



Tom Leatherwood

Shelby County Register

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VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	170.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	136.00
TOTAL AMOUNT	308.00

TOM LEATHERWOOD

REGISTER OF DEEDS SHELBY COUNTY TENNESSEE

This Instrument Prepared by and Return to:
Paul F. T. Edwards, Esq.
Stokes Bartholomew Evans & Petree, P.A.
1000 Ridgeway Loop Road, Suite 200
Memphis, TN 38120
901-525-6781

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRAYSTONE PARK SUBDIVISION**

PLAT BOOK 201, PAGE 9

THIS DECLARATION, made on the date hereinafter set forth by BRAY STATION, L.L.C., a Tennessee limited liability company, hereinafter referred to as "Declarant" or "Developer".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the Town of Collierville, County of Shelby, State of Tennessee, which is more particularly described as follows:

See Exhibit A attached hereto and made a part hereof by reference.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to BRAYSTONE PARK HOMEOWNERS ASSOCIATION, INC., its successors and assigns. The Charter and Bylaws are attached hereto as Exhibits "C" and "D", respectively.

Section 2. "Common Open Space" shall mean all real property for the common use and enjoyment of the Owners labeled as C.O.S. on the final plat(s), attached hereto as Exhibit "B" ("Site Plan"), as amended, including any and all improvements thereon, and shall also include the areas within the Landscape Easements as shown on Exhibit "B". Declarant shall have the right to amend the Plat, and record new plats for future phases, to add landscape

easements and additional property as Common Open Space without the approval of the Homeowners Association or any Owner. At its sole discretion, Declarant may also add improvements to the Common Open Space for use by the Owners, including but not being limited to athletic courts and fields, swimming pool, club house and other recreational and related improvements, without the approval of the Association or any Owner(s). The Common Open Space shall include the fences and stone columns along Bray Station Road and Shelton Road as well as any fences at or near the entryways and any lakes or ponds. All such Common Open Space and improvements thereon ("Facilities") shall be maintained at the Association's expense. Declarant reserves the right, at its sole, subjective discretion and at such time as it deems appropriate, to unilaterally convey title to the Common Open Space by Quitclaim Deed (or such other instrument as Declarant chooses) to the Association, which shall accept said title and shall be responsible for the maintenance of said Common Open Space in accordance with the provisions herein.

Section 3. "Declarant" shall mean and refer to BRAY STATION, L.L.C., a Tennessee limited liability company, its successors and assigns.

Section 4. "Landscape Easements" shall mean all areas of Braystone Park Subdivision labeled or indicated on the Site Plan as a landscape easement or landscape area. The Declarant and/or the Association shall have the right but not the obligation to improve the Landscape Easements with landscaping, fencing and other improvements and to maintain such improvements. The Declarant and/or the Association shall have the right to add additional Landscape Easements as deemed necessary to the Common Open Space and the Lots.

Section 5. "Lot" shall mean and refer to any plot of land in Braystone Park Subdivision shown on any recorded Final Plat or Plan, as amended, with the exception of the Common Open Space. For Lots owned by Declarant, Declarant shall have the right to amend the Final Plat in order to adjust Lot lines and setbacks and combine one (1) or more Lots or parts of Lots together without notice and without the approval of the Association or any Owner.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

Section 8. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration by Declarant.

**ARTICLE II
PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every Owner whose lot is subject to this Declaration shall have a right and easement of enjoyment in and to the Common Open Space and the easement granted therewith which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(A) The right of the Association to make rules and regulations for the use of all Common Open Space and Facilities;

(B) The right of the Association to suspend the voting rights and right to use of the Common Open Space and Facilities by an Owner for any period during which any assessment against his Lot remains, unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Open Space and Facilities to any member of his family who is living with him.

Section 3. Exclusion of Non-Owners. Only those Owners who are subject to this Declaration shall have the right of enjoyment of the Common Open Space of the Association. The Association, through its duly elected officers, shall have the right to establish procedures to exclude non-members from using the Common Open Space.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot is subject to this Declaration and shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. The Association shall have one (1) class of voting. Members shall be Owners, as hereinbefore defined, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in a Lot, all such persons shall be Members, but the vote for such Lot shall be cast as determined by all the persons having an ownership interest in said Lot. In no event shall more than one (1) vote be cast with respect to any Lot not owned by Declarant.

Notwithstanding the above, the Declarant shall initially be entitled to three hundred sixty (360) votes. Declarant's votes shall be decreased by one (1) vote for each Lot that has been conveyed by Declarant to a third party not affiliated with Declarant.

The Declarant's votes shall be reduced to one (1) vote per Lot owned by Declarant upon the occurrence of the earlier to occur of:

(a) When the Declarant's total votes outstanding equals total votes outstanding by Owners other than Declarant or Declarant's affiliates; or

(b) When the Declarant decides, in its sole subjective discretion to reduce its outstanding votes to one (1) vote per Lot owned by Declarant.

It is the intent of the Declarant that it shall maintain control of the Association so long as Declarant owns any part of the Property or at least one Lot or any Common Open Space.

Section 3. Declarant reserves the right to unilaterally add property ("Added Property") and/or Lots to be covered by and to be subject to the provisions of this Declaration.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements and (3) emergency assessments, such assessments to be established and collected from time to time as hereinafter provided. The annual, special and emergency assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fee fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the maintenance of the Common Open Space and Facilities, and the other obligations of the Association.

Section 3. Annual Assessment. The Declarant shall have the sole authority to establish the amount of the initial annual assessment. Subsequently, the Annual Assessment shall be set by the Board of Directors of the Association (the "Board").

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Open Space, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the total votes in person or by proxy at a meeting duly called for this purpose.

The Declarant shall have the right at its sole discretion to add certain improvements to the Common Open Space including a clubhouse and related improvements and the Declarant and/or the Association shall have the right to declare a special assessment of up to

One Thousand Two Hundred Fifty Dollars (\$1,250.00) per Lot, for construction of said clubhouse and related improvements.

Section 5. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of Members or property of Members, as determined by the Board, the Board of Directors, acting pursuant to this section, may declare an emergency assessment in such amount payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment is made in good faith.

Section 6. Notice & Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all Members not less than ten (10) days nor more than two (2) months in advance of the meeting. The presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of membership shall constitute a quorum. It is not necessary that the presence of Members or proxies entitled to cast 51% of all of the votes of each class of Membership be present to constitute a quorum so long as 51% of all of the votes of all classes of Membership combined are present. If the required quorum is not present, the Members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Rate of Assessment. The annual, special and emergency assessments must be fixed at a uniform rate for each Lot owned by an Owner.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence at the discretion of the Declarant.

The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a letter signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such letter shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Non-Payment of Assessment. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. To evidence the lien of any unpaid and delinquent assessments, the Board of Directors shall prepare a written notice setting out the amount of the unpaid indebtedness, the name of the Owner of the Lot, and

description of the Lot. Said notice shall be signed by a member of the Board and recorded in the Shelby County Register's Office. The personal obligation of the Member to pay such assessment shall, however, remain his personal obligation for the statutory period, and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration or the Bylaws, or of any installment thereof, may be maintained without foreclosing or waiving the lien created herein.

