

**THE STATE OF TEXAS**  
**COUNTY OF BRAZOS**

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**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS**  
**RESERVATIONS AND RESTRICTIONS**  
**OF**  
**BENTWOOD SUBDIVISION PHASE I – PHASE II Same**

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WHEREAS, MLS DEVELOPMENT CORPORATION, INC., A TEXAS CORPORATION (“MLS”), is the owner of all that certain tract of land in Brazos County, Texas, which has been heretofore platted, subdivided and designated as BENTWOOD SUBDIVISION PHASE I according to the map or plat thereof filed of record in Volume 4833 Page 194 in the Official records of the County Clerk of Brazos County, Texas;

WHEREAS, MLS desires to create and provide for the development improvement and maintenance of BENTWOOD SUBDIVISION PHASE I, for the mutual benefit and pleasure of the present and future property owners in such subdivision, and to protect the property values within such subdivision by imposing upon and against all of the designated lots therein the covenants, reservations and other provisions hereinafter set forth; and

WHEREAS, ALL OF LOT TEN (10), BLOCK TWO (2), BENTWOOD ESTATES, PHASE I, A SUBDIVISION IN BRAZOS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4833, PAGE 194 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS, was sold to JAIME ROMAN, SR., AND YELBA M. ROMAN, (“ROMAN”), who by their signatures below hereby agree to and consent to have these Declaration of Covenants, Conditions, Reservations and Restrictions of BENTWOOD SUBDIVISION PHASE I applicable to their lot.

WHEREAS, ALL OF LOT FIFTEEN (15), BLOCK ONE (1), BENTWOOD ESTATES, PHASE I, A SUBDIVISION IN BRAZOS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4833, PAGE 194 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS, was sold to OPUS VITAE, DESIGN BUILD, INC., (“OVDB, INC.”), who by their signatures below hereby

agree to and consent to have these Declaration of Covenants, Conditions, Reservations and Restrictions of BENTWOOD SUBDIVISION PHASE I applicable to their lot.

NOW THEREFORE, MLS, ROMAN and OVDB, INC. do hereby make, adopt and establish the following reservations, restrictions, declarations, easements, limitations, charges, agreements, covenants, conditions and stipulations, each of which shall be applicable to BENTWOOD SUBDIVISION which compromises all of the designated lots in Blocks One (1) and Two (2) therein according to the map or plat thereof filed in record at the office of the County Clerk of Brazos County, Texas.

## I.

### DEFINITIONS

1. The following terms when used herein shall have the following meanings:
  - a. "MLS" shall mean MLS DEVELOPMENT CORPORATION, INC., a Texas Corporation, its successors and assigns.
  - b. "BENTWOOD" shall mean the BENTWOOD SUBDIVISION PHASE I.
  - c. "SUBDIVISION" shall mean BENTWOOD SUBDIVISION PHASE I, which consists of all of the designated LOTS in Block One (1) and Two (2), according to the map or plat thereof filed of record in Vol. 4833 Pages 194 of the County Clerk of Brazos County Texas.
  - d. "RECORDING DATE" shall mean the date upon which this document is filed of record with the County Clerk of Brazos County, Texas.
  - e. "LOT" or "PARCEL" shall mean those plots of land shown on the map or plat of the SUBDIVISION filed of record with the Clerk of Brazos County, Texas, with the exception of those plots of land designated as Reserve Tracts, and reservations hereinafter made.
  - f. "OWNER" shall mean and refer to the record OWNER, whether one (1) or more PERSON(S) or entities of the fee simple title to any LOT in the SUBDIVISION, or any part or interest therein. OWNER shall not mean or refer to any mortgagee, under any applicable theory of mortgage, unless and until such mortgagee has acquired legal title pursuant to foreclosure or any proceeding in lieu of foreclosure. The term OWNER shall further include any PERSON or entity claiming title to any LOT or portion thereof by adverse possession; any PERSON or entity leasing, renting or otherwise occupying any LOT or part thereof; and/or any PERSON or entity claiming interest in a LOT or part thereof under a contract of sale.

- g. "COMMITTEE" shall mean and/or refer to the Architectural Control Committee established under the provisions of this document, its successors and assigns.
- h. "ASSOCIATION" shall mean and refer to BENTWOOD ASSOCIATION, INC., a Texas non-profit corporation, provided for in this document, its successors and assigns.
- i. "COMMON AREAS" shall mean all real property owned by the ASSOCIATION for the common use and enjoyment of OWNERS.
- j. "IMPROVEMENT" shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, pumps, walls, tanks, reservoirs, pipes, meters, antennae towers and/or other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, satellite, t.v. antennas, and/or other utilities.
- k. "PERSON(S)" shall refer to any natural person, individual(s), and/or any other entity unless the context indicates otherwise having the legal right to hold title to real property.
- l. "PLANS" and "SPECIFICATIONS" shall mean any and all documents designated to guide or control the construction or erection of any IMPROVEMENT, including, but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all buildings products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such IMPROVEMENT.
- m. References to the singular shall include the plural, and the plural shall include the singular.
- n. Terms utilizing bold, capital letters are used as defined terms. Terms utilizing regular upper and lower class casing are used generically unless otherwise indicated.

