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SUE HODGES
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BENTON COUNTY, ARK.

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS**
for
WOODS CREEK
Bentonville, Arkansas

Woods Creek, Inc.
Bentonville, Arkansas

1692

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

WOODS CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

is made this 27 day of May, 1993, by Woods Creek, Inc., an Arkansas corporation, (hereinafter referred to as "Declarant");

Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial covenants under a general plan of improvement for the benefit of all owners of residential property within the Properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration;

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property as is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, or assigns, and shall inure to the benefit of each owner thereof.

Article I
Definitions

Section 1. "Area of Common Responsibility" shall mean the Common Area, together with those areas, if any, which by the terms of this Declaration, by Supplemental Declaration, or by contract or agreement with any Neighborhood, become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public rights-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 2. "Articles of Incorporation" or "Articles" shall mean the Articles of Incorporation of Woods Creek Property Owners Association, Inc., as filed with the Secretary of State of the State of Arkansas, when created.

Section 3. "Association" shall mean Woods Creek Property Owners Association, Inc., an Arkansas nonprofit corporation, its successors or assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Arkansas corporate law. The use of the term "association" or "associations" in lower case shall refer to any condominium association or other owners association having jurisdiction over any part of the Properties.

Section 4. "Base Assessment" shall mean assessments levied against all Units in the Properties to fund Common Expenses.

Section 5. "By-Laws" shall mean the By-Laws of Woods Creek Property Owners Association, Inc., as they may be amended from time to time.

Section 6. "Class 'B' Control Period" shall mean the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors.

Section 7. "Common Area" shall be an inclusive term referring to all General Common Area and all Exclusive Common Area, as defined herein. The initial Common Area shall be conveyed to the Association prior to the conveyance of a Unit to any Unit purchases other than a builder or developer holding title for the purpose of development and resale.

Section 8. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

Section 9. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Architectural Control Committee.

Section 10. "Declarant" shall mean Woods Creek, Inc., an Arkansas corporation, or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 11. "Exclusive Common Area" shall mean certain portions of the Common Area which are for the exclusive use and benefit of one or more, but less than all, Neighborhoods. All costs associated with maintenance, repair, replacement and insurance of Exclusive Common Areas shall be assessed against the Owners of Units in only those Neighborhoods which are benefitted thereby as a Neighborhood Assessment, as defined herein. By way of illustration and not limitation, Exclusive Common Areas may include entry features exclusively for a particular Neighborhood or Neighborhoods and maintained exclusively by Neighborhood Assessments. Initially, any Exclusive Common Areas shall be designated as such and assigned in the deed conveying the Common Area to the Association. A portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of a majority of the total Association vote, including a majority of the votes within the affected Neighborhood(s).

Section 12. "General Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

Section 13. "Master Concept Plan" shall mean the Subdivision Layout Plan for the development of the property described on Exhibits "A" and "B" most recently accepted by the City of Bentonville, Arkansas, as it may be amended from time to time.

Section 14. "Member" shall mean an Owner as defined and provided herein.

Section 15. "Mortgage" shall mean a mortgage, a deed of trust, a deed to secure debt,

or any other form of security deed.

Section 16. "Mortgagee" shall mean a beneficiary or holder of a Mortgage.

Section 17. "Mortgagor" shall mean any Person who gives a Mortgage.

Section 18. "Neighborhood" shall mean each separately developed and denominated residential area comprised of one (1) or more housing types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have common interests other than those common to all Association members, such as a common theme, entry feature, development name, and/or common areas which are not available for use by all Association Members. For example, and by way of illustration and not limitation, each condominium, townhome development, apartment development, cluster home development, and single-family detached housing development may constitute a separate Neighborhood. In addition, each parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one (1) Neighborhood upon development. Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined in Article III, Section 3) having jurisdiction over the property within the Neighborhood. Neighborhoods may be divided or combined in accordance with Article III, Section 3. of this Declaration.

Section 19. "Neighborhood Assessments" shall mean assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses.

Any Neighborhood Assessment shall be levied equally against all Units in the Neighborhood benefitting from the services supported thereby, provided that in the event of assessments for exterior maintenance of structures, or insurance on structures, or replacement reserves which pertain to particular structures, such assessments for the use and benefit of particular Units shall be levied on a pro rata basis among the benefitted Units.

Section 20. "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of Owners of Units within a particular Neighborhood, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein.

Section 21. "Owner" shall mean one (1) or more Persons who hold the record title to any Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner.

Section 22. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 23. "Properties" shall mean the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 24. "Special Assessment" shall mean assessments levied in accordance with Article IX, Section 4, of this Declaration.

Section 25. "Supplemental Declaration" shall mean an amendment or supplement

to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

Section 26. "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, townhouse units, apartment units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties. The term shall include all portions of the lot owned including any structure thereon.

Article II Property Rights

Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the lessee of the Unit.

As long as the Declarant has an option to annex additional property pursuant to Article VIII, Section 1 hereof, Declarant reserves the right to amend this Declaration unilaterally at any time, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for Woods Creek desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Woods Creek.

Article III Membership and Voting Rights

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association.

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit owned. In the event the Owner of a Unit is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

Class "A" Members shall be entitled to one (1) equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof and for which a full assessment is being paid, and one (1) vote for every four (4) Units which are being assessed at a reduced rate, as provided in Article IX, Section 1, of this Declaration. When calculating the number of votes for Units which are being assessed at a reduced rate, the number of such Units shall be rounded to the nearest whole number that is divisible by four (4); provided, however, in any event, the Owner of Units which are being assessed at a reduced rate shall be entitled to cast at least one (1) vote. In no event shall a Member be permitted to cast a fraction of a vote.

In any situation where a Member is entitled personally to exercise the vote for his Unit and more than one (1) Person holds the interest in such Unit required for membership, the vote for such Unit shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) Class "B". The Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member shall be entitled to, in its sole discretion, appoint the members of the Board of Directors during the Class "B" Control Period, subject only to Article III, Section 6, of the By-Laws. The Class "B" Control Period shall terminate, and the Class "B" membership shall terminate and become converted to Class "A" membership, upon the earlier of:

(i) when seventy-five percent (75%) of the Units permitted by the Master Concept Plan for the property described on Exhibits "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than Declarant or builders holding title solely for purposes of development and sale;

(ii) January 1, 2010; or

(iii) when, in its discretion, the Declarant so determines.

Notwithstanding any provision to the contrary contained in this Declaration or the By-Laws, during the Class "B" Control Period, any action, policy or program of the Association requiring approval of the Members of the Association shall not be taken or adopted until also approved in writing by the Class "B" Member.

Section 3. Neighborhoods. Every Unit shall be located within a Neighborhood as defined in Article I. The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of another owners association ("Neighborhood Association") in addition to the Association, but no such Neighborhood Association shall be required except in the case of a condominium. Any Neighborhood which does not have a Neighborhood Association shall elect a Neighborhood Committee, as described in Article V, Section 3, of the By-Laws, to represent the interest of Owners of Units in such Neighborhood.

Each Neighborhood Association or Committee, upon the affirmative vote, written consent, or a combination thereof, of a majority of Owners within the Neighborhood, may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood, the cost of which shall be assessed against the benefitted Units as a

Neighborhood Assessment pursuant to Article IX.

The Declarant during the period of time when all property in a stated Neighborhood is owned by Declarant shall submit to the Board of Directors a Plat of each Neighborhood as Declarant so determines. When additional property owners exist, upon submission of a petition, signed by owners of a majority of the units within a contiguous parcel governed by this Declaration, the Board of Directors shall establish a Neighborhood within thirty (30) days of the receipt thereof, unless the Board of Directors denies said petition within the thirty (30) day period. The Board of Directors may deny a petition to establish a Neighborhood only upon a determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. No Unit shall be in more than one Neighborhood. If a petition is submitted which attempts to place a Unit or Units already in an existing Neighborhood, into another Neighborhood, said petition shall not be deemed submitted to the Board of Directors for action unless approved by the Owners of a majority of the Units within both the existing Neighborhood and the proposed Neighborhood. All submitted petitions for establishing a Neighborhood together with the Minutes of action taken by the Board of Directors shall be retained in the Books of the Association which shall be maintained for as long as this Declaration is in effect and filed of record with the Recorder of Deeds in Benton County, Arkansas.

