shall be obtained from the Board of Managers.

10.4 Nuisances. It is the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt conditions of the buildings or grounds in the vicinity of his/her Lot. The Association reserves the right to bring legal action or impose monetary fines against any Owners who do not comply with the following:

a. No Lot/Unit shall be used in whole or in part, for storage of any property or thing that will cause such Lot to appear in an untidy condition, or be offensive to others; nor shall any substance, thing, or material be kept on any Lot or in any Unit that will emit foul or offensive odors or will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity

shall be cause for discipline of the offending Owner by the Board.

b. No noxious or offensive activity shall be carried on upon any Lot or in any Unit, nor shall anything be done thereon/therein to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be any plants or animals maintained, or device or thing of any sort, whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property in the neighborhood of the Owners thereof.

c. No trash, garbage, or unsightly or offensive material shall be deposited inion an Owner's Lot or Unit, except as is temporary and incidental to a bona fide improvement. No trash, garbage, unsightly or offensive, hazardous, or poisonous material may be deposited upon the Common Elements at any time, except as is temporary and incidental to a bona fide improvement. All trash, garbage, unsightly or offensive material shall be kept in sanitary containers, for the storage or disposal of such material, which equipment shall be kept in a clean and sanitary condition.

d. No hogs, cows, reptiles, horses, rabbits, chickens, goats, poultry, livestock, or other animals of any kind, other than house pets (except pets with vicious propensities) shall be brought onto or kept on any Lot or in any Unit; and no more than a total of one dog, two cats, one of each or one other house pet may be kept or maintained on any Lot or in any Unit. All pets must be leashed and under control of the Owner when outside the Owner's Unit. Owners shall be responsible for picking up after their pets. The feeding of wild animals is strictly prohibited.

l 0.5 Motor Vehicles, Boats, and Trailers.

a. No trucks exceeding three-quarter (3/4) ton, or commercial vehicles, boats, house trailers, boat trailers, recreational vehicles, and trailers of every description shall be permitted to be parked or stored on any Lot except during periods of approved construction on the Lot. This prohibition of parking shall not apply to temporary parking (two days maximum) of trucks, travel trailers, motor home or commercial vehicles, such as for pick-up, delivery, or other purposes.

b. All vehicle maintenance shall take place in the Owner's garage.

10.6 Overhead Wiring. No power or telephone distribution or service connection lines may be erected or maintained above the surface of the ground on any Lot without consent in writing by the Board of Managers.

laundry thereon shall be erected, installed, or constructed on any Lot.

10.8 Antennas. No outside radio, television, or satellite antenna shall be erected, installed, or constructed on the Property, without the written consent of the Board of Managers. A satellite dish shall only be installed on the deck or patio in accordance with the policies of the Board and only after written permission is obtained from the Board.

I 0.9 Hazardous Materials. No fuel tank or container of any nature shall be erected, installed, or constructed on any Lot. All hazardous materials, chemicals, and fuels shall be kept in legally approved containers.

l 0.10 Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, bam, or other out building shall be erected on any Lot at any time.

10.11 - No signs, advertisements, billboards of advertising structures of any kind which are visible from the street shall be allowed to be erected or maintained in any Unit or on any Lot without the approval of the Board of Managers. However, real estate signs advertising the sale of the Unit, not to exceed five (5) square feet in size, may be displayed in the Common Element property adjacent to a specific Unit. Said real estate signs shall be removed within five (5) days following the closing date.

10.12 Drilling and Quarrying. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained, or permitted upon any Lot.

10.13 Sewage /Disposal No individual sewage treatment system shall be permitted on any Lot. All sanitary sewer lines shall connect with the central sewage disposal system provided. Water from downspouts or any surface water shall not be permitted to drain into the sanitary sewer system.

10.14 Water Supply. No individual water supply system (well) shall be permitted on any Lot or Common Element.

10.15. Utility Easements. Easements for installation or maintenance of .utilities and drainage facilities are reserved to the Developer as shown on recorded plats. Such easements shall include the right of ingress and egress for construction and maintenance purposes. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which any damage any structure installed in accordance with said easement, or interfere with the installation and maintenance of utilities, or which may change the direction of the flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the

easements\_ Any easement area of any Lot and all improvements in it shall be maintained continuously by the Owner, except for those improvements for which a public authority or utility company is responsible.

