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Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2011/56722
Term/Cashier: CASH2/Teresa Baber
12/07/2011 8:41AM
Tran: 173639
Total Fees: \$120.00

Book 2011 Page 56722
Recorded in the Above
DEED Book & Page
12/07/2011

**DECLARATION OF BILL OF ASSURANCES AND PROTECTIVE
COVENANTS OF HARBIN POINTE, PHASE II P.U.D.
AN ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS**

KNOW ALL MEN BY THESE PRESENTS:

That ARKANSAS DEVELOPMENT SERVICES, INC., an Arkansas corporation, being the owner and developer ("Developer") of the following described property located in the City of Bentonville, Benton County, Arkansas, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Said property been duly platted as Harbin Pointe, Phase II, P.U.D., an Addition to the City of Bentonville, Benton County, Arkansas (the "Subdivision"), said plat being recorded in the office of the District Clerk and Ex-Officio recorder of Benton County, Arkansas on 09/06/2011 in Plat Book 2011, Page 392, for the purpose of keeping said Subdivision desirable, uniform and suitable in architectural design and use as herein specified, and to provide for the orderly development of the Subdivision, does hereby make this Declaration of Bill of Assurances and Protective Covenants (this "Declaration") setting forth the following limitations, restrictions and uses on Lots 45 through 79, inclusive, of the Subdivision.

Developer does hereby state that this Declaration shall establish covenants running with the land for the period of time hereinafter set forth, as provided by law and shall be binding upon all purchasers and owners of Lots 45 through 79, inclusive, of the Subdivision and upon such owner's heirs, personal representatives, successors and assigns, mid upon all persons claiming under them.

It shall be lawful for the Arbor Lane Home Owners Association, Inc. (Home Owners Association sometimes abbreviated herein as "H.O.A") (hereinafter referred to as the "Association" and more particularly defined herein) or for any other person or persons owning real property situated in the Subdivision to initiate any proceedings at law or in equity against parties or persons violating or attempting to violate any of this

Declaration and to recover damages for such violations. Any rights reserved hereunder to the Developer may also be exercised by any owner of lots situated in said Subdivision, either individually or collectively, or the Association. The invalidation of any one provision of this Declaration by a court order shall not invalidate any of the other provisions which shall remain in full force and effect.

1. Covenants and Definitions.

The following words, when used in this Declaration or any amendments or supplements thereto (unless the context shall otherwise clearly indicate or prohibit), shall have the respective concepts and meanings set forth below.

"Addition" or "Subdivision" shall mean and refer to the property described in Exhibit "A" and as reflected on the plat set out on Exhibit "B" any additions thereto.

"Association" shall mean and refer to Arbor Lane Property Owners Association, Inc., an Arkansas non-profit corporation, its successors and assigns.

"Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association elected in accordance with the provision of the Articles of Incorporation and Bylaws of the Association.

"Common Property" shall mean and refer to any and all areas of land together with all improvements located thereon within the Subdivision which are known, described or designated as such on any recorded subdivision plat of the Subdivision or intended for or devoted to the common use and enjoyment of the members of the Association including but not limited to all sidewalks, easements, private drives, and drainage detention ponds. The Association shall hold such title to the Common Properties as shall be consistent with the objectives envisioned herein and subject to the easement rights herein of the members to use and enjoy the Common Property. The Developer reserves the right to affect minor redesigns or reconfiguration of the Common Property and execute any open space declarations applicable to the Common Property.

"Developer" shall mean and refer to Arkansas Development Services, Inc., an Arkansas corporation, and its successor(s) and assign(s).

"Developer Control Period" shall have the meaning set forth in Section 2, "Rights Reserved for Developer."

"Dwelling(s)" shall mean and refer to a single family residence constructed on a Lot in the Subdivision that has been issued a certificate of occupancy by the City of Bentonville, Arkansas.

"Lot" or "Lots" shall mean and refer to any plot or tract of land which is designated as a lot on the Plat which is attached hereto and labeled Exhibit "B". No lot as set forth on Exhibit "B" may be further subdivided or split; provided however minor

adjustments to lot lines or boundaries maybe made from time to time to cure title problems or to resolve procedures created by encroachments so long as such adjustments are first approved by the Board and Developer if any lots are unsold and closed.

"Member(s)" or "member(s)" shall mean and refer to each owner of a lot.

"Owner(s)" or "owner(s)" shall mean and refer to each and every person or business entity who or which is a record owner or subsequently becomes a record owner of a fee or undivided fee interest in any lot subject to these covenants.

"Plat" shall refer to the Harbin Pointe, Phase II P.U.D. Final Plat and the Replat Of Lots 45-79 of the Harbin Pointe, Phase II P.U.D. Final Plat of survey set out in Exhibit "B" attached hereto.

2. Rights Reserved for Developer

A. Developer, as owner of the Property, expressly reserves the rights set forth in this Section with Respect to the Property.

B. Developer Control Period

(i) The Developer Control Period for the Subdivision (the "Developer Control Period") begins when the Developer executes its first contract with a third-party purchaser to purchase a Lot and shall terminate no later than sixty (60) days after Developer deeds at least ninety percent (90%) of all Lots created or as may be created in Developer's sole discretion from the Property, but in no event later than ten (10) years from the date the Developer transfers and deeds its first Lot within the Subdivision to a third-party purchaser. Once the Developer Control Period terminates, the Developer Control Period shall not be extended or reactivated. The Developer shall have the right, but not the obligation, to terminate the Developer Control Period at any time in its sole discretion by filing an instrument in the real estate records of Benton County, Arkansas providing for such termination.

(ii) During the Developer Control Period, the Association shall not enter into any lease and/or contract for goods and services for the Property that extends beyond the Developer Control Period. Any contract and/or lease in contravention of the foregoing sentence shall be voidable at the option of the Association.

(iii) Developer expressly reserves a perpetual easement over all driveways, parking areas, sidewalks and utility easements comprising a portion of the Common Property to connect them with other driveways, parking areas, sidewalks and utility easements within Harbin Pointe, Phase II PUD, the location of which shall be selected by the Developer.

(iv) During the Developer Control Period, the Board shall consist solely of members appointed and determined by Developer and Developer reserves the right, in its sole discretion, to appoint and remove members of the Board for any reason.

(v) Developer reserves the right to amend or supplement this Declaration in any manner necessary to establish the validity and enforceability of this Declaration or to bring this Declaration into compliance with federal law, the laws of the State of Arkansas or any common law principle or judicial decision that may affect the validity and enforceability of this Declaration.

(vi) Developer reserves the right to amend or supplement this Declaration in any manner necessary to satisfy the requirements of insurance company that may be called upon by the Developer to issue title insurance policies to Owners, provided such amendment is reasonably required to support the validity and enforceability of this Declaration.

(vii) Except as otherwise may be provided in this Declaration, so long as Developer owns any Lot, Developer reserves the right at any time and from time to time to unilaterally amend this Declaration as it deems appropriate, in its sole discretion, to carry out the purposes of the Subdivision established in this Declaration, or to correct an error or omission, or to address and/or correct any matter required by any lending institution, public body or title insurance company, or to change the configuration or size of any lands or Lots subject to this Declaration, or to facilitate the operation and management of the Subdivision and the Association, or the sale of Lots. Such an amendment by the Developer may be made unilaterally, without the approval of any other party, and shall become effective upon the recording of an instrument executed by the Developer in the real estate records of Benton County, Arkansas, setting forth the amendment; provided, however, that no such amendment to this Declaration may change to any material extent the configuration or size of any Lot or change the proportion or percentage by which an Owner shares the expenses of the Association, unless such amendment is also approved by at least a majority vote of the Owners.

3. Membership and Voting Rights in the Association.

A. **Membership.** Every owner of a Lot shall automatically be a member of the Association.

B. **Voting Rights.** The Association shall have one (1) class of membership for purposes of Voting. Owners shall be entitled to one (1) vote for each Lot owned by the owner.

C. **Quorum, Notice and Voting Requirements.** The quorum, notice, and voting requirements of and pertaining to the Association are set forth within the Articles

of Incorporation and Bylaws of the Association, as the same may be amended from time to time. Subject to the provisions of Section B above and any other provision to the contrary set out in this Declaration, any action by or on behalf of the Association may be taken with the assent given in writing and signed by members who collectively hold or control a majority of the outstanding votes of the Association.

4. Architectural Control Committee.

A. Designation of Committee. The Association shall have an Architectural Control Committee (the "Committee"), consisting of the Developer until ninety percent (90%) of all Lots now subject to these covenants and restrictions are sold and have Dwellings constructed thereon. When ninety percent (90%) of all Lots described in this paragraph are sold and have Dwellings constructed thereon, the Developer shall appoint three (3) persons to constitute the Committee. After the terms of the 3 persons appointed by the Developer expire or terminate, the Committee members the members of the Committee, and all vacancies thereon, shall be appointed by the Board of Directors of the Association.

B. Function of the Committee. No Dwelling, Building, Structure or other Improvement shall be constructed or maintained upon any Lot and no alteration or repainting to the exterior of a Dwelling, Building, Improvement or Structure shall be made and no landscaping performed unless complete plans, specifications and site plans showing the exterior design, height, building material and color scheme, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing walls and windbreaks, sewage systems and the grading plan shall have been submitted in writing to and approved in writing by the Committee prior to the commencement of construction. Once the Committee has approved the plans and specifications, the Committee shall issue a letter to the Owner authorizing the Owner to commence the construction ("Letter"). A copy of the plans, specifications, and Lot plans as finally approved shall be deposited with the Committee. The Committee shall have the power to employ professional consultants to assist it in discharging its duties. The decisions of the Committee shall be final, conclusive and binding upon the applicant.