Any assessment levied pursuant to this Declaration or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Tennessee, and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the said Board may fix. The Association may bring an action at law against the Member personally obligated to pay the same or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust upon the Lot or Lots, then belonging to said Member; in either of which events, the Association may collect from the said Member interest, costs and reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Open Space or abandonment of his Lot.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. The Association is hereby authorized to take any and all courses of action available to them for collection of the assessment which the laws of the State of Tennessee allow. Any such sale shall be made after first advertising the sale of said property for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of Shelby, State of Tennessee, giving notice of the time and place of such sale and by written notice of the time and place of such sale to the Owner of the Lot at his last known address. Any sale of a Lot to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, including the statutory right of redemption, homestead, and dower and all other exemptions, all of which are expressly waived by the Lot Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of expenses of protecting the Property and the expenses of litigation, attorneys' fees, and sales commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust (unless sold subject to said mortgage or deed of trust); and third, to the payment of all amounts due the Association under the terms of the Declaration and Bylaws; and the balance, if any, to the party legally entitled thereto. Upon any default in the payment of any assessment, the Board of Directors shall have the right to all rents, issues, and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession in the same manner as a mortgagee entering into possession following default. The Association may enforce its lien

by whatever means available, including the power of sale granted herein or filing suit for foreclosure in the appropriate court.

All rights, remedies, and privileges granted to the Board of Directors or a Lot Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by the Declaration and Bylaws or at law or in equity.

The Association may notify the holder of the first mortgage on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the Owner of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of ninety (90) days.

Section 10. Additional Default. Any recorded first mortgage secured on a Lot and improvements thereon may provide that any default by the mortgagor in the payment of any assessment levied pursuant to these covenants, conditions and restrictions, or any installment thereof, shall likewise be a default in such mortgage, but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such mortgage by reason of Section 11 shall not be diminished by reason of such failure.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments 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.

Section 12. Management Agreements. The Board of Directors shall be authorized to employ for the Association a management agent ("Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize including, but not necessarily limited to, the duties set out in Article VIII of the By-Laws. The Board shall be authorized to hire the Declarant or Boyle Investment Company or an affiliate thereof as such Management Agent so long as the above described compensation is commercially reasonable.

It shall be the duty of the Board of Directors of the Association to effect a new management agreement prior to the expiration of any management contract. Any or all management agreements shall be with a responsible party or parties having experience adequate for the management of a project of this type.

Section 13. Insurance.

(a) The Board of Directors shall maintain casualty or physical damage insurance on all buildings and other improvements owned by the Association in an amount of not less than one hundred percent (100%) of full value if available at reasonable cost as determined by the Board of Directors, or if not available, to the greatest extent available at reasonable cost, as determined by the Board of Directors. The said Board shall also carry public liability insurance, workman's compensation insurance, and any and all other forms of insurance and in any amounts as may be deemed appropriate by the Board of Directors.

All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association and its Board of Directors, Declarant and Declarant's owners, agents and managers, who shall also be named as additional insureds under all liability policies.

(b) All policies shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to any and all insureds named thereon.

ARTICLE V
GENERAL COVENANTS AND RESTRICTIONS

Section 1. The Association shall have an Architectural Control Committee ("ACC") which shall consist of not less than three (3) members. So long as the Declarant holds an ownership interest in any portion of the Properties, the appointment and removal of the members of the ACC shall be made exclusively by the Declarant and the Declarant shall have the exclusive right and power at any time and from time to time to create and fill vacancies on the ACC or to relinquish control of the ACC to the Association. Thereafter, appointments shall be made by the Board of Directors of the Association. Members of the ACC shall serve at the pleasure of the Declarant, and later at the pleasure of the Board. The vote of a majority of the members shall constitute the action of the ACC.

At the first meeting of the ACC, the ACC shall elect from among themselves a Chairman, a Vice-Chairman and a Secretary who shall perform the normal duties of their respective offices.

Section 2. All lots in this tract shall be known and described as residential lots.

Section 3. Lots shall not be re-subdivided, except as set forth in Article 1, Section 4.

Section 4. No structure shall be erected, placed, altered or permitted to remain on any Lot in this subdivision other than one detached single family dwelling and its related buildings. The minimum finished and heated floor area of the single family residence, exclusive of porches and garages, shall not be less than three thousand four hundred (3,400) square feet. Declarant may, in its sole subjective discretion, reduce the square footage requirement of specific homes by

up to twenty percent (20%); however, such approval must be in writing and signed by Declarant prior to the start of construction.

Section 5. Building setback lines shall be as set forth on the Final Plat, as amended from time to time, and as amended by Declarant under Article I, Section 4. Under special circumstances setbacks may be reduced to a lesser amount if authorized by ACC in writing prior to commencement of construction, but in no case shall any building setbacks be less than those specified by the Collierville and/or Shelby County Zoning Regulations, whichever is applicable, unless approved by the proper jurisdictional governmental authority (i.e. Board of Zoning Appeals). ACC reserves unto itself, its successors and assigns, the right to control absolutely the precise site and location of any house or other structure upon all lots in the subdivision. Such location shall be determined only after reasonable opportunity has been afforded the lot owner to recommend a specific site.

Section 6. Except for maintenance requirements herein imposed upon the Association, the Owner of any Lot shall, at his own expense, maintain the interior and exterior of any improvements on his Lot, including all driveways and any and all equipment, fixtures, and its other appurtenances, in good order, condition and repair, and in clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his Lot and appurtenances. All exterior maintenance is subject to approval of the ACC.

The Owner of each Lot(s) shall also be responsible and held liable for maintaining, whether or not any improvement has been made thereon, the condition of his/its Lot(s), including but in no way limited to, clearing any trash or litter, having the grass cut to a reasonable height and keeping the property in a general state of good repair so as not to disturb or aesthetically offend the character of the surrounding Lot(s).

If the Lot or improvements are not being properly maintained, written notice shall be given by mail to the record owner of said lot(s), and after ten (10) days from the mailing of said notice, Declarant, or Association, or their approved agents, reserve the right to enter the property and/or to take the appropriate measures to remedy and repair the problem(s). The Lot owner shall be assessed twice the cost to repair or remedy the said problem, including but in no way limited to, any cost incurred in the collection of this indebtedness and reasonable attorney fees in connection therewith. Thirty (30) days after written notice has been mailed, the sum of any unpaid balance in connection with this paragraph shall become a lien, subject only to any previously recorded first mortgages upon the Lot(s) in question, upon the recording of such with the office of the Register of Shelby County, Tennessee.

Section 7. For the purpose solely of performing any of the repairs or maintenance required or authorized by these Declarations, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association, through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the Owner or occupant, to enter upon any Lot at any hour considered to be reasonable under the circumstances.

Section 8. No grading, structure or other improvement of any kind (including but not limited to buildings, walls, fences, concrete drives or walks, swimming pools, outdoor lighting fixtures, landscaping, yard statuary, satellite TV dishes in excess of eighteen (18) inches in diameter, radio towers/antennae, etc.) shall be commenced, erected, placed or permitted to remain upon any lot, nor shall any existing structure or other improvement be altered in any way which changes the exterior appearance thereof (including but not limited to changes to materials, paint color, or roof type or color), nor shall there be any additions, attachments or deletions to any structure or other improvement until the design, plans and specifications have been approved in writing by the ACC. Said design, plans and specifications shall be in such form and shall contain such information as may be required by the ACC. The approval of the ACC may restrict the quality of workmanship, materials, harmony of external design with the existing structures, and location with respect to topography and finished grade elevation.

