

**DECLARATION OF RESTRICTIVE COVENANTS
FOR WELLESLEY SUBDIVISION**

This declaration, made and published on the 16th day of December, 2003...

WHEREAS, the undersigned, CAPSTONE DEVELOPERS, LLC, a Tennessee Limited Liability Company (Hereinafter referred to as "DEVELOPER"), is the owner of Lots 1- 45 of Wellesley Subdivision, as shown on the final plan for Lots 1-45 of Wellesley Subdivision ("Subdivision") by plat of record in the Register's Office of Hamilton County, Tennessee, and

WHEREAS, it is the plan of DEVELOPER to restrict Lots 1-45 of the Subdivision, as well as all lots subsequently platted in the Subdivision, to residential purposes;

NOW, THEREFORE, in consideration of the premises, and for the protection of the present owner, as well as the future owners of Lots 1-45, inclusive, of the Subdivision, this declaration and agreement is made:

Each and every conveyance of any one of the Subdivision lots shall be subject to conditions, reservations, covenants and agreements which shall run with the land, as follows:

ORGANIZATION

1. **WELLESLEY HOMEOWNER'S ASSOCIATION.** The Developer has caused, or may in the future cause, the Wellesley Homeowner's Association hereinafter (WHA) to be formed as a non-profit Tennessee Corporation for the purpose of preserving and enhancing the general quality of the Subdivision by maintaining and keeping in good repair common areas as defined in paragraph 17 herein and be responsible for maintaining all drainage areas that were originally maintained by Developer.
2. **TRANSFER TO WHA.** Full control of WHA automatically shall be vested with the Lot owners upon the sale of all of the lots in Phase I and Phase II for a total of 97 lots, however, the Developer reserves the right to release control of WHA to the lot owners at an earlier time. Membership in WHA shall be required of the owner(s) of each lot who shall be granted one share per Lot in WHA. Each share shall have one vote as to official WHA business. So long as the Developer owns any lots the Developer shall have one share in WHA per lot.
3. **ASSESSMENTS.** Each Lot owner covenants and agrees to pay to WHA all assessments for common area maintenance, and other official business expenses approved by the WHA board of directors. All such assessments shall be a charge on the lot and shall be a continuing lien upon the lot against which assessment is made in favor of WHA, and WHA shall be entitled to file a document evidencing such lien in the Register's Office of Hamilton County, Tennessee. The liens provided for in this Declaration shall be subordinate to the lien of a First Mortgage on any Lot if, and

only if, all assessments, whether annual or special, with respect to such Lot having a due date on or prior to the date such Mortgage is recorded have been paid. In the event a First Mortgagee shall acquire title to any Lot by virtue of any foreclosure, deed in lieu of foreclosure, or judicial sale, such Mortgagee acquiring title shall only be liable and obligated for assessments, whether annual or special, as shall accrue and become due and payable for said Lot subsequent to date of acquisition of such title. In the event of the acquisition of title to a Lot by foreclosure, deed in lieu of foreclosure, or judicial sale, any assessments, whether annual or special, as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners as a part of the Common Expense; provided, however, nothing contained herein shall be construed as releasing the party or parties liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

Annual assessments shall be levied at a uniform rate per lot and shall be paid in such manner and on such dates as may be fixed by the WHA board of directors. Such assessments shall commence as to all lots then existing and subject to this Declaration on the first day of the month following initial occupancy but shall NOT apply to any lots that are owned by Developer. At the time of purchase of any lot from Developer the purchaser of said lot shall pay a \$200.00 initiation fee to WHA. The aggregate fund established by such funds shall be used by Developer to maintain the common areas and drainage areas until such time as the control of WHA shall be vested in the lot owners and thereafter, such monies shall be maintained in a segregated account for the purpose of insuring that WHA will have cash available to meet unforeseen expenditures.