C. Content of Plans and Specifications. The plans and specifications to be submitted and approved shall include the following:

- (i) A statement by the Owner and his architect, engineer, designer or other qualified person undertaking the design of the proposed Improvements that such parties have visited the site and have reviewed and are familiar with the applicable provisions of this Declaration, including the following design guidelines.
- (ii) A site plan drawn to scale indicating:

- (a) Name of subdivision, lot, block, address and/or other required legal description of the property, and North directional arrow.
 - (b) Property lines, including streets, rights-of-way, lakes, easements, set back lines and all dimensions,
 - (c) Existing grade and location of proposed cut and/or fill, indicating approximate slope and height or depth of each (2' minimum interval).
 - (d) Proposed sewer system footprint.
 - (e) Drainage plans indicating drainage patterns away from building to swales, culverts and other drainage facilities.
 - (f) Parking and paving plans indicating the location of all parking areas, driveways and sidewalks.
 - (g) Location of utility services, including particularly the location of all above-ground equipment such as transformers, risers, meters, sewage grinder pumps and tanks and similar items.
 - (h) Approximate location, size and kind of existing and proposed trees great than four inches in diameter measured at a point 3 feet above the grade.
 - (i) Location of all structures, retaining walls, garbage and trash containers, decks, terraces, patios and similar outdoor living areas, walks, walls, fences, signs, fountains, air conditioner compressors and other HVAC equipment and components located outdoors, mechanical equipment, and other proposed improvements.
 - (j) Location of contractor's temporary facility, outhouses and other temporary structures and items, to be used during construction.
 - (k) Any temporary access to the site.
- (iii) Floor plans for all floors indicating interior room dimensions and use, the location and size of exterior windows, doors and other openings, the location of mechanical and electrical systems, or any other conceptual plans for which a review is requested by the Committee.
- (iv) Exterior elevations providing the exterior views of all structures, fences, signs and similar Improvements labeled in accordance with the site plan. The elevations shall include a brief description of all exterior materials, colors and finishes, including without limitation those of the walls, roofs, trim, chimneys,

doors and windows. Building elevations shall be provided for all sides of the Dwelling.

(v) Specifications or color boards as necessary to describe the (i) exterior wall materials (**acceptable exterior wall materials are brick, stone, cedar shake, hardiplank/masonite or wood; Dryvit, stucco, or a similar product is not acceptable**) and colors; (ii) roof materials and colors; (iii) door materials and colors; (iv) chimney materials; (v) stained or colored pavement materials; (vi) fencing and screening material; and (vii) any other exterior site improvements. Color and material descriptions shall be keyed to the exterior elevations, differentiating between general wall colors, fascia, railing, structural elements, door, trim and accent colors, and other elements of the structure.

(vi) The landscaping plan indicating proposed plantings (by common and botanical names) and their sizes; exterior lighting system, including decorative, security and other types of illumination (including location and type of lighting fixtures), irrigation system, special landscape features including without limitation ponds and fountains; flower and vegetable gardens, and similar outdoor improvements. A residential landscaping irrigation system is required for the front yard of each Lot and such irrigation design and specifications shall be included in the plans and specifications submitted to the Committee. Bermuda or Fescue Sod, as deemed appropriate by the Committee, is required on all Lots.

(vii) A fee in the amount of \$50.00 (checks are to be made payable to the Association) for costs or expenses the Committee may incur in reviewing, or having professionals review, the plans and specifications as submitted. Such fee shall be non-refundable. The Committee reserves the right to waive all of or a portion of this fee.

D. Installation & Maintenance of Landscaping. All landscaping (irrigation, sod, plants and trees) installed during the initial construction of each Dwelling, other than landscaping located in the side yards and rear yards (areas between and behind the Dwellings) of each Lot, shall be maintained (including fertilization and irrigation) by the Association. The Association will mow the grass located within such side yards and rear yards, if any, provided the Owner allows free access to such side yard and/or rear yard so that maintenance crews can access same.

E. Definition of Improvement. "Improvement" shall mean and include all Dwellings, buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, poles, towers, antennas, driveways, swimming pools, signs, changes in any exterior color or shape, glazing or re-glazing of exterior windows with mirrored or reflective glass, and any other new exterior construction or exterior improvement which materially alters the appearance of any Lot and which may not be included in any of the foregoing.

F. Building Height. No Dwelling shall be erected, altered, or placed on a Lot which shall contain more than two (2) stories. Also, the minimum height of each roof must be at least a 6-12 pitch.

G. Location on Lot. No Dwelling, Building, Structure or Improvement shall be located on a Lot nearer to the front Lot line, side Lot line or rear Lot line established for each Lot by the Plat, provided that the Committee may authorize variations in its discretion so long as those variations do not contradict the building setbacks as depicted on the Plat and required by the City of Bentonville for the Subdivision PZD Ordinance. In the event that a Dwelling is destroyed, by fire, storm or otherwise, such Dwelling, if reconstructed, shall be placed in the same location on the Lot and have the same exterior shape, window placement, dimensions and colors, as close as practicably possible, as the Dwelling that was destroyed and must be approved by the Committee.

H. Commercial Structures. No Building, Structure or Improvement of any type may ever be placed, erected or used for business, professional, trade or commercial purposes on any portion of any Lot. This prohibition shall not apply to any business or Structure that may be placed on any Lot or portion of a Lot that is used exclusively by a public utility company in connection with the furnishing of public utility services to the Subdivision, or to any Dwelling constructed in the Subdivision to be used as a sales office or a model home as provided in Section 7 M below.

I. Outbuildings Prohibited. No outbuildings or other detached structure appurtenant to the Dwelling may be erected on any of the Lots hereby restricted without the consent in writing of the Committee.

J. Noxious Activity. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall any garbage, trash, rubbish, tree limbs, pine straw, leaves or cuttings, ashes or other refuse be thrown placed or dumped upon any vacant Lot, street or road, nor on any Lot unless placed in a container suitable for garbage pickup; nor shall anything ever be done which may be or become annoyance or nuisance to the neighborhood.

K. Oil and Mineral Operations. No oil drilling, oil development operating, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

L. Existing Structure. No existing, erected building or structure of any sort may be moved onto or placed on any of the Lots without the consent in writing of the Committee.

M. Temporary Structure. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on a Lot covered by these covenants and restrictions shall at any time be used for human habitation, temporarily or permanently. This provision does

not apply to any construction trailer(s) to be used during the initial construction of the Dwellings in the Subdivision.

N. The Basis of Approval. Approval of plans and specifications shall be based on, among other things, adequacy of site dimensions, structural design, conformity and harmony of external design and of location with neighboring Dwellings and sites, relation of finished grades and elevations to neighboring sites, and conformity to both the specific and general intent of the protective covenants. The Committee shall establish certain architectural guidelines, which shall be approved by the Board of Directors (the Architectural Guidelines), and all plans and specifications must comply with Architectural Guidelines then in force and effect. However, the Committee may approve exceptions to the Architectural Guidelines by a three-fourths (3/4th) vote. The current Architectural Guidelines shall be available at the office of the Association or the office of the Developer.

O. Majority. A majority vote of the Committee is required for approval or disapproval of proposed improvements.

P. Failure of Committee to Act. If the Committee fails to approve, disapprove, or reject as inadequate proposed plans and specifications within thirty (30) days after proper written submittal, they shall be deemed approved. If plans and specifications are not sufficiently complete or are otherwise inadequate, the Committee may reject them entirely, partially or conditionally approve

Q. Limitation of Liability. Neither the Developer, the Association, the Committee nor any of its members shall be liable, in damages or otherwise, to anyone submitting plans and specifications for approval or to any Owner of land affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans and specifications.

R. Driveways. Access driveways and other paved areas for vehicular use on a Lot shall have a base of compacted gravel, crushed stone or other approved base material and shall be surfaced with concrete. Plans and specifications for driveways, culverts, pavement edging or markers shall be as approved in writing by the Committee. Driveways may access the adjacent street at one location only, unless otherwise approved by the Committee.

S. Mailboxes. All mailboxes shall be installed, provided and maintained by the Association. Further, all mailboxes shall be deemed Common Property.

5. Covenants for Assessments.

A. Creation of the Lien and Personal Obligations of Assessments. The Developer, for each Lot owned by it within the Subdivision, hereby covenants and agrees, and each Owner of any Lot, by acceptance of a deed therefore, whether from the

Developer or some subsequent grantor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agreement (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot), to pay to the Association the following:

- (i) Regular assessments or charges for maintenance, taxes and insurance for the Common Property;
- (ii) Special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided;
- (iii) Special individual assessments which might be levied against individual Lot owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual owner, his family, guests, or invitees, and not caused by ordinary wear and tear, including the failure to properly maintain their Dwelling and/or to appropriately keep the Dwelling properly painted.
- (iv) Individual assessments and fines levied against individual Lot owners for violation of rules as pertaining to the Association and/or the Common Property.
- (v) The regular, special group, and special individual assessments, together with such late charges, interest and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made.
- (vi) Notwithstanding the above, the Developer shall not be required to pay the association dues, assessments or other charges set forth herein until ninety (90%) percent of all Lots in the Subdivision have been sold.