The ACC reserves the right to require the submission of designs, material selections and layouts of proposed improvements or changes at different stages of the design process, and further reserves the right to specify the information required therein as well as the format thereof. The ACC or its assigns may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval payable at the time such plans and specifications are so submitted. The amount of such fee shall not exceed the cost of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

Generally, the following architectural design criteria must be met, unless otherwise approved in writing by the Architectural Committee:

(a) Carports shall not be allowed and each residence shall have a garage for at least two passenger vehicles, which garage shall not open directly to the street, except when the following conditions are met: (i) the garage is shielded from view from the street by landscaping, walls or other method; and (ii) the garage location and visual shielding are approved by the ACC.

(b) Fences shall be made of wood, brick, plastic or ornamental metal material, or a combination thereof, and must be approved by the ACC prior to construction for each specific Lot by type, design, location, height and color. No chain link fences will be allowed, unless located within a wood fence so as not to be visible from outside the yard. Wood fences shall be of cedar or cypress, shadow box or board-to-board with smooth side out (if visible from street) and shall not exceed six (6) feet in height. No fence shall be constructed in a sideyard closer to the street than the rear of the house or the rear of the house on the adjacent lot, whichever is closer to the street, except that it is permissible to include a side entry door within the rear portion of the sideyard. Notwithstanding anything to the contrary herein, no fence shall be permitted within the front (and side on corner lots) setback areas. Any fences located on a Lot's common boundary with Common Open Space shall be subject to all of the following restrictions unless otherwise approved in writing by the ACC:

(1) Must be a six (6) foot high, sight-proof wood fence of cypress or cedar, as approved by the ACC; and

(2) Must have brick columns of a size, design and spacing approved by the ACC.

(c) No trees existing on any Lot shall be removed, damaged or destroyed without written permission of Declarant or the ACC unless located within the approved building area. Owner shall protect existing trees during the period of construction of a house and other improvements on its Lot by installing and maintaining protective fencing to prevent vehicles, construction materials and any debris from being placed near said trees. Said protective fencing shall be placed so as to protect at least the area under the "drip line" of said trees, extending to the outer edges of all branches. Declarant will not be responsible for any trees that die.

(d) Five (5) foot wide, four thousand (4,000) p.s.i. light broom finish concrete sidewalk shall be installed by each Owner as specified by the Town of Collierville within twelve (12) months after Declarant's installation of asphalt top coat on the streets. If said sidewalks are not installed by Purchaser within the specified time period, Declarant may, at its option, install said sidewalks and charge the cost of same to the Owner. If said costs are not paid within thirty (30) days from the date of billing, then said costs, plus court costs, attorney fees and interest at the maximum legal rate shall become a lien on the property.

(e) The ACC may, at its discretion, publish a list of architectural guidelines to deal with more specific design criteria, which may be revised from time to time, and which shall be incorporated herein by reference.

In the event that ACC fails to approve or disapprove a proposed improvement or change within a period of thirty (30) days after all information required by the ACC including but not being limited to the plans, specifications and specific locations of the proposed improvement or change have been received by ACC, such approval will not be required, and this covenant will be deemed to have been fully complied with as to that specific improvement or change.

Section 9. If any improvement or change requiring approval shall be undertaken on a Lot and said approval has not been obtained from ACC or from a representative, assignee or a committee duly appointed by said ACC, or if any improvement or change which is not in conformance with approved plans and specifications shall be undertaken on a Lot, said improvements or change shall be deemed to have been undertaken in violation of these covenants, and upon written notice from ACC, its representative assignee or committee, any such improvement or change deemed to be in violation shall be promptly removed or altered so as to extinguish such violation and all construction or such improvement shall immediately cease, except as to those steps necessary to make such construction area safe. Declarant, its assignee, representative or the Board shall have the right to seek an injunction to enforce the cessation of such work. If, thirty (30) days after the notice, the owner or owners of the Lot in question shall not have taken reasonable steps toward the removal or alteration of same, Declarant, its representative, assignee or committee, shall have the right, through its agent, to take such legal steps as may be necessary to extinguish such violation and/or to impose a fine not to exceed

\$5000.00, and the cost thereof, including court costs, any fines imposed and reasonable legal fees shall be a binding obligation of the owner as well as a lien on the lot in question upon the recording of such with the office of the Register of Shelby County, Tennessee. Any lien so recorded shall be subordinate to the lien of any previously recorded first mortgage.

Section 10. Upon completion of any improvement or change on a lot undertaken and completed in accordance with plans and specifications approved by ACC, its representative, assignee or committee, and upon written request of the owner or owners of such lot, a certificate of compliance shall be issued in a form suitable for recordation. Preparation and recording of such certificate shall be at the expense of the owner or owners of such lot. Any certificate of compliance issued in accordance with the provisions of this paragraph shall be prima-facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all improvements and changes described therein comply with all requirements of ACC, its representative or committee.

Section 11. Declarant reserves unto itself the right to impose additional and separate restrictions at the time of sale of any of the Lots sold by Declarant in this subdivision, which said restrictions may not be uniform, but may differ as to different Lots.

Section 12. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 13. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on any Lot shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

Section 14. No recreational vehicles or commercial vehicles, including but not limited to boats, boat trailers, house trailers, camping trailers, motorcycles, or similar type items shall be kept other than in a garage, or otherwise screened from view of neighbors and the streets as determined by the ACC. No tractor or trailer may be parked on any Lot or in the street in front of any house.

Section 15. Vegetable gardening will be allowed only within a fenced area to the rear of the house. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats and other household pets may be kept, providing they are not bred or kept for any commercial purposes. No commercial breeding of pets will be allowed.

Section 16. Declarant reserves the right to assign any or all of its rights, obligations, privileges or undertakings imposed by these restrictions for improvements on any Lot(s) to a representative, assignee or committee appointed by it, hereby relieving Declarant of any and all liability or obligation for any cause that may arise on or after the time of said assignment.

Section 17. Neither Declarant, nor the Association or its Board, nor the ACC, nor any member, employee, owner, architect, consultant, or agent thereof shall be responsible or liable in

any way regarding any plans or specifications submitted, revised, approved or disapproved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. Nor shall the above be liable for or responsible for any exterior or interior plans of structures built or to be built on any lot or the review thereof.

Section 18. The right is given to the Association to require the Owner of a damaged or destroyed residence on any Lot to make repairs or replacements in order to restore the residence to its condition prior to the damage or destruction, including the right to require that insurance proceeds paid to the Owner, because of said damage or destruction, be applied to the repair or replacement.

The Owner of each Lot shall carry and keep in full force and effect, at all times at the expense of the Owner, casualty insurance with limits equal to the replacement value of the improvements located thereon.

Section 19. Easements for utilities and drainage are reserved as shown on the Site Plan or as recorded in the Register's Office of Shelby County, Tennessee. No Owner shall, within any such easement areas or at other locations whether within or without designated easement areas, place or permit any structures, fencing, plants or other material which may damage or interfere with the installation and maintenance of utilities and/or interfere with the positive natural drainage established by Declarant. Further, no Owner shall install any Improvements or modify any existing grades in such a manner as would impair the positive, natural flow of water from or onto the Owner's Lot. The easement area on each Lot shall be maintained continuously by the Owners of such Lot.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 1. Gender and Grammar. The singular whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men and women, shall in all cases be assumed as though in each case full.