Article IV
Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon the Common Areas, of the entry features to the Properties, medians and vehicle islands, drainage systems, any recreational facilities on the Common Areas, and such portions of any additional property included within the Area of common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or by a contract or agreement for maintenance thereof by the Association.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of General Common Areas shall be a common Expense to be allocated among all Units as part of the Base Assessment. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

The Association may, in the discretion of its Board, assume the maintenance responsibilities for any Neighborhood set out in this Declaration or in any Supplemental Declaration or Declaration subsequently recorded which creates any Neighborhood Association upon all or any portion of the Properties. In such event, all costs of such maintenance shall be assessed only against the Units within the Neighborhood to which the services are provided. This assumption of responsibility may take place either by contract or agreement or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Properties. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association shall also have the right, but not the obligation, to enter into

easements and covenants to share costs agreements with Persons owning property in the vicinity of the Properties, specifically including, but not limited to, Persons owning and operating rental apartment developments in the vicinity of the Properties. Such easements and covenants to share costs agreements may provide for the Person owning such property to pay some portion of the Common Expenses; provided, however, in no event shall the tenants of any apartment development have the right to use recreational facilities on the Common Area solely by virtue of being a tenant in an apartment development, unless expressly so permitted in such easements and covenants to share costs agreements or as may be otherwise permitted by the Board.

The Association may maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures of the Unit, parking areas, fences and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association, a Neighborhood Association, or a Neighborhood Committee, pursuant to any additional declaration of covenants applicable to such Unit. If any Owner fails properly to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Unit and the Owner thereof in accordance with Article IX, Section 4, of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

Section 3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, and after consultation with each Neighborhood Committee, each Neighborhood shall be responsible for paying, through Neighborhood Assessments, costs of maintenance of certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood, which may include, without limitation, the costs of maintenance of any right-of-way and greenspace between the Neighborhood and adjacent public roads, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association.

Any Neighborhood Association having responsibility for maintenance of all or a portion of the property within a particular Neighborhood pursuant to a declaration of covenants affecting the Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any such Neighborhood Association fails to perform its maintenance responsibility as required herein and in any additional declaration, the Association may perform it and assess the costs against all Units within such Neighborhood Association as provided in Article IX, Section 4, of this Declaration

Article V No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Article VI
Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least two-thirds (2/3) of the total Association vote and the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Members representing at least seventy-five percent (75%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

Article VII
Annexation of Additional Property

Section 1. Annexation Without Approval of Class "A" Membership. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property described on Exhibit "B" has been subjected to this Declaration or January 1, 2010, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B", attached hereto and by reference made a part hereof and any lands contiguous to the land described in Exhibit "B". Such annexation shall be accomplished by filing in the public records of Benton County, Arkansas, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Members. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 2. Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex real property other than that described on Exhibit "B", and following the expiration of the right in Section 1, any property described on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the Class "A" votes of the Association (other than those held by Declarant) present at a meeting duly called for such purpose and of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing of record in the public records of Benton County, Arkansas, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibits "A" or "B" which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 4. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or "B" hereof.

Article VIII Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the recreational facilities. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

The Association, through the Board, by contract or other agreement, shall have the right to enforce city and county ordinances or permit the City of Bentonville and the County of Benton to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or

privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Powers of the Association with Respect to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association shall also have the power to require specific action to be taken by any Neighborhood Association or Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Neighborhood Committee, may require that a proposed budget include certain items and that expenditures be made therefor, and may veto or cancel any contract providing for maintenance, repair, or replacement of the property governed by such Neighborhood Association or Neighborhood Committee.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood Committee shall be taken within the time frame set by the Association in such written notice. If the Neighborhood Association or Neighborhood Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee and shall assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association under the circumstances (to cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association) in the manner provided in Article IX, Section 4. Such assessments may be collected as a special Assessment hereunder and shall be subject to all lien rights provided for herein.

Article IX Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 7 of this Article. There shall be three (3) types of assessments: (a) Base Assessments to fund common Expenses for the benefit of all Members of the Association; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood or Neighborhoods; and (c) Special Assessments as described in Section 4 below.

Except as otherwise provided below, Base Assessments shall be levied equally on all Units. Each Unit shall be assessed at a rate equal to twenty-five percent (25%) of the Base Assessment that would otherwise be levied against such Unit pursuant to Section 2 below until the earlier of two (2) years from the date of closing of the purchase from Declarant or the date on which a building permit is issued for the Unit. Neighborhood Assessments shall be levied on all Units within the Neighborhood for whose benefit Neighborhood Expenses are incurred as provided in Section 3 below. Special Assessments shall be levied as provided in Section 4 below. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest at the maximum legal rate of interest provided

by Arkansas law, computed from the date delinquency first occurs, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, to the extent expressly assumed; provided, no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, within five (5) days of receiving a written request therefor, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Fifty Dollars (\$50.00) for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual Base Assessment and any Neighborhood Assessment for delinquents. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be paid in monthly installments.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

So long as the Declarant has an option unilaterally to subject additional property to this Declaration, the Declarant shall not pay assessments on any unit that has never been sold. However, the Declarant shall in lieu of such payments loan at current bank interest to the Association the difference between the amount of assessments levied on all Units subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. In such event, the Board of Directors shall execute a note payable to the Declarant in the amount of such difference payable monthly over the succeeding twenty-four (24) months, and the payments on such notes shall be incorporated into the budgets of such succeeding years.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. The Base Assessment to be levied for the coming year against each Unit subject to assessment under Section 7 below shall be computed by dividing the budgeted Common Expenses

by the total number of Units shown on the Master Concept Plan as of sixty (60) days before the end of the current fiscal year. The Board shall cause a copy of the Common Expense budget and notice of the amount of Base Assessment to be levied against each Unit for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Members by the vote of at least two-thirds (2/3) of the total Class "A" vote in the Association, and by the vote of the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

Section 3. Computation of Neighborhood Assessments. It shall be the duty of the Neighborhood Committee, at least ninety (90) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Neighborhood Committee for each Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to the budget. Such budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate. Neighborhood Expenses shall be allocated among Units within the Neighborhood benefitted thereby in the same manner as Base Assessments under Sections 1 and 2 of this Article IX, and levied as a Neighborhood Assessment. The Neighborhood Committee shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Unit in the Neighborhood for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. Such Neighborhood Assessment shall become effective unless disapproved at a meeting of the Owners in the Neighborhood by the vote of at least two-thirds (2/3) of the Owners of Units in the Neighborhood to which the Neighborhood Assessment applies; provided, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Units in such Neighborhood.

In the event the proposed budget for any Neighborhood is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

Section 4. Special Assessments. In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment or Special Assessments from time to time; provided, such assessment shall have the assent of at least two-thirds (2/3) of the votes of Class "A" Members voting in person or by proxy at a meeting duly called for this purpose, and the assent of the Class "B" Member, if such exists. So long as a Unit is assessed a reduced Base Assessment under Article IX, Section 1, hereof, it shall be assessed for any Special Assessments at a rate equal to twenty-five percent (25%) of the full Special Assessment levied per Unit. Special Assessments shall be allocated in the same manner as Base Assessments under Section 2 of this Article. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the

provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing. The Association may also levy a Special Assessment against the Units in any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the senior officer of the Neighborhood Association or Neighborhood Committee, as applicable, and an opportunity for a hearing.

Section 5. Lien for Assessments. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens, except to liens which the law would view as superior thereto and to equitable interest, if any, retained by the Declarant.

Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. Under no circumstances shall the Board suspend the voting rights of a Member for nonpayment of any assessment.

Section 6. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which takes into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the budget and assessment, as provided in Section 2 of this Article.