B. Purpose of Assessments. The assessments levied by the Board on behalf of the Association shall be used for the purpose of enhancing the natural environment, appearance and beauty of the Subdivision and promoting the health, recreation, safety, and general welfare of the residents of the Subdivision.

C. Basis and Amount of Regular Maintenance Assessments.

- (i) The initial regular base assessments shall be Thirty-Five and No/100 Dollars (\$35.00) per month paid annually and due on or before March 1st. Assessments not paid by March 31st will be charged a late fee to be determined by the Association. Assessments may also be paid monthly if a member has set up for the payment of said assessments either through automatic withdrawal or through escrow funds. The Board may increase the regular base assessment amount as deemed appropriate to cover escalation of prices for services. Assessments shall apply to all Lots, unless otherwise provided herein.

(ii) The Board shall give notice to all members at least thirty (30) days in advance of the date all regular or special assessments are due. The Board may prescribe from time to time that the regular base assessments are to be collected on an annual, semiannual, quarterly, or monthly basis, and the Board shall prescribe the appropriate due dates. All regular base assessments shall be collected in advance. The due date or dates (if it is to be paid in installments) of any other assessments or special assessment shall be fixed in the respective resolution authorizing such assessment.

D. Special Group Assessments. In addition to the regular assessments authorized by Section C, the Board may levy in any fiscal year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Property.

E. Rate of Assessments. Except as noted herein, regular and special group assessments shall be fixed at a uniform rate for all Lots owned by Members, unless otherwise approved by the Board. The failure to pay the assessment by the owner of a Lot shall constitute a lien against the Lot and the Association may pursue any remedy available to it at law or in equity to collect such lien including initiation of a foreclosure suit in a court of competent jurisdiction

F. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner: the Lien: and Remedies of Association.

(i) If any assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment shall be considered delinquent and shall, together with any late charge and interest thereon at the maximum rate allowed under applicable law and costs of collection thereof, thereupon becoming a continuing debt lien on the Lot of the non-paying owner which shall bind such hands of the owner and owner's heirs, executors, administrators, devisees, personal representatives, successors, and assigns. The Board shall have the right to reject partial payments of an unpaid assessment and demand the full payment thereof. The lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Property or abandonment of the Lot;

(ii) The Board may also give written notification to the holder(s) of a mortgage on a Lot of a non-paying Owner of such owner's default in paying any assessment when such default has not been cured within thirty (30) days of the original date due, provided that the Board has, theretofore, been furnished in writing with the correct name and address of the holder(s) of such mortgage and a request to receive such notification; and

(iii) The Board may, at its election, retain the services of an attorney to review, monitor, collect, and file suit to foreclose on a lien for unpaid assessments and delinquent accounts, and there shall also be added to the amount of any unpaid assessment or to any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association.

G. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any bonafide first mortgage or deed of trust now or hereafter placed upon any Lot subject to assessment.

H. Transfer of Ownership. If any Lot or Dwelling should be sold, and the current lot owner has paid dues, the current owner can and should be reimbursed for the prorated portion remaining for the year.

6. General Powers and Duties of the Board of Directors of the Association.

A Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors (sometimes referred to as the "Board").

(i) The Board for the benefit of the Association, the Subdivision, and the Owners, may provide and may pay for, out of the assessment fund(s) provided for in Section 5 above, any or all of the following:

(a) Care, preservation and maintenance of the Common Property and the furnishing and upkeep of any personal property (including all irrigation equipment under the operation and control of the Association) and fixtures, for use in or on the Common Property;

(b) Landscaping and maintenance of the lawns within the Subdivision, including but not limited to, mowing, mulching, weeding, fertilization, irrigation, etc.;

(c) Taxes, insurance, and utilities (including, without limitation, electricity, gas, water, and sewer charges), if any, which pertain to the Common Property only;

(d) The services of any person or firm (including the Developer and any affiliates of the Developer) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by a manager hired by the Board;

(e) Legal and accounting services; and

(f) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes, or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association and the Subdivision or for the enforcement of this Declaration.

(ii) The Board shall have the following additional rights, powers and duties;

(a) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association; and

(b) To make reasonable rules and regulations for the operation of the Common Property and to amend this Declaration from time to time; provided, however, no portion of Paragraph 7 (Use and Division of Lots) of this Declaration may be amended unless not less than two-thirds (2/3) who occupy Dwellings in the Subdivision approve the proposed amendment(s).

B. Maintenance Contracts. Subject to Section 2 above, the Board shall have full power and authority to contract with any Owner (including, without limitation, the Developer) for performance on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interests of the Association.

C. Liability Limitations. Neither any member or owner nor the directors and officers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or otherwise. The Developer and the Association, and their respective directors, officers, agents, and employees, shall not be held liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof, or for failure to repair or maintain the same.

D. Reserve Funds. The Board may establish reserve funds which maybe maintained and accounted for separately from other funds maintained for annual operating expenses.

7. Use and Division of Lots.

A. The Developer does hereby dedicate for public use all of the streets as shown on the Plat of the Subdivision as described above, save and except any roads or streets depicted as being "Private" on the Plat. The Developer further dedicates to the public use the easements and rights of way, all common areas, sidewalks and all drainage

detention ponds as designated on the Plat of the Subdivision for the several purposes of constructing, maintaining, operating, repairing, replacing and servicing all public or quasi-public utilities, together with the right of ingress and egress for such purposes as aforesaid being reserved to the employees, agents and designees of any public or quasi-public utility providing service to the Lots within the Subdivision. Within said easements no public utility providing service to the Lots within the Subdivision. Within said easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance utilities. The owner of a Lot within the Subdivision shall be responsible for maintaining all improvements within the boundaries of said Lot, except for those improvements for which a utility company is responsible or those areas for which the Association shall be responsible.

B. Supply lines for all public or quasi-public utilities shall be located underground in the easement ways reserved for utility service as shown on the Plat but the electrical lines running over the Subdivision prior to development shall remain above ground. Service lines to all Dwellings located on a Lot shall be underground, and shall run from the nearest source of each utility within the easement to the point of use as determined by the location and construction of such Dwelling as the same may be located upon the Lot. The supplier of each and every public or quasi-public utility shall hereafter be deemed to have a definite, permanent, effective and exclusive easement, extending from the source of said utility within the easement to the point of use at each Dwelling or other structure. The supplier of each utility, through its proper agents and employees, shall at all times have the right to access to said easement or easements, as shown on said Plat or as provided for in this Declaration. The easement is granted for the purpose of installing, maintaining, removing or replacing any portion of the above ground or below ground facilities. The owner of a Lot shall not allow any activity on said Lot, including construction or alternation of grade, which may interfere with the operation of any utility line and appurtenances thereto. Repairs or cost of relocation occurring as a result of such activities shall be paid for by the owner of the Lot. Shrubbery shall not be placed so as to interfere with the reading of, or the normal maintenance of, any utility meter.

C. All Lots in the Subdivision shall be used for one separate single-family detached Dwelling and for no other purpose. Dwellings shall be of conventional construction. The floor area of the main residential structure (heated and cooled) on a Lot within the Subdivision, not including open porches, attics, or garages, shall not be less than 1,200 square feet and shall not be greater than 1,400 square feet. Exceptions in floor area must be approved in writing by the Developer or the Committee.

D. Each Dwelling shall be constructed on a permanent foundation made of either concrete or pier and beam. All Dwellings shall be similar in size, shape and a common color scheme shall be followed throughout the Subdivision.

E. Each Dwelling or other structure constructed on a Lot shall be covered by a roof of architectural composition shingles to be approved by the Developer or Committee. All Dwellings constructed in the Subdivision shall have a private garage to

accommodate at least two (2) automobiles. No detached structures shall be allowed to be built on a Lot within the Subdivision.

F. No off-street parking shall be allowed on a regular basis. All driveways servicing residential Dwellings, garages and/or out buildings on a Lot shall be composed of concrete or exposed aggregate. Furthermore, no vehicles ATV, trailers, boats, etc. shall be allowed to be parked in or on the side yard of any Lot. Builder or Owner is required to build sidewalks across the front and/or side of any Lot(s) as shown on the Plat set out on Exhibit "B" in accordance with City of Bentonville, Arkansas standards.

G. Each Lot shall have a natural wood fence, not greater than six (6) feet high, constructed parallel to the front of the Dwelling across the side yard. Each Owner may elect, but shall not be required, to install a natural wood privacy fence not greater than six (6) Feet to encompass the entire Lot. No chain link type fence shall be erected on any Lot.

H. No outbuilding, tent, shack, garage, barn or any vehicle on a Lot may be used as living quarters, either permanently or temporarily. No trailer, mobile home, tent, construction shack, or other out buildings shall be erected or kept on a Lot in the Subdivision except for temporary use by construction contractors for a reasonable period of time. No tow trucks, recreational vehicles or vehicles used for recreation purposes shall be stored or parked on a Lot, driveway or in the Subdivision, including public streets and alleys. No vehicle that has been inoperative for a period of more than three (3) days shall be stored on a Lot or driveway. No Boats and other recreational equipment shall be stored on a Lot or driveway. The parking or storage of unused or unlicensed motor vehicles is prohibited in the Subdivision.