Section 2. Amendments by Owners. This Declaration may be amended by the affirmative vote of the Owners holding not less than two-thirds (2/3) of the votes of the membership. Any such amendment shall be reduced to writing and recorded in the Register's Office of Shelby County, Tennessee.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT, TO UNILATERALLY AMEND THIS DECLARATION TO MEET THE REQUIREMENTS OF ANY MORTGAGE LENDER OR GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL, OR FOR ANY REASON THAT THE DECLARANT DEEMS ADVISABLE IN ITS SOLE SUBJECTIVE DISCRETION FOR THE ORDERLY DEVELOPMENT AND MANAGEMENT OF BRAYSTONE PARK SUBDIVISION AND/OR THE ASSOCIATION.

Section 3. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 4. These covenants are to run with the land and shall be binding on all the parties and all persons claiming under them until December 31, 2032, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless, by a vote of a majority of the then owners of the Lots, it is agreed to change said covenants in whole or in part.

Section 5. Construction materials shall be kept out of the public right-of-way at all times and stored on the Lot on which the construction is taking place. Streets and service drives (alleys) adjacent to said property shall be kept open for circulation at all times. This is for the protection of all parties and to allow emergency vehicles direct access to any part within the Property.

All wrappers, paper goods and light-weight building materials that may be blown onto adjacent properties shall be maintained, properly stored or deposited in trash receptacles on a daily basis.

Workers utilizing Common Open Space for lunch or breaks shall remove all food wrappers, containers, etc., and deposit said debris in trash receptacles, which shall be located on the Lot on which they are working.

Section 6. Concrete trucks are strictly prohibited from dumping any excess concrete anywhere within the Property. Concrete which is accidentally spilled on sidewalks, common areas, curbs or paving must be removed by the responsible party immediately.

Section 7. Each builder is responsible for his own Port-A-John or for making arrangements with nearby builders to share a unit between several construction sites. The Port-A-John shall be maintained on a regular basis and located at the rear of the construction site and the door of the Port-A-John shall not face any street sidewalk or other public right-of-way.

Section 8. There are no dump sites within the Property. All construction refuse and debris removed from any Lot during and upon completion of construction shall be properly disposed of, outside of the boundaries of the Property.

A fine of One Thousand Dollars (\$1,000.00) per occurrence shall be imposed by the Association or Declarant on anyone dumping debris on any portion of the Property. This fine shall accrue to the Lot from which the debris originated and a lien shall be filed on said Lot. The workman and company responsible for depositing such debris shall be prohibited from future work in the Lot. The Owner responsible shall be fined as well.

ARTICLE VII ENFORCEMENT

Section 1. If the parties hereto, or any of them, or their heirs or assigns, shall violate any of the covenants herein, it shall be lawful for any Owner, the Association and/or Declarant to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either, through the court or other legal authority, prevent him or them from so doing or to recover damages or other dues for such violation. Should the case be tried in a court of law, the losing party shall pay all court costs and reasonable attorney fees of the successful party.

Section 2. If Declarant, its agent or assigns, attempts to enforce through any legal means any of the covenants, restrictions or liens therein, the cost of said enforcement, including but in no way limited, to, reasonable attorney fees shall be paid by the Owner or other violating or attempting to violate said restrictions and covenants.

Section 3. The following shall be a default hereunder: failure by an Owner or an Owner's agents, representatives or assigns ("Defaulting Party"), to observe or perform any of the covenants, conditions or obligations of this Declaration (except for Nonpayment of Assessment, Article 4, Section 9), (a) within thirty (30) days after the issuance of a written notice by Declarant or the Association, their agents or assigns, specifying the nature of the default claim, or (b) within such additional reasonable time period as is necessary to cure the same if the default cannot be cured within said thirty (30) day period, provided that the Defaulting Party commences to cure the default within said thirty (30) day period and cures such default within ninety (90) days of such issuance of a written notice ("Default"). The Declarant, the Association or their agents, representatives or assigns, shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto or any other person violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration and recover damages for any such violation or default. Such proceedings shall include the right to restrain by injunction any violation or threatened violation of any of the terms, covenants or conditions of this Declaration or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition is not adequate. The Declarant, the Association, or their agents, representatives or assigns shall also have the right to impose a fine not to exceed Five Hundred Dollars (\$500.00) for a one-time occurrence and a fine not to exceed Fifty Dollars (\$50.00) per day for a continuing default. Reasonable attorney fees shall be paid by the Owner or other party violating or attempting to violate the conditions and terms of this Declaration. Any fines imposed and reasonable legal fees shall be a binding obligation of the Owner as well as a lien on the Lot in question upon recording of such with the office of the Register of Shelby County, Tennessee. Any lien so recorded shall be subordinate to the lien of any previously recorded first mortgage.

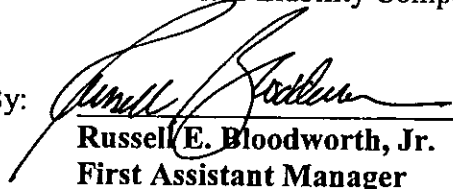
Section 4. Fine. The ACC, and/or the Board of the Association shall have the right but not the obligation to impose a fine not to exceed Five Hundred Dollars (\$500.00) as adjusted annually by Consumer Price Index (or any substitute index) for any one violation of the

covenants contained herein. Such a fine shall be in addition to the remedies set forth previously herein and shall not restrain the aforementioned entities from taking any or all of the remedies and actions outlined in this Declaration. At the discretion of the Board and/or Association, a violation which continues after the provision of written notice shall be treated as a continuous violation and shall result in a fine of One Hundred Dollars (\$100.00) (in 2002 dollars), adjusted annually by Consumer Price Index, with 2002 as the base year, per day until the violation ceases. Fines shall be attributable to each Lot and shall be a personal obligation of the Owner and shall be secured by a lien on such Lot at the time they become payable, pursuant to notice given by the Board of Directors by billing or otherwise (whether or not such notice is received by the Owner), and such lien shall also cover interest and any necessary collection expenses, including attorneys fees, provided, however, that such lien shall be subordinate to real estate taxes and any deed of trust or mortgage to secure a bona fide indebtedness recorded prior to the giving of such notice, or within ten (10) days after receipt of a written acknowledgement from the Association that no charges are outstanding against such Lot.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 3rd day of December, 2002.

BRAY STATION, L.L.C.,
a Tennessee Limited Liability Company

By:



Russell E. Bloodworth, Jr.
First Assistant Manager

ACKNOWLEDGEMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public of the state and county mentioned, personally appeared **Russell E. Bloodworth, Jr.**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the First Assistant Manager of **Bray Station, L.L.C.**, a Tennessee limited liability company, the within named bargainor, and that he as such First Assistant Manager executed the foregoing instrument for the purposes therein contained, by signing the name of **Bray Station, L.L.C.**, a limited liability company, by himself as First Assistant Manager.

WITNESS my hand, at office, this 3rd day of December, 2002.