Section 7. Date of Commencement of Annual Assessments. The assessments provided for herein shall commence as to all Units subject to assessment under the Declaration on the first day of the first month after the earlier of (1) conveyance of the first Unit to a Person other than the Declarant, or (2) issuance of a building permit thereon. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment on each Unit shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

Section 8. Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of Arkansas law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Unit. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record

or other purchaser of a Unit obtains title pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns.

Section 9. Capitalization of Association. Upon acquisition of record title to a Unit by the first purchaser thereof other than the Declarant or an owner who purchases solely for the purpose of constructing a dwelling thereon for resale, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the amount of the annual Base Assessment per Unit for that year as determined by the Board. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use to cover operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

Section 10. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) all Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including without limitation, public schools, public streets, and public parks, if any; and
- (c) the Declarant on any Unit owned by Declarant that has never been sold whether by Deed of Trust or Contract for deed to any purchaser other than builders holding title solely for the purpose of development and sale.

Article X Architectural Standards

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Sections 1 and 2 of Article X. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the appropriate committee has been obtained.

Section 1. Architectural Control Committee. The Architectural Control Committee (ACC) shall have exclusive jurisdiction over all original construction on any portion of the Properties. The ACC may prepare and, on behalf of the Board of Directors, promulgate Design and Development Guidelines and Community-Wide Standards for House and Site Construction and application and review procedures. Copies shall be available from the Architectural Control Committee for review. The guidelines and procedures shall be those of the Association, and the ACC shall have sole and full authority to prepare and to amend the

guidelines and procedures. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. Until one hundred percent (100%) of the Properties have been developed and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the ACC, which shall consist of at least three (3), but no more than five (5), persons. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the ACC in the same manner as provided in Section 2 of this Article for the Modifications Committee.

Section 2. Modifications Committee. The Board of Directors may appoint a Modifications Committee (MC) to consist of at least three (3) and no more than five (5) members, all of whom shall be appointed by the Board of Directors. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures containing Units, and the open space, if any, appurtenant thereto; provided, however, the MC may delegate this authority to the appropriate board or committee of any Neighborhood Association subsequently created or subsequently subjected to this Declaration so long as the MC has determined that such board or committee has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice.

The Modifications Committee shall promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with the standards and procedures of the ACC. In addition thereto, the following shall apply. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with the originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or to paint the interior of his Unit any color desired. In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

Section 3. No Waiver of Future Approvals. The approval of either the ACC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 4. Variance. The ACC may authorize variances from compliance with any of the provisions of the design and development guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Article XI
Use Restrictions

Restrictions on the use of the property shall be separately filed of record during each phase of development by Declarant. The Declarant retains the right, without limitation by the restrictions placed on the property, to use said properties for offices, property management, and construction purposes during all phases of construction on any properties designated as Common Properties or any properties retained by the Declarant.

Article XII
General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Unit and subject to the provisions of Article XIII, Section 6, hereof, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may amend this Declaration so long as it still owns property described in Exhibits "A" and "B" for development as part of the Properties and so long as the amendment has no material adverse effect upon any right of any Owner; thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total votes of the Association, including seventy-five percent (75%) of the votes held by Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Benton County, Arkansas.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suite, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been

an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Area or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

Section 5. Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibits "A" or "B", the Association, and the designees of each (which may include, without limitation, Benton County, Arkansas, Bentonville, Arkansas, and any utility), blanket easements upon, across, over, and under all of the Common Area and, to the extent shown on any plat, over the Units for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, jogging trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Units on the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to the Bentonville, Arkansas, or any other local, state, or federal governmental entity, subject to such approval requirements as may be contained in Article XIII, Section 2, of this Declaration.

Section 6. Severability. Invalidation of any one of these covenants or

restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 7. Right of Entry. The Association shall have the right, but not the obligation, to enter into any Unit for emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 8. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Members, which shall include approval by a vote of seventy-five percent (75%) of all Owners in each Neighborhood. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IX hereof, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 9. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood Committee and the Committee may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, By-Laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood Committee shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

Section 10. Use of the Words "Woods Creek". No Person shall use the words "Woods Creek" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the term "Woods Creek" in printed or promotional matter where such term is used solely to specify that particular property is located within the Woods Creek community.

Article XIII Mortgage Provisions

The following provisions are for the benefit of the holders of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of

the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit or any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special Provisions. The following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees, or Class "A" Members representing at least two-thirds (2/3) of the total Class "A" vote in the Association entitled to be cast thereon, and the Class "B" Member, if such exists, consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (The granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection.);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner or a Unit (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the By-Laws gives

or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 5. Applicability of Article XIII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Arkansas law for any of the acts set out in this Article.

Section 6. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Article XIV Declarant's Rights

Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Benton County, Arkansas. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by the Declarant and any clubhouse or community center which may be owned by the Association, as models and sales offices, respectively.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant. The rights contained in this Article shall terminate only upon the recording by Declarant of a written statement that all sales activity has ceased and that Declarant releases such rights by express reference thereto.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 27 day of May, 1993.

WOODS CREEK, INC.,
an Arkansas Corporation

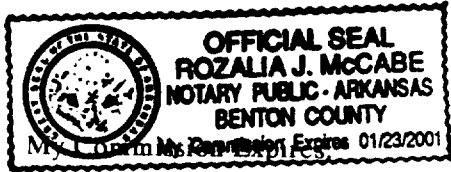
By: James F. Gore (Seal)
President

Attest: Joe E. Kunkel (Seal)
Secretary

STATE OF ARKANSAS)
COUNTY OF BENTON)

I, Rozalia J. McCabe, a Notary Public in and for said county in said state, hereby certify that James F. Gore, whose name as President and Joe E. Kunkel, whose name as Secretary, of Woods Creek, Inc., a corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 25 day of January, 1994



Rozalia J. McCabe
Notary Public

EXHIBIT "A"

McCLAIN RIDGE AT WOODS CREEK
 LOTS 1 THRU 8 OF BLOCK 3 AND ALL OF BLOCKS 1,2, AND 4
LEGAL DESCRIPTION

All that part of the West half of the Northwest Quarter of Section 27, Township 20 North, Range 30 West and part of the East half of the Northeast Quarter of Section 28, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas, more particularly described as follows:

Commencing at an "X" in the East bound lane of the East Central Avenue/U.S. Highway 71 bridge at the Southwest corner of said Section 27, Township 20 North, Range 30 West, Benton County, Arkansas; thence North 00 degrees 44 minutes 38 seconds East along the West section line of said Section 27, a distance of 4211.08 feet to an iron pin at the Point of Beginning; thence from the Point of Beginning North 00 degrees 47 minutes 25 seconds East, 394.71 feet to an iron pin; thence South 89 degrees 01 minutes 43 seconds East, 67.96 feet to a concrete monument on the southern right-of-way margin of Arkansas Highway No. 72; thence along a non-tangent curve to the left having a tangent bearing to the radius of North 01 degrees 15 minutes 52 seconds East, a radius of 1586.30 feet, a central angle of 16 degrees 44 minutes 02 seconds, and a chord bearing and distance of North 82 degrees 53 minutes 51 seconds East, 461.65 feet to an iron pin; thence leaving the said highway right-of-way South 02 degrees 27 minutes 31 seconds East, 342.16 feet to an iron pin; thence North 89 degrees 12 minutes 35 seconds West, 80.13 feet to an iron pin; thence South 02 degrees 27 minutes 31 seconds East, 404.66 feet to an iron pin; thence South 17 degrees 57 minutes 40 seconds East, 178.43 feet to an iron pin; thence South 47 degrees 42 minutes 10 seconds East, 134.88 feet to an iron pin; thence South 41 degrees 33 minutes 54 seconds West, 99.08 feet to an iron pin; thence South 60 degrees 11 minutes 43 seconds East, 88.16 feet to an iron pin; thence South 31 degrees 25 minutes 10 seconds West, 132.72 feet to an iron pin; thence South 39 degrees 26 minutes 20 seconds West, 340.02 feet to an iron pin; thence North 73 degrees 22 minutes 25 seconds West, 157.23 feet to an iron pin; thence North 43 degrees 37 minutes 05 seconds West, 49.91 feet to an iron pin; thence North 41 degrees 33 minutes 54 seconds East, 78.13 feet to an iron pin; thence North 48 degrees 26 minutes 06 seconds West, 132.32 feet to an iron pin; thence North 38 degrees 19 minutes 47 seconds East, 19.19 feet to an iron pin; thence North 53 degrees 46 minutes 30 seconds West, 205.71 feet to an iron pin; thence North 01 degrees 04 minutes 29 seconds East, 421.07 feet to a three-quarter inch pipe found; thence North 78 degrees 19 minutes 19 seconds West, 114.59 feet to an iron pin; thence North 88 degrees 14 minutes 35 seconds West, 116.98 feet to an iron pin; thence North 45 degrees 48 minutes 29 seconds East, 339.95 feet to the Point of Beginning and containing 16.96 acres, more or less.