## II.

### **RESERVATIONS**

1. In so authenticating said map or plat for record and in so dedicating the use of the streets (whether such thoroughfares are referred to as drives, avenues, roads, lanes, ways, parkway, boulevards, or streets) as shown thereon to the public for ordinary roadway purposes only, there was reserved and there is hereby expressly reserved in MLS the

following rights, titles, and easements (hereinafter collectively called "Reservations"). Reservations used herein shall be referred to as a part of and construed as being adopted in each and every contract of sale, deed or instrument of conveyance executed or to be executed by or on behalf of MLS conveying any property in the SUBDIVISION or any part thereof:

- a. The legal and fee simple title in and to each and all of said streets as shown on said map or plat is hereby reserved in MLS subject to the limited dedication of the use of streets, not marked as private by the letters "Pvt.," to the public for ordinary roadway purposes only.
- b. MLS reserves for itself, its successors and assigns, a perpetual nonexclusive easement to lay, construct, operate, maintain, inspect, repair, reconstruct, multiply, change the size of and remove such water, sanitary sewer and storm pipes, gas pipes, mains and conductors and all appurtenances thereto relevant to the operation of waterworks, sanitary sewer, storm sewer and/or drainage systems as it may from time to time desire, in, along, under, over, across and through all of the streets, both public and private, in the SUBDIVISION. Such pipes, mains and conductors, lines, wires, conduits and appurtenances shall be buried to such reasonable depths as will not interfere with the use of the streets for ordinary roadway purposes.
- c. MLS reserves for itself, its successors and assigns, title in and to all water, sanitary sewer, storm sewer, drainage pipes, gas pipes, mains and conductors, all appurtenances thereto; and all electric distribution, communication lines, wires, conduits and all appurtenances thereto constructed by MLS or its agents in all of said streets in the SUBDIVISION, together with a perpetual easement to operate, maintain, inspect, repair, reconstruct, change the size of and remove such pipes, mains and conductors, lines, wires, conduits and appurtenances thereto, as it or they may from time to time desire.
- d. MLS reserves for itself, its successors and assigns, a perpetual utility easement in, along, under, over, across, and through a ten (10) foot strip around the entire perimeter of each PARCEL in the SUBDIVISION. The ten (10) foot strip shall be measured from the property line of each PARCEL inward. With respect to such easement, MLS shall have the right to construct, operate, maintain, inspect, reconstruct, multiply, change the size of and remove such utility lines and facilities (including without limitation of the generality thereof, water, sanitary sewer, storm sewer, drainage pipes, gas pipes, mains and conductors, and all appurtenances thereto; electric distribution and communication lines, fiber optic lines, wires, conduits, guy wires, poles, connections and all appurtenances thereto), as it or they may from time to time desire, together with the right of ingress and egress thereto. The utility easements hereby reserved are easements ten feet (10') wide at and below normal ground level, extending upward to a plane one hundred twenty feet (120') above the ground, and from said plane and easements twenty feet (20') in width, extending five feet (5') in width adjacent to and on both sides

of the utility easements on each PARCEL. MLS further reserves the exclusive right to grant franchises and easements to other utility OWNERS to lay, construct, operate, maintain, inspect, reconstruct, change the size of, multiply and remove such utility lines, as described above, in such utility easements. These utility easements are not dedicated to the public in any manner.

MLS further reserves for itself, its successors and assigns, a perpetual drainage easement that shall be coextensive with the above described ten-foot (10') utility easements.

MLS further reserves for itself, its successors and assigns, a perpetual electrical utility easement located along all streets, both public and private, in the SUBDIVISION. Said electrical easement shall be ten feet (10') wide at ground level, extend upward to a plane one hundred twenty feet (120') above the ground and from said plane, and upward the easement is twenty feet (20') wide.