I. No obnoxious or offensive trade or activity shall be carried on or upon a Lot, nor shall anything be done thereon that maybe or may become an annoyance or nuisance to the neighborhood. No future mineral development of any kind shall be permitted affecting the surface of the Lots covered by these restrictions. No animals, livestock, or poultry of arty kind shall be raised, bred or kept on a Lot except that dogs, cats or other household pets maybe kept provided they are not kept, bred or maintained for any commercial purpose and that the owners comply with all applicable city ordinances. All dogs, cats and other domestic animals permitted to be kept within the Subdivision by these restrictive covenants and any city code shall be kept and maintained in the fenced side yard of a Dwelling, as described in Section 7(G). No animal shall be chained, tied or otherwise restrained either in the rear or front yard of a Lot. All dog houses or other animal shelters shall be kept in the side yard of a Dwelling. Owners shall not be permitted to have "barn" or pasture animals regardless of the number of Lots owned by any one owner.

J. Each Lot shall be permitted one antenna, aerial satellite dish or similar devise for the reception of television, radio or information services so long as the devise is located within the building set back limits and to the rear of the main residential building as approved by the Developer or Committee and is used for noncommercial

purposes only. Each antenna, aerial satellite dish or other device shall be of a minimum elevation to permit adequate reception, not higher than the primary Dwelling located on the Lot, and the transmitting and receiving portion shall not be more than two (2) feet in diameter at its widest point and not visible from the front of the Dwelling.

K. In the event that any Lots are sold and no Dwelling is immediately erected, the owner or owners of such Lot or Lots shall keep said property mowed and in a neat sanitary condition.

L. No sign of any kind shall be displayed to the public view on a Lot, except one professional sign advertising the property for sale or rent, or signs used by a builder or agent to advertise the property during the construction and sale of a Dwelling thereon. In no event shall any such sign stand more than four (4) feet above ground level nor be more than five (5) square feet in size nor be lighted at night.

M. No Owner shall be allowed to conduct any business or commercial activity or enterprise upon any Lot. No commercial type buildings shall be constructed on any Lot Provided, a person or entity owning multiple lots which are held for sale may maintain a model home or sales office in the Subdivision. Any such sales office shall be designed to be compatible with a residential Dwelling.

N. No Lot, nor any portion thereof, shall be split to create an additional Lot in this Subdivision.

O. The Owner of each Lot within the Subdivision is hereby declared to have a Universal Easement, so as to include side yards, and the same is hereby granted to Developer and any future Owner, over all adjoining Lots for the purpose of accommodating or maintaining any encroachment due to engineering errors, errors in original construction, settlement or shifting of the buildings, and for maintenance, construction or any other cause, provided, however, that in no event shall an easement for encroachment be created in willful misconduct of said Owner or Owners. In the event a Dwelling on any Lot is partially or totally destroyed, by acts of nature or otherwise, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and the Universal Easement shall be for the maintenance of said encroachments so long as they shall exist. In addition, each Lot within the Subdivision is hereby declared to have a Universal Easement for overhanging roofs and eaves as originally constructed over each adjoining Lot for the maintenance thereof. Each of the Universal Easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being served and shall pass with each conveyance of said Lot. Said Universal Easement will continue so long as completed Dwellings or Dwellings under construction remain on any Lot.

P. Lots within the Subdivision shall be conveyed subject to one side yard maintenance easement, which easement shall be for the benefit of the adjacent Lot, and the right to create, grant and reserve such easements is hereby preserved by the

Developer for itself and its successors in interest. Said maintenance easement shall be the width of the distance from the side yard property line to edge of the foundation of the Dwelling on the adjacent Lot, as built, and shall extend from the front fence to the rear fence, as described in Section 7(G) above, The following rules prescribe the terms, conditions and uses of said easements, both by the Owner of the easement (the dominant tenement) and the Owner of the land under the easement (the servient tenement).

(i) The Owner of the Lot which is benefited by the easement (the dominant tenement), except as otherwise provided in this Section, shall have the use of the surface of the easement area for the sole and only purpose of maintaining and repairing said Owner's Dwelling.

(ii) The Owner of the Lot which is benefited by the easement (the dominant tenement), shall have the right at all reasonable times to enter upon the easement area for normal and customary residential maintenance, only after providing the Owner of the land under the easement (the servient tenement) reasonable written notice.

(iii) The Owner of the servient tenement shall have the right of surface drainage over, along and upon the easement area for water resulting from the normal use of the servient tenement and the dominant tenement shall not use the easement area in such manner as will interfere with such drainage.

(iv) The Owner of the dominant tenement shall not attach any object, except the fences described in Section 7(G), above, to the side of the Dwelling on the adjacent Lot. No structure shall be constructed or placed upon the side yard easement by either tenement. Any landscaping placed or planted within the maintenance easement that is removed and/or damaged by the Owner of the dominant tenement shall be replaced by the Owner of the dominant tenement to the extent possible. If replacement of said landscaping is not possible, the Owner of the dominant tenement shall compensate the Owner of the servient tenement for the removal and/or damage of said landscaping.

(v) The Owner of the dominant tenement as a condition to the exercise of the right of access provided for shall indemnify and hold harmless the Owner of the servient tenement from any and all damage to the Dwelling, yard and landscaping of the servient tenement caused by such Owner's use of the maintenance easement.

The aforesaid side yard easements will continue so long as completed Dwellings or Dwellings under construction remain on any Lot.

Q. These covenants shall run with the land, and shall be binding on all parties and all persons claiming tinter them for a period of twenty-five (25) years from the date this instrument is recorded, (except as amended in accordance with the covenants). After which time said covenants shall be automatically extended for successive period(s) often

(10) years unless an instrument signed majority of the then owners of the Lots has been recorded, agreeing to change said covenants in whole or in part.

R. If any provision of this Declaration or any section, clause, phrase, word or the application thereof in any circumstances is held to be invalid, the validity of the remainder of this Declaration and of the application of the remaining provision shall not be affected thereby.

IN WITNESS WHEREOF, Arkansas Development Services, Inc., an Arkansas corporation, has caused this Declaration of Bill of Assurances and Protective Covenants for Harbin Pointe, Phase II, P.U.D., an Addition to the City of Bentonville, Benton County, Arkansas, to be duly executed by the undersigned, being authorized to do so in accordance with the Operating Agreement of said LLC, this 1st day of ~~DECEMBER~~ 2011.

**ARKANSAS DEVELOPMENT
SERVICES, INC.,
DEVELOPER**

By: _____

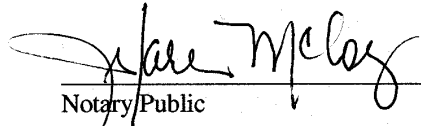
Kim Fugitt, Manager

ACKNOWLEDGMENT

STATE OF ARKANSAS)
 Washington) ss.
COUNTY OF ~~BENTON~~)

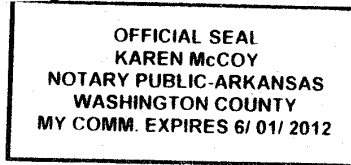
On this 1 day of December, 2011, before me, a notary public, duly commissioned, qualified and acting, personally appeared **KIM FUGITT**, who acknowledged himself to be the **MANAGER** of **ARKANSAS DEVELOPMENT SERVICES, INC.**, an Arkansas corporation, and that he, as such officer, being duly authorized to do so, executed this instrument for the consideration, uses and purposes therein mentioned and set forth, by signing the name of the business or entity as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires:
6-01-12



Book 2011 Page 56741
Recorded in the Above
DEED Book & Page
12/07/2011

Exhibit "A"
Property Description

**LOTS 13 THROUGH 41, INCLUSIVE OF HARBIN POINTE ADDITION,
PHASE 2, TO THE CITY OF BENTONVILLE, ARKANSAS FILED FOR
RECORD IN PLAT BOOK 2011 AT PAGES 87 AND 88, IN THE OFFICE
OF THE CIRCUIT CLERK, BENTON COUNTY, ARKANSAS.**

**SUBJECT TO RIGHTS-OF-WAY, EASEMENTS, AND OTHER
RESTRICTIONS OF RECORD, IF ANY.**

Book 2011 Page 56742
Recorded in the Above
DEED Book & Page
12/07/2011

Exhibit "B"
The Plat

Book 2011 Page 56743
 Recorded in the Above
 DEED Book & Page
 12/07/2011

Harbin Pointe Addition Two Phase Two
 Book 2011, Page 87
 Book 2011, Page 88

Project #01-18841-000

Lot 43

Lot 42

Lot 11

Lot 12

Legend

Project (see Schedule)

Address (see Schedule)

Area (see Schedule)

County (see Schedule)

City (see Schedule)

State (see Schedule)

Section (see Schedule)

Block (see Schedule)

Subdivision (see Schedule)

Other (see Schedule)

Professional Information

Surveyor: **Bill Cagner**
 Registered Professional Surveyor
 No. 10801
 State of Arkansas

Project: **Final Plat**
 Harbin Pointe Addition
 Phase II Project
 AR Reg. 12 / 100 (Harbin Pointe)
 Subdivision, Arkansas 2011

Book: **2011**
 Page: **56743**

Sheet: **1 of 1**
 Revision: **0**

Benton County, AR
 I certify this instrument was filed on
 12/07/2011 8:43AM
 and recorded in DEED Book
 2011 at pages 56722 - 56743
 Brenda DeShields-Circuit Clerk

THIS INSTRUMENT PREPARED BY:
NICK ARNOLD, ESQ.
KEITH, MILLER, BUTLER, SCHNEIDER & PAWLIC, PLLC
224 SOUTH SECOND ST.
ROGERS, AR 72756
479.621.0006

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2015/34163
Term/Cashier: CASH5/Jimmy Bennett
06/25/2015 8:41:28AM
Tran: 336882
Total Fees: \$115.00

Book **2015** Page **34163**
Recorded in the Above
DEED Book & Page
06/25/2015

**AMENDED AND RESTATED DECLARATION OF BILL OF ASSURANCES AND
PROTECTIVE COVENANTS OF HARBIN POINTE, PHASE II P.U.D.
AN ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS**

This Amended and Restated Declaration of Bill of Assurances and Protective Covenants of Harbin Pointe, Phase II P.U.D. an Addition to the City of Bentonville, Arkansas (this "Amended Declaration") is made on the date set forth below.