EXHIBIT 'B'

The SE 1/4 of the NW 1/4 and the NE 1/4 of the SW 1/4 and the W 1/2 of the SE 1/4 and the West 25 acres of the E 1/2 of the SE 1/4 and part of the SE 1/4 of the SW 1/4 of Section 27 described as follows: Beginning at the Southeast corner of the SE 1/4 of the SW 1/4, run thence West 493.02 feet, thence North 764.28 feet, thence North 36 1/2 West 709.5 feet to the North line of said 40 acres, thence East 915.42 feet to the Northeast corner of said 40 acres, thence South 1,320.00 feet to the Place of Beginning, all in Section 27, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas.

Also part of the NW 1/4 of the NE 1/4 of Section 34, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas, described as follows: Beginning at a point 162.03 feet West of the Northeast corner of said 40 acres, run thence West 400 feet, more or less, to a fence, thence South 709.50 feet to a public road, thence easterly with said public road to a point 742.50 feet South of the Point of Beginning, thence North 742.50 feet to the Place of Beginning.

Also, Lot 6, NE 1/4 of the NW 1/4 of Section 34, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas. Containing in all 208 acres, more or less.

Also, all that part of the West half of the Northwest Quarter of Section 27, Township 20 North, Range 30 West and part of the East half of the Northeast Quarter of Section 28, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas, more particularly described as follows:

Commencing at an "X" in the East bound lane of the East Central Avenue/U.S. Highway 71 bridge at the Southwest corner of said Section 27, Township 20 North, Range 30 West, Benton County, Arkansas; thence North 00° 44' 38" East along the West section line of said Section 27, a distance of 2628.22 feet to an iron pin set at the Southwest corner of the Southwest Quarter of the Northwest Quarter of Section 27, said point being further described as the Point of Beginning; thence from the Point of Beginning North 89° 31' 59" West, 124.52 feet to an iron pin set on the Eastern right-of-way of U.S. Highway 71; thence along said right-of-way North 57° 23' 18" West, 107.92 feet to a concrete monument; thence North 44° 04' 10" West, 68.16 feet to an iron pin set; thence leaving said right-of-way North 00° 44' 56" East, 1214.61 feet to a railroad spike found in the center of McClain Road (formerly known as Crooked Road) at the Northwest corner of the East 8 acres of the Southeast Quarter of the Northeast Quarter of said Section 28; thence North 45° 48' 29" East, 373.09 feet to an iron pin set; thence North 00° 47' 25" East, 394.71 feet to a one-half inch rebar on the Southeastern right-of-way of Arkansas Highway No. 72; thence along said right-of-way South 89° 01' 43" East, 67.96 feet to a concrete monument; thence along a curve to the left having a radius of 1586.30 feet, a central angle of 16° 44' 02", and a chord bearing and distance of North 82° 53' 51" East, 461.65 feet to an iron pin set; thence leaving said right-of-way South 02° 27' 31" East, 715.40 feet to a crimped top pipe; thence South 87° 55' 59" East, 753.03 feet to a crimped top pipe at the Northeast corner of the Southwest Quarter of the Northwest Quarter of said Section 27; thence along the East line of said Quarter-Quarter South 00° 31' 50" West, 1302.27 feet to an iron pipe set at the Southeast corner of the Southwest Quarter of the Northwest Quarter of said Section 27; thence along the South line of said Quarter-Quarter North 89° 31' 59" West, 1323.27 feet to the Point of Beginning and containing 57.01 acres, more or less.

94 006286

FILED FOR RECORD
At 9:27 O'clock A M

JAN 27 1994

SUE HODGES
Clerk and Recorder
BENTON COUNTY, ARK.

COVENANTS

of

USE RESTRICTIONS

for

WOODS CREEK DEVELOPMENT

Bentonville, Arkansas

Woods Creek, Inc.
Bentonville, Arkansas

1692

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Article I
Covenant of Use Restrictions

This Covenant of use restrictions for McClain's Ridge at Woods Creek, Block One, Two and Four and Lots One through Eight of Block 3 is made this 27 day of May, 1993, by Woods Creek, Inc., an Arkansas Corporation (hereinafter referred to as "Declarant").

The Common Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association, or business offices for the Declarant or the Association) as may more particularly be set forth in this Declaration, amendments hereto or subsequently recorded declarations.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable use fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, cancelled or modified in a regular or special meeting of the Association by the vote of Members representing a Majority of the total Class "A" votes in the Association and by the vote of the Class "B" member, so long as such membership shall exist.

Neither Declarant, its officers, directors and employees, nor the Association, its officers, directors and employees, nor any member of the ACC or other committee, shall be liable to any Owner, or to any other Person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Declarant, the Association, or any of their respective representatives or employee, in enforcing the covenants contained in this Declaration, the By-Laws, and the rules and regulations

Section 1. General Requirements.

1.1 **Construction Traffic.** During the active development period, the developer will determine the most satisfactory routing for construction traffic.

1.2 **Temporary Facilities.** During construction on any lot, temporary offices, storage sheds, portable toilets, trailers, parking areas, access roads, fences, etc., may be located as inconspicuously as possible on the lots. Temporary construction facilities shall be removed promptly when they are no longer required.

1.3 **Maintenance.** Each owner, builder and/or occupant of a site shall maintain buildings, improvements, landscaping and grounds in a safe, clean, orderly condition, free of any accumulation of rubbish, trash or litter. Waste containers are required on all construction sites.

1.4 **Erosion and Sedimentation Control.** Prior to grading on any lot, the necessary sedimentation and erosion control measures shall be in place. Silt fence is required around all graded areas on the down slope side of the lot. Local sedimentation and erosion control codes shall be followed throughout the construction period. Lots which have lake and watercourse frontage will be closely monitored for sedimentation during construction.

1.5 **Utilities.** No permanent water, sewer, gas, electric, telephone, cable TV

or other service line shall be constructed, placed or maintained within the Woods Creek community unless it is placed in underground conduits or cables or is otherwise suitable for direct burial and is buried or otherwise concealed. No facility for alternative sources of energy (solar, wind, bio-mass, or other) or TV or other signal reception device (antenna, dish) shall be erected without the consent of the Architectural Control Committee. All utility construction must meet State and local codes.

1.6 **Signs.** The sign system for the entrance, amenity areas and streetscape in Woods Creek has been carefully coordinated. Therefore, no signs may be erected on any lot or common area without approval of the Architectural Control Committee. All commercial development must submit signage design for approval. This restriction includes lot number signs, real estate sales signs and builder/contractor identification signs. Signs by the Association and the Declarant shall not require approval.

1.7 **Mailboxes.** All mail and newspaper vaults must meet Architectural Control Committee approval.

1.8 **Trash Collection.** Placement of trash receptacles on the lots or streets for collection shall be required by the City of Bentonville. Permanent trash receptacles shall be approved as to design and appearance by the Architectural Control Committee.

Section 2. Specific Lot Requirements.