- e. MLS reserves for itself, its successors and assigns the right to make minor changes in and additions to the utility easements hereinabove described for the purposes of more efficiently and economically installing the IMPROVEMENTS.
  - f. The conveyance by MLS of any PARCEL in the SUBDIVISION by contract, deed or other instrument of conveyance shall not in any event be held or construed to include any of the rights, titles and easements heretofore reserved in any of the foregoing paragraphs, nor the title to water, gas, sanitary sewer, storm sewer, drainage, electric light, poles or conduits, pipes, mains and/or any other utilities or appurtenances thereto constructed by its agents, in, along, under, through, over across, or upon such easements, property, or any part thereof, of any other section of MLS. The right to sell and lease or otherwise transfer all such rights, titles, easements, utilities and appurtenances is expressly reserved in MLS.
- 2. The foregoing Reservations of rights and easements shall not obligate MLS to exercise any of such reserved rights and easements.
  - 3. The invalidity, abandonment or waiver of any one or more of the foregoing Reservations, any sentence, clause, and/or part thereof shall not affect the remaining Reservations, sentences, clauses and/or parts thereof, which shall remain in full force and effect.

### **III.**

#### **RESTRICTIONS**

- 1. For the purpose of creating and carrying out a uniform plan for the parcelling and sale of BENTWOOD as a district set aside for residential homes and certain other

uses accessory thereto. The following restrictions, including without limitation restrictions, covenants, declarations, easements, limitation, charges, agreements, and conditions (hereafter collectively called the “*Restrictions*”), are hereby established and adopted to apply uniformly to use, occupancy and conveyance of all the PARCELS in BENTWOOD. Every contract, deed or conveyance which may be hereafter executed with regard to any of the property in the SUBDIVISION shall be conclusively deemed to have been executed, delivered and accepted subject to the following *Restrictions*, even if the *Restrictions* are not set out in full and are not incorporated by reference in such contracts of sale, deed, lease, or other transfer of interest in any such PARCEL.

#### A. BUILDING AND CONSTRUCTION RESTRICTIONS

1. Except as otherwise herein provided, each PARCEL in the SUBDIVISION shall be used only for non-commercial residential and recreational purposes. Only single family residential dwellings and appurtenances ordinary to residential living shall be permitted. To this end, without limitation, the following structures may not be built on any PARCEL in the Residential portion of the SUBDIVISION: hospitals, clinics, rest homes, duplex houses, apartment houses, garage apartments for Lease to the general public, mobile homes, hotels, or any retail, wholesale, or other business or commercial establishment of any kind or nature; however, OWNER shall be allowed to construct a small, separate living quarters attached to the dwelling or garage for so long as said separate living quarters are occupied by extended family of OWNER and not used as rental property, business or any other commercial use;
2. No residence shall be constructed on any PARCEL that has an under roof living area, excluding porches, garages, patios and the like of less than two thousand five hundred (2,500) square feet;
3. No IMPROVEMENT greater than thirty-two (32) feet in height may be constructed on any LOT without the prior written approval of the COMMITTEE. For purposes of this paragraph, height shall be measured from the foundation slab of the proposed IMPROVEMENT to the ridge line of the roof of the proposed IMPROVEMENT;
4. All single family dwellings shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows and similar openings) shall be constructed of at least seventy-five percent (75%) masonry or other material specifically approved in writing by the COMMITTEE. Masonry includes ceramic tile, brick, rock, stucco, Fiber-Cement siding and all other materials commonly referred to in the College Station, Texas area as masonry. The use of prefabricated materials, including antique homes moved from other locations, shall not be allowed;

5. All dwellings must include at least a two-car garage constructed of seventy-five (75%) masonry;
6. The surface of all roofs of principal and secondary structures shall be wood shingle, shakes, tile, quality composition shingle, or approved metal roof. The COMMITTEE shall have authority to approve other roof treatments and materials if the form utilized will not be a detriment to the quality of the neighborhood;
7. In the event an OWNER desires to use solar panels or other solar equipment in connection with the use of any LOT, the location and installation design thereof shall be submitted to the COMMITTEE and approval of such design, including the aesthetics thereof, shall be required before construction may begin;
8. All driveways shall be constructed of concrete or asphalt. No gravel rock, limestone, dirt, or other forms of materials shall be permitted. No driveway shall connect to FM 2154 (Wellborn Road). All driveways must connect to streets within the subdivision.
9. The COMMITTEE shall have the right to approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil or Liquid Petroleum Gas "LPG" and including swimming pool filter tanks. (No elevated tanks of any kind shall be erected, placed or permitted on any LOT.) All tanks shall be screened so as not to be visible from any other portion of the Property;
10. Only one single family dwelling and appurtenances thereto, such as garages and barns, may be placed or constructed on each of the PARCELS as platted as of the RECORDING DATE. No tent, shack or other temporary building, IMPROVEMENT or structure shall be placed upon the Property without the prior written approval of the COMMITTEE; provided however, that the COMMITTEE may maintain or authorize temporary structures necessary for storage of tools and equipment, and for office space for architects, buildings and foremen on the Property during any period of actual construction, which authorization, if given, shall include the nature, size, duration and location of such structure or structures;
11. No Eighteen (18) Wheel Tractor Trailer Trucks shall be allowed to park in the subdivision or on any Lot.
12. No building or structure, except fences, shall be located on any PARCEL nearer to the front property line than fifty feet (50'), or nearer to either side of the property line than twenty-five feet (25'), or nearer to the back property line than fifty feet (50');