My Commission expires:

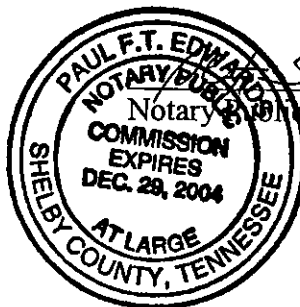
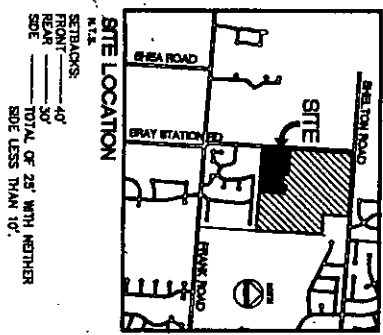
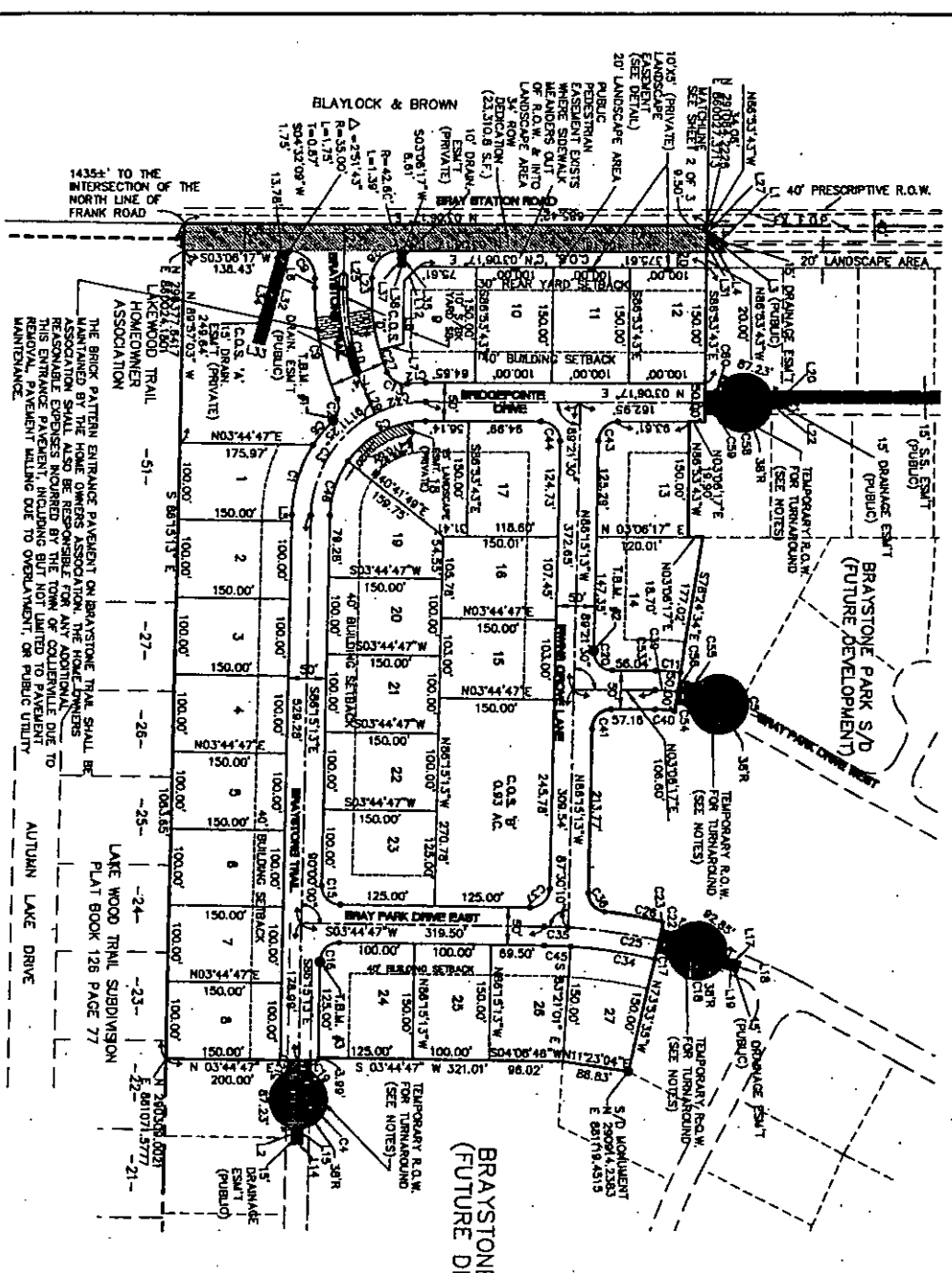


EXHIBIT "A"
Legal Description

Description of a tract of land being developed by Bray Station L.L.C. as Braystone Park S/D, Phase 1 in Collierville, Tennessee, said tract being more particularly described by metes and bounds as follows:

Beginning at the southwest corner of the herein described tract, said point being located in the physical centerline of Bray Station Road (undedicated, 40' prescribed R.O.W.) and being 1435 feet north of the intersection of the north line of Frank Road produced with the centerline of Bray Station Road as measured along said centerline; thence continuing along said centerline of Bray Station Road North 03 degrees 06 minutes 17 seconds East 685.42 feet to a point; thence South 86 degrees 53 minutes 43 seconds East 254.06 feet to a point; thence South 03 degrees 06 minutes 17 seconds West 19.90 feet to a point, said point being the northwest corner of the proposed Lot 13 of the herein described Braystone Park S/D, Phase 1; thence South 86 degrees 53 minutes 43 seconds East 150.00 feet to a point, said point being the northeast corner of said Lot 13; thence North 03 degrees 06 minutes 17 seconds East 18.70 feet to a point, said point being the northwest corner of Lot 14 of said Phase 1; thence South 78 degrees 24 minutes 34 seconds East 227.02 feet to a point of cusp; thence along a curve to the left having a radius of 175.00 feet and a central angle of 08 degrees 29 minutes 09 seconds an arc distance of 25.92 feet (chord - South 07 degrees 20 minutes 51 seconds West 25.89 feet) to a point of tangency; thence South 03 degrees 06 minutes 17 seconds West 57.16 feet to a point of curvature; thence along a curve to the left having a radius of 25.00 feet and a central angle of 89 degrees 21 minutes 30 seconds an arc distance of 38.99 feet (chord - South 41 degrees 34 minutes 28 seconds East 35.16 feet) to a point of tangency; thence South 86 degrees 15 minutes 13 seconds East 213.77 feet to a point of curvature; thence along a curve to the left having a radius of 25.00 feet and a central angle of 83 degrees 50 minutes 18 seconds an arc distance of 36.58 feet (chord - North 51 degrees 39 minutes 48 seconds East 33.40 feet) to a point of reverse curvature; thence along a curve to the right having a radius of 725.00 feet and a central angle of 06 degrees 12 minutes 51 seconds an arc distance of 78.63 feet (chord - North 13 degrees 00 minutes 54 seconds East 78.59 feet) to a point; thence South 73 degrees 53 minutes 35 seconds East 200.00 feet to a point, said point being the northeast corner of Lot 27 of said Phase 1; thence South 11 degrees 23 minutes 04 seconds West 86.83 feet to a point, said point being the southeast corner of said Lot 27 and the northeast corner of Lot 26 of said Phase 1; thence South 04 degrees 08 minutes 46 seconds West 96.02 feet to a point, said point being the southeast corner of said Lot 26 and the northeast corner of Lot 25 of said Phase 1; thence South 03 degrees 44 minutes 47 seconds West 225.00 feet to a point, said point being the southeast corner of Lot 24 of said Phase 1; thence South 86 degrees 15 minutes 13 seconds East 3.99 feet to a point; thence South 03 degrees 44 minutes 47 seconds West 200.00 feet to a point, said point being the southeast corner of Lot 8 of said Phase 1; thence North 86 degrees 15 minutes 13 seconds West 1083.65 feet to the POINT OF BEGINNING and containing 15.89 acres.