BUILDING AND RESTRICTIONS

1. All of the Subdivision lots shall be, and shall be known and described as, single family residential lots. Except as provided in this document, no structure shall be erected, altered, placed or permitted to remain on any of the Subdivision lots other than one (1) single family dwelling and attached garage.
2. No lot shall be used as a street or easement for access to any adjacent property without submitting for approval in writing to DEVELOPER and procuring its written approval. DEVELOPER shall not have any obligation to permit such street or easement. The decision to do so, or not to do so, shall be in the sole discretion of DEVELOPER.
3. It shall be permissible for DEVELOPER to rearrange boundary lines of lots, if so desired, and combine lots or parts of lots into one building plot, but not to the extent of increasing the number of lots once the final subdivision plat has been recorded.

4. Regardless of whether it is expressly stated in any deed conveying any one or more of the Subdivision lots, each conveyance shall be subject to existing governmental zoning and subdivision ordinances or regulations in effect thereon.
5. All of the Subdivision lots must from the date of purchase be maintained by the owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs and other debris being removed when needed). In the event that an owner of a lot fails of his own volition to maintain his lot in a neat and orderly condition, DEVELOPER, or its duly appointed agent, may enter upon the lot without liability and proceed to put the lot into an orderly condition, billing the cost of such work to the owner.
6. Before any construction of any dwelling house and all other structures is commenced or carried on, plans and specifications for the structures shall be submitted for approval to DEVELOPER and written approval thereof procured. It is the intent of DEVELOPER to maintain a traditional design with consistent front façade, roof pitch of not less than 8/12, and exterior materials and design. The decision to approve or deny approval for house plans shall be within the sole discretion of DEVELOPER, its successors or assigns. DEVELOPER, its successors or assigns, shall have the right to grant exceptions to any of these Restrictions if, in its sole discretion, allowing the exception would in no way detract from the quality, appearance and architectural style intended for the structures that shall be built in the subdivision. It is further provided that in the event of the completion of any structure on any lot without any proceedings having been instituted in the Courts of Hamilton County, Tennessee to enjoin the construction thereof, said structure shall be conclusively presumed to have had such approval.
7. No house shall be erected or permitted to remain in the Subdivision unless it has the number of square feet enclosed, heated living area, exclusive of open or screened porches, garages or basements, set for in this paragraph:
 - i. As to single level houses, without a basement, a minimum of 1850 square feet; if a two level building a minimum of 900 square feet must be on the first floor, and a minimum of 1850 square feet in the house.
8. No residence shall be located on any one of the Subdivision lots nearer than twenty-five (25) feet to the front line or any side street line; nor nearer than ten (10) feet to any side lot line; nor set off the rear boundary line less than twenty-five (25) feet. This requirement may be waived by DEVELOPER if it, in its sole discretion, determines that any such waiver shall be in the best interests of the Subdivision. All houses shall have a concrete sidewalk of four feet in width between 22 and 24 inches from the curb. All houses shall have a concrete, pea gravel/aggregate concrete, brick paver or patterned (stamped) concrete driveway.

9. The fronts of all dwelling houses shall be constructed using all or a blend of brick veneer, stone veneer, stucco, or synthetic stucco ("sto" or equivalent). Accenting with fiber-cement (hardiboard as equivalent) siding or cedar shake vinyl is permitted as long as whichever one used does not exceed 30% of the front portion of the house. No asbestos, masonite or regular vinyl siding shall be used on the front of a dwelling house on any lot, with the exception that vinyl/aluminum may be used for soffits and other areas that are deemed by DEVELOPER to be consistent with the character of the Subdivision and not to detract from the architectural integrity of the home style established in the Subdivision. NO exterior concrete blocks shall be exposed; therefore, all concrete blocks shall be veneered with either brick, stone, stucco or synthetic stucco. All lots shall have a minimum of sodded front yard and seeded side and back yards with a landscaping plan that has at least a dozen (12) 3 gallon plants against the house per the standard of the Subdivision
10. All residences shall have a designated cast aluminum mailbox chosen by the DEVELOPER. (See flyer provided by DEVELOPER.)
11. Any residence being erected on a lot shall be *commenced* within twelve (12) months from the date of closing on the purchase of the lot unless Developer, in his sole discretion, approves in writing an extension of this time.
12. No sheep, goats, swine, horses, cattle, burros, fowl or any like animals shall be permitted to be kept or to remain on any of the lots in the Subdivision, or to roam at large on any of the streets or ways in or bordering the same. There shall be no commercial breeding of domestic pets. No liquor, beer, wine or other intoxicating substances shall be sold within the bounds of said subdivision.
13. 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. In particular, boats, tractor trucks, motor homes, inoperative or abandoned automobiles, and/or camping trailers shall not be frequently or habitually parked on a driveway located on any lot within the Subdivision. Nor shall the owner of any lot park a boat, tractor-trailer, motor home, inoperative or abandoned automobiles, and/or camping trailers in the streets or driveways therein, or carry on any major repairs to any automobile, boat or other vehicle in a driveway or street in the Subdivision.
14. No outbuildings, and other quarters may be constructed unless the plans and specifications are approved in writing by DEVELOPER before construction begins and their construction and appearance is architecturally and structurally similar to the front elevation of the main dwelling house and similar materials are used. No such structures, other than the main dwelling house, shall be included in complying with the minimum square footage requirements set forth above.
15. The plans and location for all fences must be submitted to DEVELOPER for written approval prior to construction. No construction of a fence shall