13. Drainage structures where required under private driveways shall have a net drainage opening area of sufficient size to permit the free flow of water without back water, and shall be a minimum of eighteen (18) inch diameter pipe culvert or such larger diameter as the COMMITTEE shall require. Additionally the pipe shall have a 6 to 1 slope as extended beginning at the exposed portion of the pipe to the end thereof.
14. No building materials of any kind or character shall be placed or stored on any PARCEL more than thirty (30) days prior to construction of a building or IMPROVEMENTS are commenced. All materials shall be placed within the building lines as established above. At the completion of the building or IMPROVEMENT excess or scrap material must be immediately removed from the premises;
15. No stumps, trees, underbrush, refuge of any kind, and/or scrap material from IMPROVEMENTS being erected on any PARCEL shall be placed on any other PARCEL, or on streets or easements;
16. Exposed openings resulting from any excavation made of any PARCEL shall be back filled and the disturbed ground shall be leveled and reseeded with fiber mulch, blanket seeding, or sodding. No change of elevation on any PARCEL greater than five feet (5') shall be made without prior approval of the COMMITTEE;
17. No residential dwelling shall be built without a State of Texas approved septic tank or other sewage disposal system that is so approved; and
18. Mailboxes shall be erected and maintained on each LOT upon which a residence is situated, and shall be fixed on masonry stanchions (columns), approved by the COMMITTEE. No metal or wood post stands are permitted. Each mailbox shall be new when installed, constructed of durable steel or aluminum, and of size and shape conforming to postal authority standards for single family residential postal depositories. Mailboxes shall be located in accordance with postal regulations; and
19. The COMMITTEE may approve or disapprove, for any reason or no reason, at its sole discretion any item 1-17 above.

## **B. GENERAL RESTRICTIONS**

1. No noxious or offensive trade or activity shall be carried on upon any PARCEL nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood;



2. No “commercial activity” of any kind shall be conducted on any LOT within that portion of the SUBDIVISION affected by this declaration. “Commercial Activity” shall include but not be limited to, the offering for sale of any product or service, the manufacture or growth of any product for purposes of sale without regard to whether such activities are conducted in or from residential dwellings or otherwise;
3. No animals, livestock, or poultry of any kind shall be raised, bred, and/or kept on any LOT within the SUBDIVISION for commercial purposes. Each PARCEL shall be allowed one animal unit (au) every one (1) acre or fraction of an acre. One animal unit (au) is defined as:

1 cow	=	1 au
1 horse	=	1 au
1 dog or cat	=	½ au (Maximum 4 dogs or cats)

There will be no swine, sheep, goats or poultry allowed on any parcel within the SUBDIVISION. There will be no wild, exotic or naturally undomesticated animals allowed to be caged or otherwise kept on any PARCEL within the SUBDIVISION. No animals including dogs and cats will be allowed to roam free in the SUBDIVISION. In the event any animal creates a nuisance to the SUBDIVISION in the sole and exclusive opinion of the COMMITTEE, such animal will be removed from the SUBDIVISION. BENTWOOD or members of the COMMITTEE shall have the right to enter and remove any such animal which is placed on any PARCEL in violation of this Section, and in so doing, shall not be liable and is expressly relieved from any liability for trespass or other sort in connection therewith, or arising from such removal.

4. No sign(s), except sign(s) advertising property for sale and/or rent (not exceeding five (5) square feet in size; advertisement billboard, and/or advertising structure of any kind may be erected or maintained on any PARCEL without the consent in writing of the COMMITTEE, MLS, or members of the COMMITTEE shall have the right to enter and remove any such signs), advertisement and/or billboard and/or structure which is placed on any PARCEL without said consent, and in so doing, shall not be liable and is expressly relieved from any liability for trespass or other sort in connection therewith, or arising from such removal;
5. No part of the SUBDIVISION shall be used or maintained as dumping grounds for rubbish, trash, or garbage. Equipment for the storage or disposal of such material(s) shall be kept in a clean and sanitary condition. No trailer(s); recreational vehicle(s); tent(s); boat(s); and/or stripped down, wrecked, junked, or otherwise wholly inoperable vehicle shall be kept, parked, stored, and/or maintained on any portion

of the driveway and/or front yard in front of the building line of the permanent structure. Some shall be kept, parked, stored, or maintained on other portions of a LOT only within an enclosed structure or a screened area which prevents the view thereof from adjacent LOTS or streets. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street;