EXHIBIT "B"
Plat



NOTE:
1. ALL RIGHTS OF ACCESS DIRECTLY ONTO BRAY STATION ROAD & BRAY STATION TRAIL FROM ANY PROPERTY LINE OF LOTS 1-12 IS HEREBY CONVEYED TO THE TOWN OF COLLIERVILLE. NO ACCESS SHALL BE PERMITTED ACROSS AREAS DENOTED AS 'COMMON OPEN SPACE' ON THE FINAL PLAT FROM LOT 1 ONTO BRAY STATION ROAD. IN THE EVENT THE AREA DENOTED AS 'COMMON OPEN SPACE' REVERTS TO THE TOWN OF COLLIERVILLE OWNERS, NO DIRECT ACCESS ONTO BRAY STATION ROAD SHALL BE PERMITTED.

2. THERE IS A FIVE (5) FOOT UTILITY EASEMENT ALONG THE FRONT, REAR AND SIDE LINES OF ALL LOTS UNLESS SHOWN OTHERWISE. ALL UTILITY EASEMENTS ARE TO BE OUTSIDE ALL PUBLIC EASEMENTS.

3. ALL TEMPORARY R.O.W. FOR TURNOVER SHALL BE ABANDONED WHEN FUTURE AREA IS DEVELOPED.

4. THE HOMEOWNERS ASSOCIATION SHALL MAINTAIN THE LIGHT FIXTURES AND LIGHTING IN COMMON OPEN SPACES, PERIPHERY AREAS, DRIVE STRUCTURE, ALL COMMON OPEN SPACES AND THE ADJACENT WITHIN THE COMMON OPEN SPACES.

5. THE HOMEOWNERS ASSOCIATION SHALL BE RESPONSIBLE FOR MAINTENANCE AND REPAIR OF ANY REGULATION WITHIN PUBLIC RIGHT-OF-WAY.

6. THE PRIVATE LANDSCAPE EASEMENT IS RESERVED FOR THE BENEFIT OF THE HOMEOWNERS ASSOCIATION AND HOMEOWNERS ASSOCIATION TO PLACE THEREIN ANY PLANTING MATERIAL AND SCENES BOTH OF WHICH ARE TO BE APPROVED BY THE TOWN OF COLLIERVILLE.

THE AREA DENOTED AS 'STORMWATER DETENTION AREA' MAY NOT BE USED FOR ANY OTHER PURPOSES. THE DETENTION SYSTEM FROM THE TOWN OF COLLIERVILLE LOCATED IN THIS AREA SHALL BE THE STORMWATER DETENTION SYSTEM AS SHOWN ON THE FINAL PLAT. MAINTENANCE SHALL BE PERFORMED SO AS TO ENSURE THAT THE SYSTEM OPERATES IN ACCORDANCE WITH THE APPROVED DRAINAGE PLAN ON FILE IN THE OFFICE OF THE ENGINEER. THE TOWN OF COLLIERVILLE DEPARTMENT OF ENGINEERING, SUCH AS THE REMOVAL OF DEBRIS, SHALL BE LIMITED TO THE REMOVAL OF DEBRIS AND REPAIR OF DRAINAGE STRUCTURES.



THIS PROPERTY IS NOT LOCATED IN A 100 YEAR FLOOD HAZARD AREA.
FIELD, PANEL 100 W. FLOOD E. 2810
FINAL PLAT
BRAYSTONE PARK S/D
(FORMERLY IRWIN'S PARK S/D)
PHASE 1
COLLIERVILLE, TENNESSEE
OCTOBER 2002
TOTAL AREA: 15.88 ACRES
TOTAL LOTS: 27
ZONED: R-1

PREPARED FOR: HICKER & ARNOLD, INC.
BRAY STATION ROAD
100 W. FLOOD E. 2810
MEMPHIS, TN 38119

HICKER & ARNOLD, INC.
100 W. FLOOD E. 2810
MEMPHIS, TN 38119

LOT NO.	F.F. AREA (S.F.)
1	540.00
2	542.00
3	543.00
4	544.00
5	545.00
6	546.00
7	547.00
8	548.00
9	549.00
10	550.00
11	551.00
12	552.00
13	553.00
14	554.00
15	555.00
16	556.00
17	557.00
18	558.00
19	559.00
20	560.00
21	561.00
22	562.00
23	563.00
24	564.00
25	565.00
26	566.00
27	567.00
COS A	48,389
COS B	40,483
COS C	12,823
COS D	1,293

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CHARTER OF BRAYSTONE PARK HOMEOWNERS ASSOCIATION, INC.

The undersigned person under the Tennessee Nonprofit Corporation Act, adopts the following charter for the above listed corporation:

1. The name of the corporation is Braystone Park Homeowners Association, Inc.
2. This corporation is a mutual benefit corporation.
3. This corporation is not a religious corporation.
4. (a) The complete address of the corporation's initial registered office is 1000 Ridgeway Loop Road, Suite 200, Memphis, Shelby County, Tennessee 38120.
 (b) The name of the initial registered agent, to be located at the address listed in 4(a), is Paul F. T. Edwards.

5. The name and complete address of the incorporator is:

Paul F. T. Edwards
 1000 Ridgeway Loop Road, Suite 200
 Memphis, Tennessee 38120

6. The complete address of the corporation's principal office is:


5900 Poplar Avenue
 Memphis, TN 38119

7. This corporation is a nonprofit corporation.
8. The corporation will have members.
9. The corporation may be dissolved with the assent given in writing and signed by not less than sixty-seven percent (67%) of the members. Upon dissolution of the corporation, other than incident to a merger or consolidation, the assets of the corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this corporation was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.
10. No director shall be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director, except as otherwise provided in subparagraph (A), (B), and (C) of T.C.A. Section 48-52-102(b)(3). The foregoing shall not

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 OF TENNESSEE
 SECRETARY OF STATE
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eliminate or limit the liability of a director for any action or omission occurring prior to the date when this paragraph becomes effective.

WITNESS my hand this 24th day of October, 2002.




Paul F. T. Edwards, Incorporator



Tom Leatherwood
Shelby County Register

As evidenced by the instrument number shown below, this document has been recorded as a permanent record in the archives of the Office of the Shelby County Register.

	
02182468	
10/28/2002 - 04:02 PM	
3 PGS : R - CHARTER IN STATE	
DAVEY 81434-2182468	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	5.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	4.00
TOTAL AMOUNT	11.00
TOM LEATHERWOOD	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	

“EXHIBIT D”

**BYLAWS
OF
BRAYSTONE PARK HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I

Section 1. Name. The name of this corporation is Braystone Park Homeowners Association, Inc. Its principal place of business is 5900 Poplar Avenue, Suite 100, Memphis, Tennessee 38119. The corporation may have such other offices within or without the State of Tennessee as the Board of Directors or the Members may from time to time designate.

ARTICLE II

Section 2. Applicability. These Bylaws and each provision thereof shall be applicable to all Lots and Members, as defined in the Declaration of Covenants, Conditions and Restrictions for Braystone Park Subdivision.