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, on December 7, 2011, a Declaration of Bill of Assurances and Protective Covenants of Harbin Pointe, Phase II P.U.D. an Addition to the City of Bentonville, Arkansas was filed for record in the Real Estate Records of Benton County, Arkansas at Book No. 2011, Page 56722 regarding and concerning that certain real property of the Harbin Pointe, Phase II, P.U.D., an Addition to the City of Bentonville, Benton County, Arkansas (the "Subdivision") (the "Original Declaration"), such property being and being more particularly described in Appendix "A" (the "Property") which is attached hereto and made a part hereof; and

WHEREAS, by the terms of Section 6(A)(ii)(b) of the Original Declaration, amendments to Section/Paragraph 7 of the Original Declaration must be made by more than two-thirds (2/3) approval of those who occupy Dwellings in the Subdivision; and

WHEREAS, a sufficient number of owners, constituting over two-thirds (2/3) of those who occupy Dwellings in the Subdivision, by and through the Arbor Lane Home Owners Association, Inc., its successors and assigns (the "Declarant" or the "Association"), conducted a duly called special meeting and affirmatively voted to amend both the Original Declaration; and

WHEREAS, a sufficient number of owners, constituting over two-thirds (2/3) of those who occupy Dwellings in the Subdivision, delegated, authorized and approved the Declarant to sign, record and otherwise effectuate this Amended Declaration; and

WHEREAS, the Declarant does hereby state that this Amended Declaration shall establish covenants running with the land for the period of time hereinafter set forth, as provided by law and shall be binding upon all purchasers and owners of the Property and/or any portion thereof, and upon such owner's heirs, personal representatives, successors and assigns, mid upon all persons claiming under them; and

WHEREAS, the Declarant desires to provide for building and use restrictions to promote and insure that the Subdivision is a quality residential community, to protect the property values of all Owners within the Subdivision, to insure that all homes are constructed of quality materials and workmanship, and are compatible with other homes in the Subdivision.

NOW THEREFORE, in consideration of the foregoing and for the purpose of enhancing and protecting the value and desirability thereof, the Declarant hereby declares and subjects all of the Property described in Appendix "A," to the covenants, charges, assessments, conditions and restrictions set forth in this Amended Declaration, all of which shall run with said Property and shall benefit and be binding upon all parties and all persons owning all or any part thereof, and their heirs, personal representatives, successors and assigns. Any and all contracts, purchase agreements, or Deeds affecting any of the Property or Lots therein shall be deemed to have these covenants and restrictions incorporated therein by reference, and any and all such contracts, purchase agreements, or Deeds affecting any of the Property or Lots therein shall be conclusively held to have been executed, delivered, and accepted with full knowledge of all covenants and restrictions contained herein. Furthermore, it is expressly declared and agreed that these covenants also benefit the Declarant and future Owners of the Property because of the interest of the Declarant and such future Owners in having the entire Property maintained in an attractive manner for the benefit of all Owners of any portion of the Property; and

AND, THEREFORE, it shall be lawful for the Association or for any other person or persons owning real property situated in the Subdivision to initiate any proceedings at law or in equity against parties or persons violating or attempting to violate any of this Declaration and to recover damages for such violations. Any rights reserved hereunder to the Declarant may also be exercised by any owner of lots situated in said Subdivision, either individually or collectively, or the Association. The invalidation of any one provision of this Declaration by a court order shall not invalidate any of the other provisions which shall remain in full force and effect.

NOW THEREFORE, the undersigned Declarant does hereby declare that both the Original Declaration, as it was originally filed, is hereby restated, modified, supplemented, replaced and amended in its entirety to provide as follows:

1. Covenants and Definitions.

The following words, when used in this Declaration or any amendments or supplements thereto (unless the context shall otherwise clearly indicate or prohibit), shall have the respective concepts and meanings set forth below.

“Addition” or “Subdivision” shall mean and refer to the property described in Exhibit “A” and as reflected on the plat set out on Exhibit “B” any additions thereto.

“Association” shall mean and refer to Arbor Lane Home Owners Association, Inc., an Arkansas non-profit corporation, its successors and assigns.

“Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association elected in accordance with the provision of the Articles of Incorporation and Bylaws of the Association.

“Common Property” shall mean and refer to any and all areas of land together with all improvements located thereon within the Subdivision which are known, described or designated as such on any recorded subdivision plat of the Subdivision or intended for or devoted to the common use and enjoyment of the members of the Association including but not limited to all sidewalks, easements, private drives, and drainage detention ponds. The Association shall hold such title to the Common Properties as shall be consistent with the objectives envisioned herein and subject to the easement rights herein of the members to use and enjoy the Common Property. The Declarant reserves the right to affect minor redesigns or reconfiguration of the Common Property and execute any open space declarations applicable to the Common Property.

“Dwelling(s)” shall mean and refer to a single family residence constructed on a Lot in the Subdivision that has been issued a certificate of occupancy by the City of Bentonville, Arkansas.

“Lot” or “Lots” shall mean and refer to any plot or tract of land which is designated as a lot on the Plat which is attached hereto and labeled Exhibit “B”. No lot as set forth on Exhibit “B” may be further subdivided or split; provided however minor adjustments to lot lines or boundaries maybe made from time to time to cure title problems or to resolve procedures created by encroachments so long as such adjustments are first approved by the Board if any lots are unsold and closed.

“Member(s)” or “member(s)” shall mean and refer to each owner of a lot.

“Owner(s)” or “owner(s)” shall mean and refer to each and every person or business entity who or which is a record owner or subsequently becomes a record owner of a fee or undivided fee interest in any lot subject to these covenants.

“Plat” shall refer to the Harbin Pointe, Phase II P.U.D. Final Plat and the Replat Of Lots 45-79 of the Harbin Pointe, Phase II P.U.D. Final Plat of survey set out in Exhibit “B” attached hereto.

2. Rights Reserved for Developer

Intentionally Deleted

3. Membership and Voting Rights in the Association.

A. Membership. Every owner of a Lot shall automatically be a member of the Association.

B. Voting Rights. The Association shall have one (1) class of membership for purposes of Voting. Owners shall be entitled to one (1) vote for each Lot owned by the owner.

C. Quorum, Notice and Voting Requirements. The quorum, notice, and voting requirements of and pertaining to the Association are set forth within the Articles of Incorporation and Bylaws of the Association, as the same may be amended from time to time. Subject to the provisions of Section B above and any other provision to the contrary set out in this Declaration, any action by or on behalf of the Association may be taken with the assent given in writing and signed by members who collectively hold or control a majority of the outstanding votes of the Association.

4. Architectural Control Committee.

A. Designation of Committee. The Association shall have an Architectural Control Committee (the "Committee"), consisting of the Board of Directors of the Association. All appointments to fill any vacancies thereon shall be appointed by the Board of Directors of the Association.

B. Function of the Committee. No Dwelling, Building, Structure or other Improvement shall be constructed or maintained upon any Lot and no alteration or repainting to the exterior of a Dwelling, Building, Improvement or Structure shall be made and no landscaping performed unless complete plans, specifications and site plans showing the exterior design, height, building material and color scheme, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing walls and windbreaks, sewage systems and the grading plan shall have been submitted in writing to and approved in writing by the Committee prior to the commencement of construction. Once the Committee has approved the plans and specifications, the Committee shall issue a letter to the Owner authorizing the Owner to commence the construction ("Letter"). A copy of the plans, specifications, and Lot plans as finally approved shall be deposited with the Committee. The Committee shall have the power to employ professional consultants to assist it in discharging its duties. The decisions of the Committee shall be final, conclusive and binding upon the applicant.

C. Content of Plans and Specifications. The plans and specifications to be submitted and approved shall include the following:

(i) A statement by the Owner and his architect, engineer, designer or other qualified person undertaking the design of the proposed Improvements that such parties have visited the site and have reviewed and are familiar with the applicable provisions of this Declaration, including the following design guidelines.

(ii) A site plan drawn to scale indicating:

(a) Name of subdivision, lot, block, address and/or other required legal description of the property, and North directional arrow.