2.1 **Clearing and Grading.** To preserve the natural beauty of Woods Creek, excessive clearing and grading should not be performed on any lot. Deep cuts and excessive fill areas are discouraged. Debris from clearing and grubbing operations shall be removed promptly from the site. On-site burning in clearing and grubbing operations is prohibited unless approved in advance by the Bentonville Fire Department and the Architectural Control Committee. Grading should be accomplished in a manner which will prevent ponding or soil erosion on the site or on adjacent property.

2.2 **Tree Preservation.** To maintain the natural beauty of Woods Creek, existing vegetation must be preserved as much as possible. No trees shall be removed or destroyed on any lot prior to approval of construction plans by the Architectural Control Committee. Trees which are preserved shall be protected to the greatest extent practical from damage during building construction. Barricades or fencing are strongly recommended to prevent root compaction. Placement of dirt stockpiles or construction materials under the tree canopy is discouraged. Trees which do become damaged during building construction should be treated as soon as possible.

2.3 **Landscaping.** In keeping with the Woods Creek development goal to preserve the natural character of the area, all installed plant materials and other landscape elements should harmonize with the existing natural setting. Maintenance of lots in their natural state, with lawn areas developed in and around existing vegetation is encouraged. Landscape plans should provide screening for garage entrances, parking areas, and other service areas visible from the street or adjacent lots. All new trees shall be guaranteed by the builder or landscape contractor to remain healthy for a period of twelve (12) months from date of planting. A landscape plan must be submitted with the initial application for construction plan approval.

2.4 **Exterior Accessory Structures.** All exterior accessory structures such as fences, decks, arbors and lights must be approved by the Architectural Control Committee. For new construction, these structures must be shown on the applicant's construction plans. For

additions or renovations, applications and plans shall be submitted to the Architectural Control Committee according to the same process used for new construction approval.

In general, fencing will be reviewed on a case-by-case basis by the Architectural Control Committee and shall be allowed only where a specific functional or aesthetic purpose is achieved. Woven metal or chain link fencing is prohibited. No fencing will be allowed within twenty-five feet (25') of any lake or pond. Fencing shall be allowed only in the primary land mass of any lot. Fences shall not extend into the front yard of any house. Fence height must be appropriate for the fence type and should maintain a reasonable scale to the house. Fencing and any other accessory structures shall comply with local and State codes.

2.5 **Driveways.** To reinforce the quality of Woods Creek, the use of patterned concrete, paving stones, and brick paving, either in total or as a border for asphalt or concrete, in driveways is encouraged. All driveways must be diamond blade sawcut at street curb. Driveway placement, design and paving material are subject to the approval of the Architectural Control Committee.

No fence, wall, hedge, shrub, exterior light or grade which may obstruct vehicular sight distance shall be permitted at any driveway where it connects to the street.

Section 3. Residential Building Requirements.

3.1 **Minimum Square Footage Requirements.** The minimum square footage requirements will be established on the plat of the subdivision.

3.2 **Colors and Textures.** In keeping with the Woods Creek community image as a neighborhood of compatible architectural styles, materials and colors which blend harmoniously with the natural setting are encouraged. No obtrusive or inappropriate colors and textures which would draw attention to specific buildings or structures shall be allowed. Information regarding colors and textures for all construction is required on the application submitted to the Architectural Control Committee. The ACC shall determine the appropriateness of colors and textures for all construction.

3.3 **Exterior Building Materials.** Exterior siding of brick or stone is encouraged in Woods Creek. Wood siding may be used with specific approval of the Architectural Control Committee. Exposed concrete blocks, prefabricated metal buildings, simulated brick, unnatural brick tones and bright aluminum windows and doors will not be permitted unless specifically approved by the Architectural Control Committee. Vinyl, metal and steel siding must be specifically approved by the ACC.

3.4 **Roofs.** No flat roofs shall be allowed without specific permission from the Architectural Control Committee. Roofs shall be finished with materials harmonious with the surroundings and of a muted color. Dimensional or textured shingles are the minimum standard for roof finishes.

3.5 **Design and Development Guidelines.** Copies of Design and Development Guidelines and Community-Wide Standards for House and Site Construction as well as application and review procedures which supplement these requirements are available from the Architectural Control Committee for review. All owners and builders should review these documents before entering into the design and plans for any residence.

Article II
General

Section 1. Parking and Garages. Vehicles, including motorcycles, shall be parked only in the garages or in the driveways serving Units or in appropriate spaces or designated areas in which parking may or may not be assigned, and then subject to such reasonable rules and regulations as the Board of Directors may adopt. No parking shall be permitted on any street, except temporarily for social gatherings or other functions held in a Unit as may be approved by the Board. No garage may be altered in such a manner that the number of vehicles which may reasonably be parked therein after the alteration is less than the number of vehicles that could have reasonably been parked in the garage as originally constructed.

All disabled vehicles, stored vehicles, vehicles primarily used for commercial purposes, vehicles with commercial writings on their exteriors, tractors, motor homes, recreational vehicles, campers, boats and other watercraft must be parked entirely within a garage or within the side yard or back yard of a Unit totally screened from view of other Units, the Common Area and the street, unless otherwise permitted by the Board. Notwithstanding the above, commercial vehicles shall be allowed on the Properties during normal business hours for the purpose of serving a Lot or the Common Area; provided, no such vehicle shall be permitted to remain on the Property overnight or for any purpose other than serving a Lot or the Common Area.

For purposes of this Section, a vehicle shall be considered "disabled" if (a) it does not have a current license tag or is obviously inoperable, and (b) is parked on the Property for more than fourteen (14) consecutive days. A vehicle shall be considered "stored" if (a) it is set on blocks or covered with a tarpaulin, and (b) remains on blocks or covered with a tarpaulin for fourteen (14) consecutive days or longer without the prior written permission of the Board of Directors.

If any vehicle is parked in violation of this Section, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after two (2) days the vehicle may be towed. The notice shall include the name and telephone of a person to contact regarding the alleged violation. If two (2) days after such notice is placed on the vehicle the violation continues, or if the violation occurs again within twelve (12) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked in a fire lane, or is blocking a fire hydrant, or is blocking another vehicle, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim or damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow, as set forth herein.

Section 2. Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit.

Section 3. Restrictions.

3.1 Animals and Pets. No animals, livestock, or poultry of any kind shall be

raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets not to exceed a total of two (2) may be permitted in a Unit. However, those pets which are permitted to run free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any portion of the Properties shall be removed upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Unit be confined on a leash held by and under the physical control of a responsible person.

3.2 **Nuisance.** No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Properties.

3.3 **Unsightly or Unkempt Conditions.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties, including any Unit.

3.4 **Basketball Equipment, Clotheslines, Garbage Cans, Tanks, Etc.** All basketball hoops and backboards, clotheslines, garbage cans, above-ground tanks, and other similar items shall be located or screened so as to be concealed from view of neighboring Units, streets, and property located adjacent to the Unit. All rubbish, trash, and garbage shall be regularly removed from the Properties and shall not be allowed to accumulate thereon.

3.5 **Subdivision of Unit.** No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Declarant, however, hereby expressly reserves the right to replat any Unit or Units owned by Declarant. Any such division, boundary line change, or replating shall not be in violation of the applicable subdivision and zoning regulations.

3.6 **Guns.** The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

3.7 **Pools.** No above-ground pools shall be erected, constructed or installed on any Unit.

3.8 **Irrigation.** No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties unless prior written approval has been received from the Architectural Control Committee. All sprinkler and irrigation systems shall be subject to approval by the Architectural Control

Committee. Private irrigation wells are prohibited on the Properties.

3.9 **Tents, Trailers and Temporary Structures.** Except as may be permitted by the ACC during initial construction within the Properties, no tent, utility shed, shack, trailer or other structure of a temporary nature, and no permanent or temporary outbuildings, shall be placed upon a Unit or any part of the Properties.

3.10 **Drainage and Septic Systems.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across the Properties for the purpose of altering drainage and water flow. Septic systems are prohibited on the Properties.

3.11 **Tree Removal.** No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved by the Architectural Control Committee.

3.12 **Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Control Committee.