6. OWNERS shall not permit the accumulation of trash, rubbish, weeds, or other unsightly objects on their PARCELS or on the easements or on the alley or the streets abutting the same. Each OWNER shall be responsible for proper disposition of his/her trash or garbage. OWNERS shall keep the drainage easements free of obstructions; each lot must be maintained in an aesthetically pleasing fashion and mowed such that grass does not exceed 10 inches in height. If a lot is not in compliance with this regulation, MLS or the association may mow the premises and/or remove any trash, rubbish or debris and bill the lot owner for the cost thereof. Said bill will be deemed additional Assessments and failure to pay such bill shall be governed by Article VI Paragraph 2 and Article IX.
7. After commencement of construction of any structure or IMPROVEMENT, the work thereon shall be diligently prosecuted to the end and the structure or IMPROVEMENT shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof;
8. All construction projects shall be completed within 18 months of the setting of the forms for the foundation. After such time, all tractors, trailer, and offices must be immediately removed.
9. All fencing within one hundred feet (100') of any road in the SUBDIVISION, running parallel to the right of way of such road or substantially parallel thereto, shall be of such size, design, material and color as is specifically approved by the COMMITTEE. In the event LOT OWNER paints said fence, LOT OWNER shall maintain said fence;
10. No act may be performed which is likely to pollute the air or water in any part of the SUBDIVISION, nor may any property OWNER violate any ordinance designed to eliminate pollution at that time in force whether it be State, County or City;
11. No firearms or fireworks may be discharged in the SUBDIVISION or on any PARCEL, easement or common area;

12. Representatives of MLS, the ASSOCIATION, or the COMMITTEE may from time to time at any reasonable hour, enter and inspect any part of the SUBDIVISION to ascertain compliance with this document or any amendments hereto;
13. No oil or gas drilling, development, refining, quarrying or mining operations of any kind shall be permitted on any LOT, nor shall any tanks, tunnels, mineral excavations or shafts be permitted on any LOT. No derrick or other structures designed for use in boring or drilling for oil, natural gas, or other minerals shall be erected, maintained or permitted on any LOT save and except existing locations at time of plat approval. Notwithstanding the foregoing, each OWNER, by its acquisition of a parcel of the SUBDIVISION has been, or will be reserved by third parties or predecessors in title to the Property;

#### IV.

#### ARCHITECTURAL CONTROL

1. There is hereby created the Architectural Control Committee which shall consist of two (2) members. The initial Architectural Control Committee is composed of:

M. L. SCHEHIN

DEBBIE STOLL

- A majority of the Architectural Control Committee may designate representatives to act for it. In the event of the death or resignation or failure to serve by any member of the COMMITTEE, the remaining members shall have full authority to designate a successor. Neither the members of the COMMITTEE nor its appointed representatives shall be entitled to any compensation for services rendered pursuant to this covenant. After fifteen (15) years from the date of this instrument, or at such earlier time as the majority of the COMMITTEE shall determine the power to designate members of the Architectural Control Committee will automatically pass to the Association. The COMMITTEE'S approval or disapproval as required by the *Restrictions* shall be in writing.
2. No IMPROVEMENT of any kind shall be erected, placed or altered in the exterior design after being erected or placed on or attached to any PARCEL in the SUBDIVISION until the construction plans, landscaping plans, or other plans, specifications and plot plans showing the location and size of such IMPROVEMENT has been submitted to the COMMITTEE, or its designated representatives as to the harmony of external design with the existing structures on PARCELS in the SUBDIVISION, as to type of exterior materials and exterior paint colors, as to quality of workmanship and materials, and as to locations with respect to topography and finished ground elevations, and compliance with all applicable provisions of this document, and general compatibility within the

SUBDIVISION. IMPROVEMENTS used herein include, but are not limited to, building(s), fences, towers, antennas, porches, decks, walls, swimming pools, water wells, playground equipment, outdoor cooking or eating facilities of a permanent nature, docks, piers, barns, silos, cages, sheds, streets, alleys, excavations and other earth movements. The COMMITTEE may require a reasonable fee for performing the functions herein prescribed and may disapprove plans, specifications, designs, and plot plans for failure to pay such fee. Such fees shall be used by the COMMITTEE to discharge actual expenses incurred by the COMMITTEE. After approval in writing has been given, the erecting, placing or altering of the IMPROVEMENTS on any PARCEL shall be made only in accordance with the approved plans, specifications and plot plans, unless variations or changes are also approved in the same manner.

3. Neither MLS, nor the members of the COMMITTEE, representatives, and/or their successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any OWNER or lessee of any PARCEL affected by these *Restrictions*, by reason of mistake in judgement, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans submitted. Every person who submits plans to the COMMITTEE for approval agrees by submission of such plans, and every OWNER or lessee of any PARCEL within the property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against MLS, the members of the COMMITTEE, or its representatives, to recover any such damages.
4. At the option of a majority of the COMMITTEE, all of the powers, rights, duties, and responsibilities of said COMMITTEE may be transferred to the ASSOCIATION; in such event the ASSOCIATION shall appoint a representative or representatives to perform all functions of the COMMITTEE. Said representative or representatives shall be the successor of the COMMITTEE.