commence without the prior written approval. DEVELOPER will specifically avoid fences on adjoining lots that are constructed in a manner that will leave any area between the sides of the fences. Such small passageways between fences of adjoining lots will be avoided.

16. No fence may be erected forward of the midpoint of the side line of the dwelling house. Fences must be at least six (6) feet and no more than eight (8) feet in height. Fences must be constructed of a material that is comparable and aesthetically compatible with the material used in the construction of the house. Fences of cedar, ornamental iron or aluminum, brick or mountain stone shall be preferred. Fences constructed of white vinyl may be built provided that DEVELOPER determines that the location and design of such fence shall in no way detract from the architectural standard for the Subdivision. Any wooden fences must have the finished boards oriented toward the outside of the lot and away from the house, and the lateral structural boards oriented toward the house so as not to be visible from other lots. No chain link fences shall be permitted. Fences on corner lots may not be located any closer to any side street than the side of the dwelling house. DEVELOPER shall be allowed to waive any of the restrictions set forth herein, provided that any such waiver results in a change which is consistent with the architectural and environmental concerns set forth in this document, as interpreted and determined in the sole discretion of DEVELOPER. Any such waiver shall be in writing and the decision by to grant or deny any request waiver shall be final.
17. Lot 1 of the subdivision including the pool and pool house, the subdivision entrance walls, the fountain in the middle of the street near entrance, shall be considered common areas in the subdivision and shall be owned and maintained by WHA. WHA shall be responsible for the maintenance of all drainage areas originally maintained by the Developer. WHA also agrees to landscape and maintain the Pond and the area surrounding the Pond ("Pond Property" that is currently owned by Newcomb Springs, Inc.) that is used as a retention pond for Lots 1-45. All of such landscaping and maintenance of the Pond and the Pond Property shall be subject to the following terms and conditions: (i) the Pond and the Pond Property shall be landscaped and maintained consistent with its use as a residential water feature for aesthetic and recreational purposes, and (ii) the pond shall be maintained in a manner which conforms with any and all applicable zoning, health, environmental or other laws, statutes, ordinances or regulations affect the Pond and the Pond Property. WHA also agrees to maintain the 600 foot wooden privacy fence built along the lot lines between Newcomb Springs property and lots 1 through 4.
18. If for any reason any one or more of the foregoing protective covenants and restrictions is construed by judgment or decree of any Court of record to be invalid, such judgment or decree shall not affect any of the other provisions, which shall remain in full force and effect, the owner hereby declaring that said

CAPSTONE DEVELOPERS, LLC

James Goodwin, General Manager

STATE OF TENNESSEE

COUNTY OF HAMILTON

Before me, the undersigned, a notary public within and for said county and state at Chattanooga, Tennessee, duly commissioned and qualified, personally appeared James Goodwin, General Manager, with whom I am personally acquainted, and who, upon his oath, acknowledged himself to be the General Manager of CAPSTONE DEVELOPERS, LLC, the within named bargainor, and he as such General Manager, being duly authorized so to do, executed and foregoing instrument for the purposes therein contained, by subscribing thereto the name of the corporation by himself as General Manager.

WITNESS my hand and notarial seal at my office in Chattanooga Tennessee, this _____th day of _____, 2003.

Notary Public