ARTICLE III

Section 1. Eligibility. The Owner or Owners, as defined in said Declaration of Covenants, of a Lot, who have become such in compliance with all of the requirements and conditions contained in the Declaration of Covenants, including these Bylaws, shall be entitled to attend and vote at all meetings of the Association. The Declarant shall be considered the Owner of each Lot which is unsold by it. Ownership of a Lot shall be the sole qualification for membership in the Association.

Section 2. Classification of Members and Voting Rights. The Association shall have one (1) class of voting. Members shall be Owners, as hereinbefore defined, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in a Lot, all such persons shall be Members, but the vote for such Lot shall be cast as determined by all the persons having an ownership interest in said Lot. In no event shall more than one (1) vote be cast with respect to any Lot not owned by Declarant.

Notwithstanding the above, the Declarant shall initially be entitled to three hundred sixty (360) votes. Declarant's votes shall be decreased by one (1) vote for each Lot that has been conveyed to a third party not affiliated with Declarant.

The Declarant's votes shall be reduced to one (1) vote per Lot owned by Declarant upon the occurrence of the earlier to occur of:

(a) When the Declarant's total votes outstanding equals total votes outstanding by Owners other than Declarant or Declarant's affiliates; or

(b) When the Declarant decides, in its sole subjective discretion to reduce its outstanding votes to one (1) vote per Lot owned by Declarant.

It is the intent of the Declarant that it shall maintain control of the Association so long as Declarant owns any part of the Property or at least one Lot or any Common Open Space.

Section 3. Declarant reserves the right to unilaterally add property ("Added Property") and/or Lots to be covered by and to be subject to the provisions of this Declaration.

ARTICLE IV

Section 1. Place of Meeting. Meetings of the membership shall be held at the principal office or the place of business of the Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. Annual Meetings. The annual meetings of the Members of the Association shall be held at 6:00 P.M. on the first Tuesday in April of each year, beginning at the discretion of the Declarant. At such meeting there shall be elected by secret written ballot of the Members a Board of Directors in accordance with the requirements of Section 5 of Article V of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Board of Directors or upon a petition signed by Members representing at least ten percent (10%) of the total number of votes entitled to be cast on any issue proposed to be considered at the proposed special meeting having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member of record, at his address as it appears on the membership book of the Association, if any, or if no such address appears, at his last known place of address, at least ten (10) days but no more than two (2) months prior to such meeting. Service may also be accomplished by the delivery of any such notice to the Member at his last known address by deposit in the box or slot for the United States mail. Notice by either such method shall be considered as notice served. Attendance by a Member at any meeting of the Members shall be a waiver of notice by him of the time, place and purpose thereof.

Section 5. Quorum. The presence, either in person or by proxy, of Members representing at least fifty-one percent (51%) of the total votes of Members entitled to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for, the

transaction of business at all meetings of Members. It is not necessary that the presence of Members or proxies entitled to cast 51% of all the votes of each class of membership be present to constitute a quorum so long as 51% of all the votes of all classes of membership combined are present. If the required quorum is not present, the Members who are present either present or by proxy may except as provided by law adjourn the meeting to a time not less than 48 hours from the time the original meeting was called. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

Section 6. Adjourned Meeting. If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of Members representing a fifty-one percent (51%) majority of the total votes cast, in person or by proxy, provided a quorum exists, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or of the Charter of Incorporation, or the Declaration, or of these Bylaws, a different vote is required, in which case such express provision shall govern and control. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

Section 8. Proxies. Any Member may appoint any other Member or the Developer or any other person permitted by law or by these Bylaws as his proxy. In no case may any Member (except the Developer) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and must comply with all requirements imposed by law or by these Bylaws.

Section 9. Action Without Meeting. Whenever the vote of Members at a meeting thereof is required or permitted to take any action in accordance with any statute, the Declaration or these Bylaws, such meeting and vote may be dispensed with if all Members who would have been entitled to vote upon such action receive a written ballot from the Association. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approvals shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equal or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Section 10. Order of Business. The order of business at all regularly scheduled meetings of the Members shall be as follows:

- (a) Roll call and certificate of proxies.

- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers, if any.
- (e) Reports of committees, if any.
- (f) Unfinished business.
- (g) New business.
- (h) Election or appointment of inspectors of election.
- (i) Election of directors.

In the case of a special meeting, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meeting.

ARTICLE V

Section 1. Number and Qualification of Board. The affairs of the Association shall be governed by the Board of Directors composed of at least two (2) persons and not more than seven (7) persons, a majority of whom, after the fifth annual meeting of Members shall be Members of the Association. For purposes of this Section 1, an officer or owner of the Declarant shall be deemed a Member.

Section 2. Initial Directors. The initial Directors shall be elected by the Declarant and need not be Members of the Association. The names of the Directors who shall act as such from the date upon which the Declaration is recorded in the Register's Office of Shelby County, Tennessee, until such time as their successors are duly chosen and qualified are as follows:

Gary L. Thompson
Charles A. Claiborne
John C. Faquin

Section 3. Power and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and the subdivision and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Members. The powers and duties of the Board of Directors shall include, but not be limited to, the following:

To provide for:

(a) Care and upkeep of the Common Open Space and any other properties charged to the care of the Association, including establishing reserves for repairs or replacements.

(b) Establishment and collection of assessments and/or carrying charges from the Members and for the assessment and/or enforcement of liens therefor in a manner consistent with law and the provisions of these Bylaws and the Declaration.

(c) Designation, hiring and/or dismissal of the personnel necessary for the good working order of Braystone Park and to provide services for the community in a manner consistent with law and the provisions of these Bylaws and the Declaration.

(d) Promulgation and enforcement of such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of Braystone Park, all of which shall be consistent with law and the provisions of these Bylaws and Declaration.

Section 4. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 5. Election and Term of Office. The term of the Directors named herein shall expire when their successors have been elected at the first annual meeting of Members and are duly qualified. At the first annual meeting of the Members, the Members shall determine the number of Directors consistent with these Bylaws, who shall constitute the Board of Directors to serve until the next annual meeting and until their successors have been elected and duly qualified. The term of office of each Director thereafter shall be for a period of one (1) year and until their successors shall have been elected and hold their first meeting.

Section 6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the membership shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a director until a successor is elected by the Members at the next annual meeting.

Section 7. Removal of Directors. At a regular meeting, or special meeting duly called for such propose, any Director may be removed with or without cause by the affirmative vote of the majority of the entire membership of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than sixty (60) days delinquent in payment of any assessments and/or carrying charges due the Association shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 6 of this Article.

Section 8. Compensation. No compensation shall be paid to Directors for their services as Directors. After the first annual meeting of the members, no remuneration shall be paid any Director who is also a Member of the Association for services performed for the Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

Section 9. Organizational Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during each calendar year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least two (2) days prior to the day named for such meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President on two (2) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the date, time and place (as hereinabove provided), but not necessarily the purpose, of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third (1/3) of the Directors.

Section 12. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all the Directors are present and remain present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 13. Quorum. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such meeting, any

business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 14. **Action Without Meeting.** Any action of the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to take such action without a meeting. Such written consent or consents describing the action taken and signed by each Director shall be filed with the minutes of the proceedings of the Board of Directors. If all Directors consent to taking such action without a meeting, the affirmative vote of the number of Directors that would be necessary to take such action at a meeting is the act of the Board.