## V.

### **BENTWOOD ASSOCIATION, INC.**

1. **Creation.** The ASSOCIATION, a Texas non-profit corporation, shall be incorporated with its initial registered office in Brazos County, Texas and with its principal office located at 17815 F.M. 2154, College Station, Texas, 77845.
2. **Incorporation.** MLS shall cause the ASSOCIATION to be incorporated, and MLS shall have the power to elect all members of the Board of Directors and to fill any vacancies occurring therein until MLS has conveyed by deed, in the aggregate, eighty percent (80%) of the LOTS in BENTWOOD, and any future acreage developed under a common scheme or plan of development by MLS, according to map or plat filed in the Official Records of Brazos County, Texas. Once eighty percent (80%) of the LOTS have been so deeded, the membership of the Board of Directors shall be determined by majority vote of the land OWNERS

of record that are subject to a required maintenance charge payable to the ASSOCIATION. The voting shall be conducted according to rules established by the Bylaws of the ASSOCIATION. MLS may elect to transfer power to elect Board of Directors to said record OWNERS at any time.

3. **Powers and Functions.** The ASSOCIATION shall have powers and functions provided by applicable law, its Articles of Incorporation, its Bylaws, as heretofore or hereafter amended, respectively, and such other powers as set forth herein, including without limitation, at its option, the right to maintain streets, lakes, utilities, recreational areas; to provide for garbage pickup (at a cost to the individual property OWNER if the Maintenance Fund is insufficient for this purpose), hire police protection, furnish power or gas for street lighting, maintain esplanades, and other common areas; and to establish rules and regulations for the use of lakes, rivers, streets, and other SUBDIVISION facilities, specifically erected and installed and designated to be controlled by the ASSOCIATION. The ASSOCIATION shall administer the Maintenance Fund hereinafter provided.
4. **Membership.** LOT ownership and membership in the ASSOCIATION shall be inseparable. Transfer of a LOT automatically transfers membership in the ASSOCIATION and all rights of the transferor with respect to the COMMON AREAS and facilities to which ownership of such LOT relates.
5. **Additions.** If MLS develops further acreage under a common scheme or plan of development, as MLS, the ASSOCIATION, may require such property OWNERS to be members of the ASSOCIATION and they shall have equal voting rights therein on the same basis as OWNERS of property in this SUBDIVISION.

## VI.

### **MAINTENANCE CHARGE**

1. **Creation of Annual Maintenance Charge.** Each PARCEL in BENTWOOD, PHASE ONE, is hereby subjected to annual maintenance charge of Two Hundred and no/100 (\$200) Dollars per year, payable annually in advance by the OWNER of each PARCEL on the first day of January of each year, beginning 2003 and each succeeding year thereafter until terminated as provided below, to the ASSOCIATION, its successors and assigns, for the purpose of creating a fund described below, known as the "Maintenance Fund." Where any PARCEL is owned by more than one person or entity, said maintenance charge shall be payable by all such OWNERS, jointly and severally. The maintenance charge shall be prorated between purchasers and sellers of PARCELS in the proportion that the remaining months of the calendar year bear to the whole year. By acceptance of a deed or other instrument of conveyance, or by any other claim of legal title to any PARCEL or portion thereof, each OWNER agrees and consents to the maintenance charge shall be paid for each year from 2003 through 2013 and shall be extended automatically for successive periods of ten (10) years unless before 2013, or before the 31<sup>st</sup> day of

December of any tenth year thereafter, the Owners of record of a majority of the PARCELS in the SUBDIVISION vote to discontinue such charge by written instrument which shall be signed and acknowledged by the OWNERS of record of a majority of the PARCELS and recorded in the Official Records of Brazos County, Texas.