Section 4. **Assurance of Completion of Buildings.** Except as to original construction by the Declarant, the Owner and any contractor, builder, person or entity constructing a structure upon the Properties may be required, prior to beginning the construction of any such structure, to furnish the ACC such credit information and proof of financial ability to complete the construction as shall be required by the Architectural Control Committee. At the same time, there shall be furnished to the ACC satisfactory proof that builders' risk and appropriate workmen's compensation insurance will be in effect for the construction period.

Section 5. **Leasing of Units.**

5.1 **Definition.** "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

5.2 **General.** Units may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board of Directors. No transient tenants may be accommodated in a Unit. All leases shall be in writing and shall be for an initial term of no less than one (1) year, except with the prior written consent of the Board of Directors. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations.

5.3 **Business Use.** No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to

all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on a ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (1) such activity is engaged in full or part-time; (2) such activity is intended to or does generate a profit; or (3) a license is required therefor. Notwithstanding the above, the leasing of a Unit in accordance with Section 5.2 of this Article shall not be considered a trade or business within the meaning of this section.

5.4 **Setbacks.** Setback requirements are those set forth on the Recorded Plat of each Subdivision, as may be varied or amended by the zoning ordinance of the City of Bentonville, Arkansas, or other proper governmental authority. For the purpose of this provision, driveways, walks and steps shall not be considered as a part of the Unit; provided, however, that no portion of any Unit shall encroach upon another Unit. If two (2) or more Units are consolidated into one (1) building site, the setback provision shall be applied to such resultant building site as if it were one originally platted Unit; provided, however, such consolidated Unit shall have membership and voting rights, and shall pay assessments based on the number of Units originally shown on the Record Plat for such consolidated Unit.

IN WITNESS WHEREOF, the undersigned has executed this Covenant of Use Restrictions this 27 day of May, 1993.

WOODS CREEK, INC.
an Arkansas Corporation

By: James F. Core (Seal)
President

Attest: Joe E. Kimmel (Seal)
Secretary

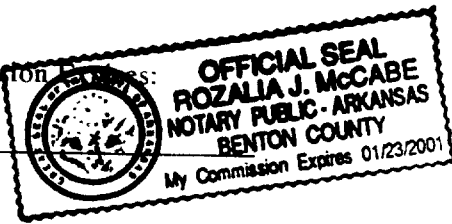
STATE OF ARKANSAS)
COUNTY OF BENTON)

I, Rozalia J. McCabe, a Notary Public
in and for said county in said state, hereby certify that James E. Gore
Joe E. Kunkel, whose name as President and
whose name as Secretary, of Woods
Creek, Inc., a corporation, are signed to the foregoing instrument, and who are known to me,
acknowledged before me on this day that, being informed of the contents of the instrument, they,
as such officers and with full authority, executed the same voluntarily for and as the act of said
Corporation.

Given under my hand and seal of office this 25 day of January, 1994

Rozalia J. McCabe
Notary Public

My Commission Expires:



56
✓

94 064328

FILED FOR RECORD
At 3:30'clock P M

SEP 06 1994

SUE HODGES
Clerk and Recorder
BENTON COUNTY, ARK.

DECLARATION OF COVENANTS, CONDITIONS,

AND RESTRICTIONS

for

WOODS CREEK

Bentonville, Arkansas

**Woods Creek, Inc.
Bentonville, Arkansas**

2800 A West Hudson Rd
Rogers, Ar
72756

14650

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
WOODS CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

is made this _____ day of _____, 1993, by Woods Creek, Inc., an Arkansas corporation, (hereinafter referred to as "Declarant");

Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial covenants under a general plan of improvement for the benefit of all owners of residential property within the Properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration;

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property as is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, or assigns, and shall inure to the benefit of each owner thereof.

Article I
Definitions

Section 1. "Area of Common Responsibility" shall mean the Common Area, together with those areas, if any, which by the terms of this Declaration, by Supplemental Declaration, or by contract or agreement with any Neighborhood, become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public rights-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 2. "Articles of Incorporation" or "Articles" shall mean the Articles of Incorporation of Woods Creek Property Owners Association, Inc., as filed with the Secretary of State of the State of Arkansas, when created.

Section 3. "Association" shall mean Woods Creek Property Owners Association, Inc., an Arkansas nonprofit corporation, its successors or assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Arkansas corporate law. The use of the term "association" or "associations" in lower case shall refer to any condominium association or other owners association having jurisdiction over any part of the Properties.

Section 4. "Base Assessment" shall mean assessments levied against all Units in the Properties to fund Common Expenses.

Section 5. "By-Laws" shall mean the By-Laws of Woods Creek Property Owners Association, Inc., as they may be amended from time to time.

Section 6. "Class 'B' Control Period" shall mean the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors.

Section 7. "Common Area" shall be an inclusive term referring to all General Common Area and all Exclusive Common Area, as defined herein. The initial Common Area shall be conveyed to the Association prior to the conveyance of a Unit to any Unit purchases other than a builder or developer holding title for the purpose of development and resale.

Section 8. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

Section 9. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Architectural Control Committee.

Section 10. "Declarant" shall mean Woods Creek, Inc., an Arkansas corporation, or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 11. "Exclusive Common Area" shall mean certain portions of the Common Area which are for the exclusive use and benefit of one or more, but less than all, Neighborhoods. All costs associated with maintenance, repair, replacement and insurance of Exclusive Common Areas shall be assessed against the Owners of Units in only those Neighborhoods which are benefitted thereby as a Neighborhood Assessment, as defined herein. By way of illustration and not limitation, Exclusive Common Areas may include entry features exclusively for a particular Neighborhood or Neighborhoods and maintained exclusively by Neighborhood Assessments. Initially, any Exclusive Common Areas shall be designated as such and assigned in the deed conveying the Common Area to the Association. A portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of a majority of the total Association vote, including a majority of the votes within the affected Neighborhood(s).

Section 12. "General Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

Section 13. "Master Concept Plan" shall mean the Subdivision Layout Plan for the development of the property described on Exhibits "A" and "B" most recently accepted by the City of Bentonville, Arkansas, as it may be amended from time to time.

Section 14. "Member" shall mean an Owner as defined and provided herein.

Section 15. "Mortgage" shall mean a mortgage, a deed of trust, a deed to secure debt,

or any other form of security deed.

Section 16. "Mortgagee" shall mean a beneficiary or holder of a Mortgage.

Section 17. "Mortgagor" shall mean any Person who gives a Mortgage.

Section 18. "Neighborhood" shall mean each separately developed and denominated residential area comprised of one (1) or more housing types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have common interests other than those common to all Association members, such as a common theme, entry feature, development name, and/or common areas which are not available for use by all Association Members. For example, and by way of illustration and not limitation, each condominium, townhome development, apartment development, cluster home development, and single-family detached housing development may constitute a separate Neighborhood. In addition, each parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one (1) Neighborhood upon development. Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined in Article III, Section 3) having jurisdiction over the property within the Neighborhood. Neighborhoods may be divided or combined in accordance with Article III, Section 3, of this Declaration.

Section 19. "Neighborhood Assessments" shall mean assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses.

Any Neighborhood Assessment shall be levied equally against all Units in the Neighborhood benefitting from the services supported thereby, provided that in the event of assessments for exterior maintenance of structures, or insurance on structures, or replacement reserves which pertain to particular structures, such assessments for the use and benefit of particular Units shall be levied on a pro rata basis among the benefitted Units.

Section 20. "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of Owners of Units within a particular Neighborhood, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein.

Section 21. "Owner" shall mean one (1) or more Persons who hold the record title to any Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner.

Section 22. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 23. "Properties" shall mean the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 24. "Special Assessment" shall mean assessments levied in accordance with Article IX, Section 4, of this Declaration.

Section 25. "Supplemental Declaration" shall mean an amendment or supplement

to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

Section 26. "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, townhouse units, apartment units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties. The term shall include all portions of the lot owned including any structure thereon.

Article II Property Rights

Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the lessee of the Unit.