10.1 6 Care and Appearance of Premises. The structures and grounds on each Lot shall be maintained in a neat and attractive manner. The Association shall have the right, upon twenty (20) days' notice to the Owner, setting forth the action intended to be taken, and if at the end of such time such action has not been taken by the Owner, at the expense of the Owner, to remove trash or rubbish, and/or to cut grass, weeds, and vegetation or to trim or prune, and hedge or other planting that in the opinion of the Board of Managers Association, by reason of its location, or the height to which or the manner in which it is permitted to grow is detrimental to adjoining property or is unattractive in appearance\_ The Association shall further have the right, upon like notice and conditions to care for vacant and unimproved property, and to remove grass, weeds, and rubbish therefrom and to do any and all things necessary or desirable in the opinion of the Association to keep such property in neat and good order all at the cost and expense of the Owner. Such costs and expenses incurred by the Association shall be paid to the Association upon demand and if not paid within ten (10) days thereof then they shall accrue interest at the rate of one and one-half percent {1 Y:z%) become a lien upon the related Unit, equal in priority to the lien for assessments as provided herein.

ARTICLE XI

GOLF COURSE EASEMENT

Golfers lawfully using the Bear Creek Golf Course Shall have a "Bad Shot" easement to go upon l ots at reasonable times and in a reasonable manner to retrieve golf balls which unintentionally land upon the lots. In no event, however, shall any golfer have the right by this easement to strike a golf ball from a lot with a golf club or other instrument. By purchasing a lot in the subdivision, the Owner thereof acknowledges that such location may result in nuisances and hazards to persons and property on such lot as a result of golf course operations, and each owner, by acceptance of deeded, covenants for itself and its successors, assigns, children, invites, and licensees that they shall assume all risks associated with such location, including but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to the golf course operations and shall indemnify and hold harmless from any liability, claims or expenses, including reasonable attorney's fees, arising out of any such property damage or personal injury sustained on their lot, on subdivision common ground or on the Golf Course property\_ Nothing herein contained, however, shall be deemed to release individual golfers from their negligence or willful misconduct.

ARTICLE XII GENERAL PLAN

12.1 Guidelines. All of the foregoing covenants and restrictions are intended to constitute a general plan for the benefit of and are to be enforceable by all present and future Owners of or parties in interest of the Lots or Units of Bear Creek Hollow Villas or any part thereof and their heirs and assigns as well as by the Bear Creek Hollow Villas Owners Association.

12.2 Rules and Regulations. The Board shall provide rules and regulations and implement a system of late fees, fines and penalties, applicable to all Owners, their guests and invitees (the "Rules and Regulations").

1 2.3 NID Bond Repayment. Purchaser acknowledges that all Lot Owners in Bear Creek

· Subdivision must participate in the repayment of City of Wentzville Neighborhood Improvement District ("NID") bonds. Beginning in 1999, each Lot Owner will be assessed an annual payment based on the square footage of each Lot; said assessment is expected to be levied at a rate of 1.2 cents per square foot to as much as 1.7 cents per square foot and such payments will continue for 20 years. The foregoing covenants, agreements and waivers run with the land and bind future owners of all or any portion of the land, including future platted lots, for the benefit of the City of Wentzville, Missouri so long as any notes or bonds related to the NID Assessments are outstanding. All provisions of this Indenture, including the benefits and the burdens, run with the Subject Property. It is further agreed that Purchaser or the eventual purchasers of the improved Lots will: (i) pay all special assessments (the "NID" Assessments) to be levied against any and all real property owned by Purchaser and located within the Bear Creek Storm water Detention Sanitary Sewer and Water Improvement District (the "NID" District") pursuant to the Missouri Neighborhood Improvement District Act, Section

67.453 through 67.475 of the Missouri Revised Statutes, as amended (the "NID Act") on or before the date such NID Assessments are due; (ii) waives any right, pursuant to Section 67.463 of the NID Act, to pay such NID Assessments in full on one lump sum, and elects to pay such NID Act; and (iii) waives the right, in accordance with Section 67.4654 of the NID Act, to file sui t to set aside the NID Assessments or otherwise questions the validity of the proceedings relating thereto.