2. **Liens.** The ASSOCIATION shall have a lien against any PARCEL for which the annual maintenance charge provided herein shall not be paid effective upon the thirtieth (30<sup>th</sup>) day following the date said maintenance charge became due and payable. The amount of said lien shall be for the amount of the maintenance charge then due, owing and unpaid plus an additional delinquency charge of twelve percent (12%) per annum of the unpaid balance accruing from the date said maintenance charge became due and payable. The ASSOCIATION shall have the right to evidence the existence of this lien by filing a sworn and acknowledged statement of lien in the Office of the County Clerk of Brazos County, Texas, but the failure of the ASSOCIATION to so file a statement of lien shall not affect the validity of the lien as between the ASSOCIATION and the OWNER.
3. **Purpose and Use of Maintenance Fund.** The maintenance charge shall be used to pay "maintenance expenses" which shall include without limitation expenses incurred for any of the following purposes: lighting, constructing, improving and maintaining any rights of way, easements, entry, streets, sidewalks, paths, fences, lakes, boat launch, boat house, park, parkways, stables, tracks, pools, lodge, esplanades, and any structures, facilities or area which can be used by all OWNERS which in the opinion of the ASSOCIATION would benefit the SUBDIVISION as a whole; collecting and disposing of garbage, ashes, rubbish and the like in said areas (other than garbage, ashes, rubbish, and the like from constructed residential dwellings), caring for vacant PARCELS, employing watchmen or any other action deemed desirable to protect persons and property, payment of legal and all other expenses in connection with the operation of the ASSOCIATION, and the enforcement of all recorded charges, restrictions, covenants, agreements and conditions affecting property to which maintenance charges apply, payment of all expenses in connection with the collection and administration of the maintenance charges, and doing any other things necessary and desirable in the opinion of the ASSOCIATION to keep property neat and in good order of which it considers of general benefit to the SUBDIVISION. The act of the ASSOCIATION and its expenditures of the Maintenance Fund shall be final so long as it acts in good faith.
4. **Increases or Reductions to Annual Maintenance Charge.** The ASSOCIATION may increase or reduce the maintenance charge from time to time by action applied uniformly to all PARCELS in the SUBDIVISION as provided below.
5. **Assessments.** From and after 2003, the ASSOCIATION'S Board of Directors, at its next annual or special meeting and at each annual meeting thereafter, shall set the amount of the monthly assessments for each year for each LOT, taking into consideration the current maintenance costs and future needs of the ASSOCIATION; except, however, the monthly assessments may not be increased in any one year by

more than twenty percent (20%) of the then existing annual assessment, except on the affirmative vote of OWNERS entitled to cast two-thirds (2/3) of the votes of the ASSOCIATION, in person or by proxy at a meeting duly called for such purposes.

6. **Developer Exemption.** MLS shall not be liable or in any way responsible for the payment of any maintenance charge provided for herein.

## VII.

### **SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS**

1. In addition to the annual assessments for maintenance charges authorized above, the ASSOCIATION may levy in any assessment year, special assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvements upon the COMMON AREA, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of a three-fourths (3/4) majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of a meeting called for this purpose shall be sent to all members not less than thirty (30) days or more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting and the proposal to be voted on.
2. No special assessments for capital improvements shall be made under this provision prior to the time when the membership of the Board of Directors of the ASSOCIATION is determined by majority vote of the land OWNERS of record subject to the maintenance charge as hereinabove set forth.
3. The Special Assessments shall be payable by the OWNERS on the dates and terms as may be established by the ASSOCIATION. The ASSOCIATION may also provide for a lien against any PARCELS for which the special assessment remains unpaid.

## VIII.

### **SUBORDINATION OF THE LIEN TO MORTGAGES**

1. The liens of the assessments provided for herein shall be subordinate to the lien of any first mortgage and/or mortgages granted or created by the OWNER of any LOT to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such LOT. Sale or transfer of any LOT or transfer of any LOT pursuant to a foreclosure under such purchase money or IMPROVEMENT, mortgages or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the 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. No extinguishment of the lien shall relieve the delinquent LOT OWNER from his/her personal obligation and liability therefor.

**IX.**

**EFFECT OF NON-PAYMENT OF ASSESSMENTS:  
REMEDIES OF THE ASSOCIATION**

1. Any assessments and charges which are not paid when due are considered delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of the delinquency at the rate of twelve percent (12%) per annum. The ASSOCIATION may bring an action at law against the OWNER or member personally obligated to pay the same, or foreclose the lien against the property. Any interest, costs, and reasonable attorney's fees of any such action will be added to the amount of such assessment. Each OWNER, by his acceptance of a deed to a LOT hereby expressly vests in the ASSOCIATION, or its agents the right and power to bring all actions against such OWNER personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the ASSOCIATION in a like manner as a mortgage or deed of trust lien on real property and such OWNER hereby expressly grants to the ASSOCIATION, a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the ASSOCIATION, shall be for the benefit of all other LOT OWNERS, and shall be exercisable by a Trustee to be named or designated by the Board of Directors of the ASSOCIATION. Any sale pursuant to this power shall be conducted in accordance with the provisions of Article 3810 of the *Texas Revised Civil Statutes Annotated*. The ASSOCIATION acting on behalf of the LOT OWNERS shall have the power to bid in an interest at foreclosure sale and to acquire and hold, lease, mortgage, and convey the property.

**X.**

**RE-SUBDIVISION**

1. No Lot may be re-subdivided into smaller LOTS. This provision does not apply to any real property reserved by MLS or to any real property that may be developed as a part of the SUBDIVISION in the future under a common scheme or plan of development.