As long as the Declarant has an option to annex additional property pursuant to Article VIII, Section 1 hereof, Declarant reserves the right to amend this Declaration unilaterally at any time, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for Woods Creek desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Woods Creek.

Article III Membership and Voting Rights

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association.

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit owned. In the event the Owner of a Unit is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

Neighborhood Assessment pursuant to Article IX.

The Declarant during the period of time when all property in a stated Neighborhood is owned by Declarant shall submit to the Board of Directors a Plat of each Neighborhood as Declarant so determines. When additional property owners exist, upon submission of a petition, signed by owners of a majority of the units within a contiguous parcel governed by this Declaration, the Board of Directors shall establish a Neighborhood within thirty (30) days of the receipt thereof, unless the Board of Directors denies said petition within the thirty (30) day period. The Board of Directors may deny a petition to establish a Neighborhood only upon a determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. No Unit shall be in more than one Neighborhood. If a petition is submitted which attempts to place a Unit or Units already in an existing Neighborhood, into another Neighborhood, said petition shall not be deemed submitted to the Board of Directors for action unless approved by the Owners of a majority of the Units within both the existing Neighborhood and the proposed Neighborhood. All submitted petitions for establishing a Neighborhood together with the Minutes of action taken by the Board of Directors shall be retained in the Books of the Association which shall be maintained for as long as this Declaration is in effect and filed of record with the Recorder of Deeds in Benton County, Arkansas.

Article IV Maintenance

Section 1. **Association's Responsibility.** The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon the Common Areas, of the entry features to the Properties, medians and vehicle islands, drainage systems, any recreational facilities on the Common Areas, and such portions of any additional property included within the Area of common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or by a contract or agreement for maintenance thereof by the Association.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of General Common Areas shall be a common Expense to be allocated among all Units as part of the Base Assessment. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

The Association may, in the discretion of its Board, assume the maintenance responsibilities for any Neighborhood set out in this Declaration or in any Supplemental Declaration or Declaration subsequently recorded which creates any Neighborhood Association upon all or any portion of the Properties. In such event, all costs of such maintenance shall be assessed only against the Units within the Neighborhood to which the services are provided. This assumption of responsibility may take place either by contract or agreement or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Properties. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association shall also have the right, but not the obligation, to enter into

(a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

Class "A" Members shall be entitled to one (1) equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof and for which a full assessment is being paid, and one (1) vote for every four (4) Units which are being assessed at a reduced rate, as provided in Article IX, Section 1, of this Declaration. When calculating the number of votes for Units which are being assessed at a reduced rate, the number of such Units shall be rounded to the nearest whole number that is divisible by four (4); provided, however, in any event, the Owner of Units which are being assessed at a reduced rate shall be entitled to cast at least one (1) vote. In no event shall a Member be permitted to cast a fraction of a vote.

In any situation where a Member is entitled personally to exercise the vote for his Unit and more than one (1) Person holds the interest in such Unit required for membership, the vote for such Unit shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) Class "B". The Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member shall be entitled to, in its sole discretion, appoint the members of the Board of Directors during the Class "B" Control Period, subject only to Article III, Section 6, of the By-Laws. The Class "B" Control Period shall terminate, and the Class "B" membership shall terminate and become converted to Class "A" membership, upon the earlier of:

(i) when seventy-five percent (75%) of the Units permitted by the Master Concept Plan for the property described on Exhibits "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than Declarant or builders holding title solely for purposes of development and sale;

(ii) January 1, 2010; or

(iii) when, in its discretion, the Declarant so determines.

Notwithstanding any provision to the contrary contained in this Declaration or the By-Laws, during the Class "B" Control Period, any action, policy or program of the Association requiring approval of the Members of the Association shall not be taken or adopted until also approved in writing by the Class "B" Member.

Section 3. Neighborhoods. Every Unit shall be located within a Neighborhood as defined in Article I. The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of another owners association ("Neighborhood Association") in addition to the Association, but no such Neighborhood Association shall be required except in the case of a condominium. Any Neighborhood which does not have a Neighborhood Association shall elect a Neighborhood Committee, as described in Article V, Section 3, of the By-Laws, to represent the interest of Owners of Units in such Neighborhood.

Each Neighborhood Association or Committee, upon the affirmative vote, written consent, or a combination thereof, of a majority of Owners within the Neighborhood, may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood, the cost of which shall be assessed against the benefitted Units as a

easements and covenants to share costs agreements with Persons owning property in the vicinity of the Properties, specifically including, but not limited to, Persons owning and operating rental apartment developments in the vicinity of the Properties. Such easements and covenants to share costs agreements may provide for the Person owning such property to pay some portion of the Common Expenses; provided, however, in no event shall the tenants of any apartment development have the right to use recreational facilities on the Common Area solely by virtue of being a tenant in an apartment development, unless expressly so permitted in such easements and covenants to share costs agreements or as may be otherwise permitted by the Board.

The Association may maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Section 2. **Owner's Responsibility.** Each Owner shall maintain his or her Unit and all structures of the Unit, parking areas, fences and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association, a Neighborhood Association, or a Neighborhood Committee, pursuant to any additional declaration of covenants applicable to such Unit. If any Owner fails properly to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Unit and the Owner thereof in accordance with Article IX, Section 4, of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

Section 3. **Neighborhood's Responsibility.** Upon resolution of the Board of Directors, and after consultation with each Neighborhood Committee, each Neighborhood shall be responsible for paying, through Neighborhood Assessments, costs of maintenance of certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood, which may include, without limitation, the costs of maintenance of any right-of-way and greenspace between the Neighborhood and adjacent public roads, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association.

Any Neighborhood Association having responsibility for maintenance of all or a portion of the property within a particular Neighborhood pursuant to a declaration of covenants affecting the Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any such Neighborhood Association fails to perform its maintenance responsibility as required herein and in any additional declaration, the Association may perform it and assess the costs against all Units within such Neighborhood Association as provided in Article IX, Section 4, of this Declaration.

Article V No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Article VI
Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least two-thirds (2/3) of the total Association vote and the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Members representing at least seventy-five percent (75%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

Article VII
Annexation of Additional Property

Section 1. Annexation Without Approval of Class "A" Membership. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property described on Exhibit "B" has been subjected to this Declaration or January 1, 2010, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B", attached hereto and by reference made a part hereof and any lands contiguous to the land described in Exhibit "B". Such annexation shall be accomplished by filing in the public records of Benton County, Arkansas, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Members. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 2. Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex real property other than that described on Exhibit "B", and following the expiration of the right in Section 1, any property described on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the Class "A" votes of the Association (other than those held by Declarant) present at a meeting duly called for such purpose and of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing of record in the public records of Benton County, Arkansas, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibits "A" or "B" which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 4. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or "B" hereof.

Article VIII Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the recreational facilities. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

The Association, through the Board, by contract or other agreement, shall have the right to enforce city and county ordinances or permit the City of Bentonville and the County of Benton to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or

privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Powers of the Association with Respect to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association shall also have the power to require specific action to be taken by any Neighborhood Association or Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Neighborhood Committee, may require that a proposed budget include certain items and that expenditures be made therefor, and may veto or cancel any contract providing for maintenance, repair, or replacement of the property governed by such Neighborhood Association or Neighborhood Committee.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood Committee shall be taken within the time frame set by the Association in such written notice. If the Neighborhood Association or Neighborhood Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee and shall assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association under the circumstances (to cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association) in the manner provided in Article IX, Section 4. Such assessments may be collected as a special Assessment hereunder and shall be subject to all lien rights provided for herein.

Article IX Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 7 of this Article. There shall be three (3) types of assessments: (a) Base Assessments to fund common Expenses for the benefit of all Members of the Association; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood or Neighborhoods; and (c) Special Assessments as described in Section 4 below.