- (b) Property lines, including streets, rights-of-way, lakes, easements, set back lines and all dimensions,
- (c) Existing grade and location of proposed cut and/or fill, indicating approximate slope and height or depth of each (2' minimum interval).
- (d) Proposed sewer system footprint.
- (e) Drainage plans indicating drainage patterns away from building to swales, culverts and other drainage facilities.
- (f) Parking and paving plans indicating the location of all parking areas, driveways and sidewalks.
- (g) Location of utility services, including particularly the location of all above-ground equipment such as transformers, risers, meters, sewage grinder pumps and tanks and similar items.
- (h) Approximate location, size and kind of existing and proposed trees great than four inches in diameter measured at a point 3 feet above the grade.
- (i) Location of all structures, retaining walls, garbage and trash containers, decks, terraces, patios and similar outdoor living areas, walks, walls, fences, signs, fountains, air conditioner compressors and other HVAC equipment and components located outdoors, mechanical equipment, and other proposed improvements.
- (j) Location of contractor's temporary facility, outhouses and other temporary structures and items, to be used during construction.
- (k) Any temporary access to the site.
- (iii) Floor plans for all floors indicating interior room dimensions and use, the location and size of exterior windows, doors and other openings, the location of mechanical and electrical systems, or any other conceptual plans for which a review is requested by the Committee.
- (iv) Exterior elevations providing the exterior views of all structures, fences, signs and similar Improvements labeled in accordance with the site plan. The elevations shall include a brief description of all exterior materials, colors and finishes, including without limitation those of the walls, roofs, trim, chimneys, doors and windows. Building elevations shall be provided for all sides of the Dwelling.
- (v) Specifications or color boards as necessary to describe the (i) exterior wall materials (**acceptable exterior wall materials are brick, stone, cedar shake, hardiplank/masonite or wood; Dryvit, stucco, or a similar product is not acceptable**) and colors; (ii) roof materials and colors; (iii) door materials and colors; (iv) chimney materials; (v) stained or colored pavement materials; (vi) fencing and screening material; and (vii) any other exterior site improvements. Color and material descriptions shall be keyed to the exterior elevations,

differentiating between general wall colors, fascia, railing, structural elements, door, trim and accent colors, and other elements of the structure.

(vi) The landscaping plan indicating proposed plantings (by common and botanical names) and their sizes; exterior lighting system, including decorative, security and other types of illumination (including location and type of lighting fixtures), irrigation system, special landscape features including without limitation ponds and fountains; flower and vegetable gardens, and similar outdoor improvements. A residential landscaping irrigation system is required for the front yard of each Lot and such irrigation design and specifications shall be included in the plans and specifications submitted to the Committee. Bermuda or Fescue Sod, as deemed appropriate by the Committee, is required on all Lots.

(vii) A fee in the amount of \$50.00 (checks are to be made payable to the Association) for costs or expenses the Committee may incur in reviewing, or having professionals review, the plans and specifications as submitted. Such fee shall be non-refundable. The Committee reserves the right to waive all of or a portion of this fee.

D. Installation & Maintenance of Landscaping. All landscaping (irrigation, sod, plants and trees) installed during the initial construction of each Dwelling, other than landscaping located in the side yards and rear yards (areas between and behind the Dwellings) of each Lot, shall be maintained (including fertilization and irrigation) by the Association. The Association will mow the grass located within such side yards and rear yards, if any, provided the Owner allows free access to such side yard and/or rear yard so that maintenance crews can access same.

E. Definition of Improvement. "Improvement" shall mean and include all Dwellings, buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, poles, towers, antennas, driveways, swimming pools, signs, changes in any exterior color or shape, glazing or re-glazing of exterior windows with mirrored or reflective glass, and any other new exterior construction or exterior improvement which materially alters the appearance of any Lot and which may not be included in any of the foregoing.

F. Building Height. No Dwelling shall be erected, altered, or placed on a Lot which shall contain more than two (2) stories. Also, the minimum height of each roof must be at least a 6-12 pitch.

G. Location on Lot. No Dwelling, Building, Structure or Improvement shall be located on a Lot nearer to the front Lot line, side Lot line or rear Lot line established for each Lot by the Plat, provided that the Committee may authorize variations in its discretion so long as those variations do not contradict the building setbacks as depicted on the Plat and required by the City of Bentonville for the Subdivision PZD Ordinance. In the event that a Dwelling is destroyed, by fire, storm or otherwise, such Dwelling, if reconstructed, shall be placed in the same location on the Lot and have the same exterior shape, window placement, dimensions and colors, as close as practicably possible, as the Dwelling that was destroyed and must be approved by the Committee.

H. Commercial Structures. No Building, Structure or Improvement of any type may ever be placed, erected or used for business, professional, trade or commercial purposes on any portion of any Lot. This prohibition shall not apply to any business or Structure that may be placed on any Lot or portion of a Lot that is used exclusively by a public utility company in connection with the furnishing of public utility services to the Subdivision, or to any Dwelling constructed in the Subdivision to be used as a sales office or a model home as provided in Section 7 M below.

I. Outbuildings Prohibited. No outbuildings or other detached structure appurtenant to the Dwelling may be erected on any of the Lots hereby restricted without the consent in writing of the Committee.

J. Noxious Activity. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall any garbage, trash, rubbish, tree limbs, pine straw, leaves or cuttings, ashes or other refuse be thrown placed or dumped upon any vacant Lot, street or road, nor on any Lot unless placed in a container suitable for garbage pickup; nor shall anything ever be done which may be or become annoyance or nuisance to the neighborhood.

K. Oil and Mineral Operations. No oil drilling, oil development operating, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

L. Existing Structure. No existing, erected building or structure of any sort may be moved onto or placed on any of the Lots without the consent in writing of the Committee.

M. Temporary Structure. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on a Lot covered by these covenants and restrictions shall at any time be used for human habitation, temporarily or permanently. This provision does not apply to any construction trailer(s) to be used during the initial construction of the Dwellings in the Subdivision.

N. The Basis of Approval. Approval of plans and specifications shall be based on, among other things, adequacy of site dimensions, structural design, conformity and harmony of external design and of location with neighboring Dwellings and sites, relation of finished grades and elevations to neighboring sites, and conformity to both the specific and general intent of the protective covenants. The Committee shall establish certain architectural guidelines, which shall be approved by the Board of Directors (the Architectural Guidelines), and all plans and specifications must comply with Architectural Guidelines then in force and effect. However, the Committee may approve exceptions to the Architectural Guidelines by a three-fourths (3/4th) vote. The current Architectural Guidelines shall be available at the office of the Association or the office of the Declarant.

O. Majority. A majority vote of the Committee is required for approval or disapproval of proposed improvements.

P. Failure of Committee to Act. If the Committee fails to approve, disapprove, or reject as inadequate proposed plans and specifications within thirty (30) days after proper written submittal, they shall be deemed approved. If plans and specifications are not sufficiently complete or are otherwise inadequate, the Committee may reject them entirely, partially or conditionally approve

Q. Limitation of Liability. Neither the the Association, the Committee nor any of its members shall be liable, in damages or otherwise, to anyone submitting plans and specifications for approval or to any Owner of land affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans and specifications.

R Driveways. Access driveways and other paved areas for vehicular use on a Lot shall have a base of compacted gravel, crushed stone or other approved base material and shall be surfaced with concrete. Plans and specifications for driveways, culverts, pavement edging or markers shall be as approved in writing by the Committee. Driveways may access the adjacent street at one location only, unless otherwise approved by the Committee.

S. Mailboxes. All mailboxes shall be installed, provided and maintained by the Association. Further, all mailboxes shall be deemed Common Property.

5. Covenants for Assessments and Enforcement of Covenants.

A. Creation of the Lien and Personal Obligations of Assessments. The Developer (as defined in the Original Declaration), for each Lot owned by it within the Subdivision, previously covenanted and agreed, and each Owner of any Lot, by acceptance of a deed therefore, whether from the Developer or some subsequent grantor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agreement (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot), to pay to the Association the following:

- (i) Regular assessments or charges for maintenance, taxes and insurance for the Common Property;
- (ii) Special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to lime as hereinafter provided;
- (iii) Special individual assessments which might be levied against individual Lot owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual owner, his family, guests, or invitees, and not caused by ordinary wear and tear, including the failure to properly maintain their Dwelling and/or to appropriately keep the Dwelling properly painted.
- (iv) Individual assessments and fines levied against individual Lot owners for violation of rules as pertaining to the Association and/or the Common Property.

(v) The regular, special group, and special individual assessments, together with such late charges, interest and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made.

B. Purpose of Assessments. The assessments levied by the Board on behalf of the Association shall be used for the purpose of enhancing the natural environment, appearance and beauty of the Subdivision and promoting the health, recreation, safety, and general welfare of the residents of the Subdivision.

C. Basis and Amount of Regular Maintenance Assessments.

(i) The initial regular base assessments shall be determined by the Associated and promulgated to all Owners. Assessments may also be paid monthly if a member has set up for the payment of said assessments either through automatic withdrawal or through escrow funds. The Board may increase the regular base assessment amount as deemed appropriate to cover escalation of prices for services. Assessments shall apply to all Lots, unless otherwise provided herein.

(ii) The Board shall give notice to all members at least thirty (30) days in advance of the date all regular or special assessments are due. The Board may prescribe from time to time that the regular base assessments are to be collected on an annual, semiannual, quarterly, or monthly basis, and the Board shall prescribe the appropriate due dates. All regular base assessments shall be collected in advance. The due date or dates (if it is to be paid in installments) of any other assessments or special assessment shall be fixed in the respective resolution authorizing such assessment.

D. Special Group Assessments. In addition to the regular assessments authorized by Section C, the Board may levy in any fiscal year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Property.

E. Rate of Assessments. Except as noted herein, regular and special group assessments shall be fixed at a uniform rate for all Lots owned by Members, unless otherwise approved by the Board. The failure to pay the assessment by the owner of a Lot shall constitute a lien against the Lot and the Association may pursue any remedy available to it at law or in equity to collect such lien including initiation of a foreclosure suit in a court of competent jurisdiction

F. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner: the Lien: and Remedies of Association.