**XI.**

**WATER SERVICE**

The SUBDIVISION is serviced by Wellborn Water Supply Corporation. Each Lot Owner shall be required to contract directly with Wellborn Water Supply Corporation. The cost of water, tap fees, membership fees, expansion reserve fees,



installation fees, monthly use fees and meters shall be subject to the fee schedule of Wellborn Special Utility District and paid by the Lot Owner.

## **XII.**

### **MISCELLANEOUS PROVISIONS**

1. The foregoing *Restrictions* are adopted as part of and shall apply to each and every PARCEL in the SUBDIVISION. Such *Restrictions* are equally for the benefit of all subsequent OWNERS or PARCELS in BENTWOOD and accordingly, shall be covenants running with the land. Any OWNER or lienholder of any of the property or the ASSOCIATION shall have the power to prosecute in the appropriate court a suit at law or in equity to prevent any violation or attempted violation of the *Restrictions* and to recover damages for any violation or attempted violation including, but not limited to, reasonable attorney's fees; provided, however that this clause shall not restrict any governmental agency from acting to enforce any of the *Restrictions*.
2. The term of the *Restrictions* shall be for a period from the filing of this instrument for record in Brazos County, Texas, until the 1<sup>st</sup> day of June, A.D., 2013, after which date such *Restrictions* shall be automatically extended for such successive periods of ten (10) years each, unless and until, by instruments executed by the then record OWNERS of a majority of the PARCELS in BENTWOOD and duly recorded in Official Records of Brazos County, Texas, such *Restrictions* are altered, rescinded, modified or changed, in whole or in part.
3. Nothing contained in this document or any violation of any of the *Restrictions* shall have the effect of impairing or affecting the rights of any mortgagee or trustee under any mortgage or deed of trust outstanding against of the SUBDIVISION or any portion thereof.
4. Any and all rights, powers and reservations of MLS herein contained may be assigned to any person, corporation or association which will assume the duties pertaining to the particular rights, powers, and reservations assigned, and upon any such person, corporation or associations' evidencing its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by MLS herein and MLS shall thereafter be released from any future liabilities. The term MLS as used in this document includes all such assignees and their heirs, successors and assigns.
5. Every person who now or hereafter owns or acquires any right, title or interest in or to any property in the SUBDIVISION is and shall be conclusively deemed to have consented and agreed to every covenant, condition, reservation and restriction contained herein, whether or not any reference to this declaration is contained in this instrument by which such person acquires an interest in the property.

6. MLS reserves the right to make minor deviations from the terms of this document to the extent permissible by law and consistent with the general plan for development as herein set out, all without further action or consent by or from any party.
7. The invalidity, violation, abandonment, waiver of or failure to enforce any one or more of or any part of the provisions of this document shall in no way affect or impair the remaining provisions or parts thereof which shall remain in full force and effect.
8. MLS, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties thereby subjecting such additional lands to this Declaration, by filing of Record a Supplementary Declaration with respect to such additional property which shall extend the scheme of this Declaration to such property. The ASSOCIATION shall accept same to be owned and managed pursuant to the terms and conditions of this Declaration.
9. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing SUBDIVISION.

Dated this \_\_\_ day of FEBRUARY, 2003.

MLS DEVELOPMENT  
CORPORATION, INC.

By: \_\_\_\_\_  
M. L. SCHEHIN, PRESIDENT

\_\_\_\_\_  
JAIME ROMAN, SR.

\_\_\_\_\_  
YELBA M. ROMAN

OPUS VITAE, DESIGN BUILD,  
INC.

BY: \_\_\_\_\_  
(NAME) (TITLE)

THE STATE OF TEXAS     §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_ day of FEBRUARY, 2003, by M. L. SCHEHIN, PRESIDENT OF MLS DEVELOPMENT CORPORATION, A TEXAS CORPORATION, ON BEHALF OF SAID CORPORATION.

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NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS     §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_ day of FEBRUARY, 2003, by JAIME ROMAN, SR. AND YELBA M. ROMAN.

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NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS     §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_ day of FEBRUARY, 2003, by \_\_\_\_\_, \_\_\_\_\_ OF OPUS VITAE, DESIGN BUILD, INC., A \_\_\_\_\_ CORPORTION, ON BEHALF OF SAID CORPORATION.

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NOTARY PUBLIC, STATE OF TEXAS

PREPARED IN THE LAW OFFICE OF:  
J. FRED BAYLISS, P.C.  
1305 WEST VILLA MARIA  
BRYAN, TEXAS 77801

AFTER RECORDING RETURN TO:  
AGGIELAND TITLE COMPANY  
3608 EAST 29<sup>TH</sup> STREET, SUITE #101  
BRYAN, TEXAS 77802