Section 15. **Fidelity Bonds.** The Board of Directors may require that all officers and employees of the Association handling or responsible for the Association's trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

ARTICLE VI

Section 1. **Designation.** The principal officers of the Corporation shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. Prior to the first annual meeting of Members, the officers of the Association need not be Members of the Association. The Directors may appoint an assistant secretary and as assistant treasurer and such other officers as in their judgment may be necessary. The offices of Secretary and Treasurer may be filled by the same person.

Section 2. **Election of Officers.** The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board of Directors.

Section 3. **Removal of Officers.** Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 4. **President.** The President shall be the chief executive officer of the Association. In the event he is also a member of the Board of Directors' he shall preside at all meetings of the Members and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an association, including, but not limited to, the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the

Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Members of the Association; he shall have custody of the seal of the Association, if any; he shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and he shall, in general, perform all duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VII

Section 1. Liability and Indemnification of Officers and Directors. The Association shall indemnify every officer and Director of the Association against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or Director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding) if approved by the then Board of Directors of the Association to which he may be made a party by reason of being or having been an officer or Director of the Association, whether or not such person is an officer or Director at the time such expenses are incurred. The officers and Directors of the Association shall not be liable to the Members of the Association for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The officers and Directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association of Braystone Park Subdivision (except to the extent that such officers or Directors may also be Owners of Lots within the subdivision), and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director of the Association or former officer or Director of the Association may be entitled.

Section 2. Common or Interested Directors. The Directors shall exercise their powers and duties in good faith and with a view to the interest of the Association and the subdivision. No contract or other transaction between the Association and one or more of its Directors, or between the Association and any corporation, firm or association (including the Developer) in which one or more of the Directors of this Association are Directors or officers or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at a meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if any of the conditions specified in any of the following subparagraphs exist:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; and

(b) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction with like force and effect as if he were not such Director or officer of such other corporation or not so interested.

ARTICLE VIII

Section 1. Management and Common Expenses. The Association, acting by and through its Board of Directors, shall manage, and operate the affairs of the Association and, for the benefit of the Lots and the Owners thereof, shall enforce the provisions hereof and shall pay out of the common expense fund herein and elsewhere provided for, the following:

(a) The cost of such insurance as the Association may effect.

(b) The cost of providing such legal and accounting services as may be considered necessary to the operation of Braystone Park Subdivision.

(c) The cost of any and all materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like, which the Association secures in the discretion of the Board of Directors or by the vote of the Members shall be deemed necessary or proper.

(d) The cost of the maintenance or repair on any Lot in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Open Space or to preserve the appearance or value of Braystone Park Subdivision or is otherwise in the interest of the general welfare of all Owners of the Lots; provided, however, that no such maintenance or repair shall be undertaken without a resolution by the Board of Directors and not without reasonable written notice to the Owner of the Lot proposed to be maintained and provided, further, that the cost thereof shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be sent promptly to the then Owner of said Lot at which time the assessment shall become due and payable and a continuing lien and obligation of said Owner.

(e) All other items which are listed as responsibilities of the Association as found in the Declaration.

Section 2. Duty to Maintain. Except for maintenance requirements herein imposed upon the Association, the Owner of any Lot shall, at his own expense, maintain the interior and exterior of any improvements on his Lot, including all driveways and any and all equipment, and fixtures therein situate, and its other appurtenances, in good order, condition and repair, and in clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his Lot and appurtenances. All exterior maintenance is subject to approval of the Architectural Control Committee.

Section 3. Right of Entry. For the purpose solely of performing any of the repairs or maintenance required or authorized by these Bylaws, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association, through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the Owner or occupant, to enter upon any Lot at any hour considered to be reasonable under the circumstances.

ARTICLE IX

Section 1. Fiscal Year. The fiscal year of the Association shall begin on the first day of January every year, except for the first fiscal year of the Association, which shall begin at the date of incorporation. The commencement day of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 2. Books and Accounts. Books and accounts of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practice. The same shall include books with detailed accounts, in chronological order, of receipts and of the expenditures affecting Braystone Park Subdivision and its administration and shall specify the maintenance and repair expenses incurred. That amount of any assessment required for payment of any capital expenditures of the Association shall be credited upon the books of the Association to the "Paid-In-Surplus" account as a capital contribution by the Members.

Section 3. Reports. The Association shall furnish its Members, and the holder of first mortgages requesting same in writing within ninety (90) days from the date of close of each fiscal year, with an annual financial statement, including the income and disbursements of the Association.

Section 4. Inspection of Books. The books and accounts of the Association, and vouchers accrediting the entries made thereupon, shall be available for examination by the Members of the Association, and/or their duly authorized agents or attorneys, and to the institutional holder of any first mortgage on any Lot and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interest as Members.

Section 5. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the

Association by such officers, agents, or other persons as are from time to time so authorized by the Board of Directors.

Section 6. Employment of Management Company. The Association shall be authorized to employ a management company to aid the Association in carrying out its duties and responsibilities. Prior to passage of control of the Association from the Developer, no management or service contract shall be entered into unless there is a right of termination, without cause, upon ninety (90) days' written notice.

ARTICLE X

Section 1. Amendments. These Bylaws may be amended by the affirmative vote of Members holding not less than two-thirds (2/3) (unless the Declaration calls for a greater number with respect to a particular clause) of all votes entitled to be cast at any meeting of the Members duly called for such purpose, and only after thirty (30) days' prior written notice to the institutional holders of all first mortgages on the Lots in Braystone Park Subdivision. Amendments may be proposed by the Board of Directors or by petition signed by Members representing at least thirty percent (30%) of the total number of votes entitled to be cast. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

ARTICLE XI

Section 1. Notice to Board of Directors. Any Owner of any Lot in the subdivision who mortgages such Lot shall promptly notify the Board of Directors of the name and address of his mortgagee and, if requested so to do, shall file a conformed copy of such mortgage with the Board of Directors. The Board of Directors shall maintain suitable records pertaining to such mortgages.

Section 2. Definition. As used in this Article, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees and the term "mortgage" shall include a deed of trust. As used generally in these Bylaws, the term "institutional holder" or "institutional mortgagee" shall include banks, trust companies, insurance companies, savings and loan associations, pension funds and any corporation, including a corporation of, or affiliated with, the United States government, or any agency thereof.

ARTICLE XII

Section 1. Resident Agent. The resident agent shall be designated as the person authorized to accept service of process in any action relating to two or more Lots or to the Common Areas.

Section 2. Notices. Unless another type of notice is herein or elsewhere specifically provided for, any and all notices called for in the Declaration or these Bylaws shall be given in writing.

Section 3. Severability. In the event any provision or provisions of these Bylaws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 4. Waiver. No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 5. Captions. The captions contained in these Bylaws are for convenience only and are not a part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of the Bylaws.

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

Section 7. CONFLICTS. THESE BYLAWS ARE SUBORDINATE TO ALL PROVISIONS OF THE DECLARATION. ALL OF THE TERMS HEREOF, EXCEPT WHERE CLEARLY REPUGNANT TO THE CONTEXT, SHALL HAVE THE SAME MEANING AS IN THE DECLARATION. IN THE EVENT OF ANY CONFLICT BETWEEN THESE BYLAWS AND THE DECLARATION, THE PROVISIONS OF THE DECLARATION SHALL CONTROL, AND IN THE EVENT OF ANY CONFLICT BETWEEN THE AFORESAID DECLARATION AND ANY OF THE LAWS OF THE STATE OF TENNESSEE, THE PROVISIONS OF THE STATUTE SHALL CONTROL.