(i) If any assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment shall be considered delinquent and shall, together with any late charge (as to be determined by the Association) and interest thereon at the maximum rate allowed under applicable law and costs of collection thereof, thereupon becoming a continuing

debt lien on the Lot of the non-paying owner which shall bind such hands of the owner and owner's heirs, executors, administrators, devisees, personal representatives, successors, and assigns. The Board shall have the right to reject partial payments of an unpaid assessment and demand the full payment thereof. The lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Property or abandonment of the Lot;

(ii) The Board may also give written notification to the holder(s) of a mortgage on a Lot of a non-paying Owner of such owner's default in paying any assessment when such default has not been cured within thirty (30) days of the original date due, provided that the Board has, theretofore, been furnished in writing with the correct name and address of the holder(s) of such mortgage and a request to receive such notification; and

(iii) The Board may, at its election, retain the services of an attorney to review, monitor, collect, and file suit to foreclose on a lien for unpaid assessments and delinquent accounts, and there shall also be added to the amount of any unpaid assessment or to any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association.

G. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any bonafide first mortgage or deed of trust now or hereafter placed upon any Lot subject to assessment.

H. Transfer of Ownership. If any Lot or Dwelling should be sold, and the current lot owner has paid dues, the current owner can and should be reimbursed for the prorated portion remaining for the year.

I. Enforcement of Covenants Contained within this Amended Declaration. The remedies provided in this Section for breach of the covenants stated in this Amended Declaration are cumulative and not exclusive. In addition to other rights and remedies provided by the Amended Declaration and by law, the Association has the following right to enforce this Amended Declaration:

(i) Nuisance. The result of every act or omission that violates any provision of this Amended Declaration is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

(ii) Fine. The Association may, in the Board's sole and absolute discretion, levy reasonable charges, as an individual assessment, against an Owner and/or his Lot if the Owner, or the Owner's family, guests, employees, agents, or contractors violate a provision of this Amended Declaration. Fines may be levied for each act of violation or for each day a violation continues, and do not constitute a waiver or discharge of the Owner's obligations under this Amended Declaration.

(iii) **Self-Help.** The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates this Amended Declaration. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an individual assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not demolish an item of substantial construction on a Lot without judicial proceedings.

(iv) **Judicial Enforcement.** The Association, as well as any Owner shall have the common law right to enforce the terms and provisions of this Amended Declaration by any appropriate judicial process, including but not limited to injunctive relief.

(v) **No Waiver.** The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by this Amended Declaration. Failure by the Association or by any Owner to enforce a provision of this Amended Declaration is not a waiver of the right to do so thereafter.

J. **Warning/Notice.** Before levying a fine for violation of this Amended Declaration (other than nonpayment of any assessments), or before levying an individual assessment for property damage, the Association will give the Owner: (i) a written warning identifying the specific violation(s) the Owner is committing; and then (ii) written notice of the levy and an opportunity to be heard before the Board. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional procedures and requirements for notices and hearing.

K. **Limitation of Interest.** The Association, and its officers, directors, managers and attorneys, intend to conform strictly to the applicable usury laws of the State of Arkansas. Notwithstanding anything to the contrary in this Amended Declaration, the Bylaws, the Association's collection policies and resolutions, or any other document or agreement executed or made in connection with any of these, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects or applies as interest any sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the Owner if those assessments are paid in full.

6. General Powers and Duties of the Board of Directors of the Association.

A **Powers and Duties.** The affairs of the Association shall be conducted by its Board of Directors (sometimes referred to as the "Board").

(i) The Board for the benefit of the Association, the Subdivision, and the Owners, may provide and may pay for, out of the assessment fund(s) provided for in Section 5 above, any or all of the following:

(a) Care, preservation and maintenance of the Common Property and the furnishing and upkeep of any personal property (including all irrigation equipment under the operation and control of the Association) and fixtures, for use in or on the Common Property;

(b) Landscaping and maintenance of the lawns within the Subdivision, including but not limited to, mowing, mulching, weeding, fertilization, irrigation, etc.;

(c) Taxes, insurance, and utilities (including, without limitation, electricity, gas, water, and sewer charges), if any, which pertain to the Common Property only;

(d) The services of any person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by a manager hired by the Board;

(e) Legal and accounting services; and

(f) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes, or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association and the Subdivision or for the enforcement of this Declaration.

(ii) The Board shall have the following additional rights, powers and duties;

(a) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association; and

(b) To make reasonable rules and regulations for the operation of the Common Property and to amend this Declaration from time to time; provided, however, no portion of Paragraph 7 (Use and Division of Lots) of this Declaration may be amended unless not less than two-thirds (2/3) who occupy Dwellings in the Subdivision approve the proposed amendment(s).

B. Maintenance Contracts. Subject to Section 2 above, the Board shall have full power and authority to contract with any Owner for performance on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interests of the Association.

C. Liability Limitations. Neither any member or owner nor the directors and officers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or otherwise. The Association, and its respective directors, officers, agents, and employees, shall not be held liable

for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof, or for failure to repair or maintain the same.

D. Reserve Funds. The Board may establish reserve funds which maybe maintained and accounted for separately from other funds maintained for annual operating expenses.

7. Use and Division of Lots.

A. The Association does hereby dedicate for public use all of the streets as shown on the Plat of the Subdivision as described above, save and except any roads or streets depicted as being "Private" on the Plat. The Association further dedicates to the public use the easements and rights of way, all common areas, sidewalks and all drainage detention ponds as designated on the Plat of the Subdivision for the several purposes of constructing, maintaining, operating, repairing, replacing and servicing all public or quasi-public utilities, together with the right of ingress and egress for such purposes as aforesaid being reserved to the employees, agents and designees of any public or quasi-public utility providing service to the Lots within the Subdivision. Within said easements no public utility providing service to the Lots within the Subdivision. Within said easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance utilities. The owner of a Lot within the Subdivision shall be responsible for maintaining all improvements within the boundaries of said Lot, except for those improvements for which a utility company is responsible or those areas for which the Association shall be responsible.

B. Supply lines for all public or quasi-public utilities shall be located underground in the easement ways reserved for utility service as shown on the Plat but the electrical lines running over the Subdivision prior to development shall remain above ground. Service lines to all Dwellings located on a Lot shall be underground, and shall run from the nearest source of each utility within the easement to the point of use as determined by the location and construction of such Dwelling as the same may be located upon the Lot. The supplier of each and every public or quasi-public utility shall hereafter be deemed to have a definite, permanent, effective and exclusive easement, extending from the source of said utility within the easement to the point of use at each Dwelling or other structure. The supplier of each utility, through its proper agents and employees, shall at all times have the right to access to said easement or easements, as shown on said Plat or as provided for in this Declaration. The easement is granted for the purpose of installing, maintaining, removing or replacing any portion of the above ground or below ground facilities. The owner of a Lot shall not allow any activity on said Lot, including construction or alternation of grade, which may interfere with the operation of any utility line and appurtenances thereto. Repairs or cost of relocation occurring as a result of such activities shall be paid for by the owner of the Lot. Shrubbery shall not be placed so as to interfere with the reading of, or the normal maintenance of, any utility meter.

C. All Lots in the Subdivision shall be used for one separate single-family detached Dwelling and for no other purpose. Dwellings shall be of conventional construction. The floor area of the main residential structure (heated and cooled) on a Lot within the Subdivision, not including open porches, attics, or garages, shall not be less than 1,200 square feet and shall not

be greater than 1,400 square feet. Exceptions in floor area must be approved in writing by the Committee.

D. Each Dwelling shall be constructed on a permanent foundation made of either concrete or pier and beam. All Dwellings shall be similar in size, shape and a common color scheme shall be followed throughout the Subdivision.

E. Each Dwelling or other structure constructed on a Lot shall be covered by a roof of architectural composition shingles to be approved by the Committee. All Dwellings constructed in the Subdivision shall have a private garage to accommodate at least two (2) automobiles. No detached structures shall be allowed to be built on a Lot within the Subdivision.

F. No off-street parking shall be allowed on a regular basis. All driveways servicing residential Dwellings, garages and/or out buildings on a Lot shall be composed of concrete or exposed aggregate. Furthermore, no vehicles ATV, trailers, boats, etc. shall be allowed to be parked in or on the side yard of any Lot. Builder or Owner is required to build sidewalks across the front and/or side of any Lot(s) as shown on the Plat set out on Exhibit "B" in accordance with City of Bentonville, Arkansas standards.

G. Each Lot shall have a natural wood fence, not greater than six (6) feet high, constructed parallel to the front of the Dwelling across the side yard. Each Owner may elect, but shall not be required, to install a natural wood privacy fence not greater than six (6) Feet to encompass the entire Lot. No chain link type fence shall be erected on any Lot.

H. No outbuilding, tent, shack, garage, barn or any vehicle on a Lot may be used as living quarters, either permanently or temporarily. No trailer, mobile home, tent, construction shack, or other out buildings shall be erected or kept on a Lot in the Subdivision except for temporary use by construction contractors for a reasonable period of time. No tow trucks, recreational vehicles or vehicles used for recreation purposes shall be stored or parked on a Lot, driveway or in the Subdivision, including public streets and alleys. No vehicle that has been inoperative for a period of more than three (3) days shall be stored on a Lot or driveway. No Boats and other recreational equipment shall be stored on a Lot or driveway. The parking or storage of unused or unlicensed motor vehicles is prohibited in the Subdivision.