ARTICLE XIII

OFFICES, APPLICABILITY, DEFINITIONS

13.1 Offices. The principal office of the Bear Creek Hollow Villas Owners Association shall be located upon the Property as d escribed in this Declaration or at such other address as the Board of Managers may designate from time to time.

1 3.2 Applicability of By-Laws. The provisions of the By-Laws as established and revised from time to time by the Association shall be applicable to all of the Property that is the subject of this Declaration.

1 3.3 Personal Application. All present and future Owners, occupants, residents and mortgagees (as used in this Declaration, "mortgagee" includes any holder or \_beneficiary of a deed of trust) of Lots and their employees, and any other person who may own a Lot in any manner, are subject to the By-Laws, this Declaration, and the Rules and Regulations of the Association. The mere acquisition, occupancy of a Unit shall constitute an agreement that the By-Laws, the Declaration, and the Rules and Regulations, as amended from time to time, are accepted, ratified, and will be complied with.

18

13.4 Definitions. The definitions of words and terms as contained in this Declaration shall apply to those words and terms used in the By-Laws, and for that purpose are incorporated into the By-Laws as though fully set forth therein, by this reference.

ARTICLE XIV GENERAL PROVISIONS

14.1 Enforcement. The Association shall have the right to enforce all restrictions, conditions, covenants, reservations liens, and charges now or hereafter imposed by the provisions of the Declaration or the By-Laws by imposing fines, restricting membership privileges, or by any proceeding at law or in equity. Failure by the Board of Managers to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any such action instituted by the Association acting through its Board of Managers, exclusively, the prevailing party shall have the right to collect its reasonable attorneys' fees and shall have the right to recover any and all costs of suit.

14.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision that shall remain in full force and effect.

14.3. Amendment. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions shall automatically be extended for successive periods often (I0) years for three (3) consecutive extensions. This Declaration may be amended at any time by the Developer or its successors or assigns so long as Developer or its successors or assigns owns any Lot(s)/unit(s). Subsequent to the sale of the last lot/unit owned by Developer, or its successors or assigns, this Declaration may be amended by an instrument signed by not less than two-thirds (2/3)

of the eligible Owners. Any amendments to this Declaration must be recorded.

IN WITNESS WHEREOF, the undersigned has hereto set its hand and seal this \_

of \_\_\_\_\_\_\_, 2000.

B & N BUILDERS, LL.C.,

a Missouri limited liability company

*b;i*

By:

0tig Nichols, Member

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day

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STATE OF MISSOURI )

) ss

COUNTY OF ST. CHARLES )

On this ll+-- day of ffiru.... , 2000, before me appeared Earl 0. Banze, to be me by personally known, who, being by mJ duly sworn, did say that he is a member of B & N Builders, L.LC., a Missouri limited liability company, and that he is signing this instrument on behalf of said limited liability company and that said Earl 0. Banze acknowledged said instrument to be the free act and deed of said limited liability company.

fN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, the day and year first above written.

My Commission Expires:

lANA SOMMER·

NOTARY PUBLIC · STATE OF MISSOURI

*LINCotN* COUNTY

MY COMMlSSION EXPIRES JULY 11, 2003

STATE OF MISSOURI )

COUNTY OF ST. CHARLES

) ss

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On this jl ay of *Yh*a.. *t* , 2000, before me appeared Doug M. Nichols, to be me by personally known, who, being by me duly sworn, did say that he is a member ofB & N Builders, L.L.C., a Missouri limited liability company, and that he is signing this instrument on behalf of said limited liability company and that said Doug M. Nichols acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, the day and year first above written.

da/NdS

Notary Public

My Commission Expires:

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