I. No obnoxious or offensive trade or activity shall be carried on or upon a Lot, nor shall anything be done thereon that maybe or may become an annoyance or nuisance to the neighborhood. No future mineral development of any kind shall be permitted affecting the surface of the Lots covered by these restrictions. No animals, livestock, or poultry of arty kind shall be raised, bred or kept on a Lot except that dogs, cats or other household pets maybe kept provided they are not kept, bred or maintained for any commercial purpose and that the owners comply with all applicable city ordinances. All dogs, cats and other domestic animals permitted to be kept within the Subdivision by these restrictive covenants and any city code shall be kept and maintained in the fenced side yard of a Dwelling, as described in Section 7(G). No animal shall be chained, tied or otherwise restrained either in the rear or front yard of a Lot. All dog houses or other animal shelters shall be kept in the side yard of a Dwelling. Owners shall not be

permitted to have "barn" or pasture animals regardless of the number of Lots owned by any one owner.

J. Each Lot shall be permitted one antenna, aerial satellite dish or similar devise for the reception of television, radio or information services so long as the devise is located within the building set back limits and to the rear of the main residential building as approved by the Committee and is used for noncommercial purposes only. Each antenna, aerial satellite dish or other devise shall be of a minimum elevation to permit adequate reception, not higher than the primary Dwelling located on the Lot, and the transmitting and receiving portion shall not be more than two (2) feet in diameter at its widest point and not visible from the front of the Dwelling.

K. In the event that any Lots are sold and no Dwelling is immediately erected, the owner or owners of such Lot or Lots shall keep said property mowed and in a neat sanitary condition.

L. No sign of any kind shall be displayed to the public view on a Lot, except one professional sign advertising the property for sale or rent, or signs used by a builder or agent to advertise the property during the construction and sale of a Dwelling thereon. In no event shall any such sign stand more than four (4) feet above ground level nor be more than five (5) square feet in size nor be lighted at night.

M. No Owner shall be allowed to conduct any business or commercial activity or enterprise upon any Lot. No commercial type buildings shall be constructed on any Lot Provided, a person or entity owning multiple lots which are held for sale may maintain a model home or sales office in the Subdivision. Any such sales office shall be designed to be compatible with a residential Dwelling.

N. No Lot, nor any portion thereof, shall be split to create an additional Lot in this Subdivision.

O. The Owner of each Lot within the Subdivision is hereby declared to have a Universal Easement, so as to include side yards, and the same is hereby granted to the Association and any future Owner, over all adjoining Lots for the purpose of accommodating or maintaining any encroachment due to engineering errors, errors in original construction, settlement or shifting of the buildings, and for maintenance, construction or any other cause, provided, however, that in no event shall an easement for encroachment be created in willful misconduct of said Owner or Owners. In the event a Dwelling on any Lot is partially or totally destroyed, by acts of nature or otherwise, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and the Universal Easement shall be for the maintenance of said encroachments so long as they shall exist. In addition, each Lot within the Subdivision is hereby declared to have a Universal Easement for overhanging roofs and eaves as originally constructed over each adjoining Lot for the maintenance thereof. Each of the Universal Easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being served and shall pass with each conveyance of said Lot. Said Universal Easement will continue so long as completed Dwellings or Dwellings under construction remain on any Lot.

P. Lots within the Subdivision shall be conveyed subject to one side yard maintenance easement, which easement shall be for the benefit of the adjacent Lot, and the right to create, grant and reserve such easements is hereby preserved by the Association for itself and its successors in interest. Said maintenance easement shall be the width of the distance from the side yard property line to edge of the foundation of the Dwelling on the adjacent Lot, as built, and shall extend from the front fence to the rear fence, as described in Section 7(G) above, The following rules prescribe the terms, conditions and uses of said easements, both by the Owner of the easement (the dominant tenement) and the Owner of the land under the easement (the servient tenement).

(i) The Owner of the Lot which is benefited by the easement (the dominant tenement), except as otherwise provided in this Section, shall have the use of the surface of the easement area for the sole and only purpose of maintaining and repairing said Owner's Dwelling.

(ii) The Owner of the Lot which is benefited by the easement (the dominant tenement), shall have the right at all reasonable times to enter upon the easement area for normal and customary residential maintenance, only after providing the Owner of the land under the easement (the servient tenement) reasonable written notice.

(iii) The Owner of the servient tenement shall have the right of surface drainage over, along and upon the easement area for water resulting from the normal use of the servient tenement and the dominant tenement shall not use the easement area in such manner as will interfere with such drainage.

(iv) The Owner of the dominant tenement shall not attach any object, except the fences described in Section 7(G), above, to the side of the Dwelling on the adjacent Lot. No structure shall be constructed or placed upon the side yard easement by either tenement. Any landscaping placed or planted within the maintenance easement that is removed and/or damaged by the Owner of the dominant tenement shall be replaced by the Owner of the dominant tenement to the extent possible. If replacement of said landscaping is not possible, the Owner of the dominant tenement shall compensate the Owner of the servient tenement for the removal and/or damage of said landscaping.

(v) The Owner of the dominant tenement as a condition to the exercise of the right of access provided for shall indemnify and hold harmless the Owner of the servient tenement from any and all damage to the Dwelling, yard and landscaping of the servient tenement caused by such Owner's use of the maintenance easement.

The aforesaid side yard easements will continue so long as completed Dwellings or Dwellings under construction remain on any Lot.

Q. These covenants shall run with the land, and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date this instrument is recorded, (except as amended in accordance with the covenants). After which time said covenants shall be automatically extended for successive period(s) often (10) years unless an

instrument signed majority of the then owners of the Lots has been recorded, agreeing to change said covenants in whole or in part.

R. If any provision of this Declaration or any section, clause, phrase, word or the application thereof in any circumstances is held to be invalid, the validity of the remainder of this Declaration and of the application of the remaining provision shall not be affected thereby.

S. Any and all containers and/or receptacles for trash and/or garbage ("Trash Cans") may only be placed for open access on the day(s) when the pick-up of said trash and/or garbage is scheduled. All Trash Cans must be removed from the curb and/or street within twenty-four (24) hours after said scheduled pick-up. At all other times, all Trash Cans must be stored in such a manner and fashion as to be shielded from view by adjoining Owners and/or the street.

T. There shall be no temporary or permanent parking of any motor vehicle, trailer and/or recreational device in front of any mailbox and/or fire hydrant situated in or present in the Subdivision.

U. Except on special occasions such as holidays or a get-together at an Owner's residence, or as otherwise approved by the Association, all parking shall be in driveways. Accordingly, no vehicle shall be parked on the street for more than two (2) consecutive days and shall not be parked overnight on a street. Any violation of this section may result in a towing of the vehicle at the owner's expense.

V. Except as otherwise approved by the Association, no recreational vehicle, mobile home, jet ski or boat may be stored or parked on a Lot or driveway or street in the Subdivision any longer than is reasonably necessary for loading and/or unloading. No trailers, at any time, shall be stored or parked on a Lot or driveway or street in the Subdivision.

W. All toys, newspapers and yard waste must be picked up in a timely manner so as not to accumulate in an unsightly manner as viewed from any street in the Subdivision.

Book 2015 Page 34179
Recorded in the Above
DEED Book & Page
06/25/2015

IN WITNESS WHEREOF, the Declarant, Arbor Lane Home Owners Association, Inc., has caused this Amended and Restated Declaration of Bill of Assurances and Protective Covenants of Harbin Pointe, Phase II P.U.D. an Addition to the City of Bentonville, Arkansas, to be duly executed by the undersigned, being dully authorized to do so, this 16 day of June, 2015.

**ARBOR LANE HOME OWNERS
ASSOCIATION, INC.**

By: Kelley Kosters
Name: Kelley Kosters
Title: President

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF Benton) ss.
)

On this 16th day of June, 2015, before me, a notary public, duly commissioned, qualified and acting, personally appeared KELLEY KOSTERS, who acknowledged himself/herself to be the President of ARBOR LANE HOME OWNERS ASSOCIATION, INC., and that he/she, as such officer, being duly authorized to do so, executed this instrument for the consideration, uses and purposes therein mentioned and set forth, by signing the name of the business or entity as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Ashley N. Johns
Notary Public

My Commission Expires:
11/7/24

Ashley N. Johns
Commission # 12402004
Notary Public - Arkansas
Benton County
Comm. Expires ~~Nov. 7, 2024~~

Exhibit "A"
Property Description

LOTS 13 THROUGH 41, INCLUSIVE OF HARBIN POINTE ADDITION, PHASE 2, TO THE CITY OF BENTONVILLE, ARKANSAS FILED FOR RECORD IN PLAT BOOK 2011 AT PAGES 87 AND 88, IN THE OFFICE OF THE CIRCUIT CLERK, BENTON COUNTY, ARKANSAS.

SUBJECT TO RIGHTS-OF-WAY, EASEMENTS, AND OTHER RESTRICTIONS OF RECORD, IF ANY.

Book **2015** Page **34181**
Recorded in the Above
DEED Book & Page
06/25/2015

Exhibit "B"
The Plat

Book **2015** Page **34182**
Recorded in the Above
DEED Book & Page
06/25/2015

Benton County, AR
I certify this instrument was filed on
06/25/2015 8:41:28AM
and recorded in DEED Book
2015 at pages 34163 - 34183
Brenda DeShields-Circuit Clerk