Except as otherwise provided below, Base Assessments shall be levied equally on all Units. Each Unit shall be assessed at a rate equal to twenty-five percent (25%) of the Base Assessment that would otherwise be levied against such Unit pursuant to Section 2 below until the earlier of two (2) years from the date of closing of the purchase from Declarant or the date on which a building permit is issued for the Unit. Neighborhood Assessments shall be levied on all Units within the Neighborhood for whose benefit Neighborhood Expenses are incurred as provided in Section 3 below. Special Assessments shall be levied as provided in Section 4 below. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest at the maximum legal rate of interest provided

by Arkansas law, computed from the date delinquency first occurs, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, to the extent expressly assumed; provided, no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, within five (5) days of receiving a written request therefor, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Fifty Dollars (\$50.00) for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual Base Assessment and any Neighborhood Assessment for delinquents. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be paid in monthly installments.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

So long as the Declarant has an option unilaterally to subject additional property to this Declaration, the Declarant shall not pay assessments on any unit that has never been sold. However, the Declarant shall in lieu of such payments loan at current bank interest to the Association the difference between the amount of assessments levied on all Units subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. In such event, the Board of Directors shall execute a note payable to the Declarant in the amount of such difference payable monthly over the succeeding twenty-four (24) months, and the payments on such notes shall be incorporated into the budgets of such succeeding years.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. The Base Assessment to be levied for the coming year against each Unit subject to assessment under Section 7 below shall be computed by dividing the budgeted Common Expenses

by the total number of Units shown on the Master Concept Plan as of sixty (60) days before the end of the current fiscal year. The Board shall cause a copy of the Common Expense budget and notice of the amount of Base Assessment to be levied against each Unit for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Members by the vote of at least two-thirds (2/3) of the total Class "A" vote in the Association, and by the vote of the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

Section 3. Computation of Neighborhood Assessments. It shall be the duty of the Neighborhood Committee, at least ninety (90) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Neighborhood Committee for each Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to the budget. Such budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate. Neighborhood Expenses shall be allocated among Units within the Neighborhood benefitted thereby in the same manner as Base Assessments under Sections 1 and 2 of this Article IX, and levied as a Neighborhood Assessment. The Neighborhood Committee shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Unit in the Neighborhood for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. Such Neighborhood Assessment shall become effective unless disapproved at a meeting of the Owners in the Neighborhood by the vote of at least two-thirds (2/3) of the Owners of Units in the Neighborhood to which the Neighborhood Assessment applies; provided, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Units in such Neighborhood.

In the event the proposed budget for any Neighborhood is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

Section 4. Special Assessments. In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment or Special Assessments from time to time; provided, such assessment shall have the assent of at least two-thirds (2/3) of the votes of Class "A" Members voting in person or by proxy at a meeting duly called for this purpose, and the assent of the Class "B" Member, if such exists. So long as a Unit is assessed a reduced Base Assessment under Article IX, Section 1, hereof, it shall be assessed for any Special Assessments at a rate equal to twenty-five percent (25%) of the full Special Assessment levied per Unit. Special Assessments shall be allocated in the same manner as Base Assessments under Section 2 of this Article. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the

provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing. The Association may also levy a Special Assessment against the Units in any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the senior officer of the Neighborhood Association or Neighborhood Committee, as applicable, and an opportunity for a hearing.

Section 5. Lien for Assessments. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens, except to liens which the law would view as superior thereto and to equitable interest, if any, retained by the Declarant.

Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. Under no circumstances shall the Board suspend the voting rights of a Member for nonpayment of any assessment.

Section 6. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which takes into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the budget and assessment, as provided in Section 2 of this Article.

Section 7. Date of Commencement of Annual Assessments. The assessments provided for herein shall commence as to all Units subject to assessment under the Declaration on the first day of the first month after the earlier of (1) conveyance of the first Unit to a Person other than the Declarant, or (2) issuance of a building permit thereon. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment on each Unit shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

Section 8. Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of Arkansas law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Unit. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record

or other purchaser of a Unit obtains title pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns.

Section 9. **Capitalization of Association.** Upon acquisition of record title to a Unit by the first purchaser thereof other than the Declarant or an owner who purchases solely for the purpose of constructing a dwelling thereon for resale, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the amount of the annual Base Assessment per Unit for that year as determined by the Board. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use to cover operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

Section 10. **Exempt Property.** Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) all Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including without limitation, public schools, public streets, and public parks, if any; and
- (c) the Declarant on any Unit owned by Declarant that has never been sold whether by Deed of Trust or Contract for deed to any purchaser other than builders holding title solely for the purpose of development and sale.

Article X Architectural Standards

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Sections 1 and 2 of Article X. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the appropriate committee has been obtained.

Section 1. **Architectural Control Committee.** The Architectural Control Committee (ACC) shall have exclusive jurisdiction over all original construction on any portion of the Properties. The ACC may prepare and, on behalf of the Board of Directors, promulgate Design and Development Guidelines and Community-Wide Standards for House and Site Construction and application and review procedures. Copies shall be available from the Architectural Control Committee for review. The guidelines and procedures shall be those of the Association, and the ACC shall have sole and full authority to prepare and to amend the

guidelines and procedures. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. Until one hundred percent (100%) of the Properties have been developed and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the ACC, which shall consist of at least three (3), but no more than five (5), persons. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the ACC in the same manner as provided in Section 2 of this Article for the Modifications Committee.

Section 2. Modifications Committee. The Board of Directors may appoint a Modifications Committee (MC) to consist of at least three (3) and no more than five (5) members, all of whom shall be appointed by the Board of Directors. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures containing Units, and the open space, if any, appurtenant thereto; provided, however, the MC may delegate this authority to the appropriate board or committee of any Neighborhood Association subsequently created or subsequently subjected to this Declaration so long as the MC has determined that such board or committee has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice.

The Modifications Committee shall promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with the standards and procedures of the ACC. In addition thereto, the following shall apply. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with the originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or to paint the interior of his Unit any color desired. In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

Section 3. No Waiver of Future Approvals. The approval of either the ACC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 4. Variance. The ACC may authorize variances from compliance with any of the provisions of the design and development guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Article XI
Use Restrictions

Restrictions on the use of the property shall be separately filed of record during each phase of development by Declarant. The Declarant retains the right, without limitation by the restrictions placed on the property, to use said properties for offices, property management, and construction purposes during all phases of construction on any properties designated as Common Properties or any properties retained by the Declarant.

Article XII
General Provisions

Section 1. **Term.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. **Amendment.** Prior to the conveyance of the first Unit and subject to the provisions of Article XIII, Section 6, hereof, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may amend this Declaration so long as it still owns property described in Exhibits "A" and "B" for development as part of the Properties and so long as the amendment has no material adverse effect upon any right of any Owner; thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total votes of the Association, including seventy-five percent (75%) of the votes held by Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Benton County, Arkansas.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3. **Indemnification.** The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suite, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been

an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Area or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

Section 5. Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibits "A" or "B", the Association, and the designees of each (which may include, without limitation, Benton County, Arkansas, Bentonville, Arkansas, and any utility), blanket easements upon, across, over, and under all of the Common Area and, to the extent shown on any plat, over the Units for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, jogging trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Units on the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to the Bentonville, Arkansas, or any other local, state, or federal governmental entity, subject to such approval requirements as may be contained in Article XIII, Section 2, of this Declaration.

Section 6. Severability. Invalidation of any one of these covenants or

restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 7. **Right of Entry.** The Association shall have the right, but not the obligation, to enter into any Unit for emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 8. **Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Members, which shall include approval by a vote of seventy-five percent (75%) of all Owners in each Neighborhood. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IX hereof, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 9. **Cumulative Effect; Conflict.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood Committee and the Committee may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, By-Laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood Committee shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

Section 10. **Use of the Words "Woods Creek".** No Person shall use the words "Woods Creek" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the term "Woods Creek" in printed or promotional matter where such term is used solely to specify that particular property is located within the Woods Creek community.

Article XIII Mortgage Provisions

The following provisions are for the benefit of the holders of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. **Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of

the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit or any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. **Special Provisions.** The following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees, or Class "A" Members representing at least two-thirds (2/3) of the total Class "A" vote in the Association entitled to be cast thereon, and the Class "B" Member, if such exists, consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (The granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection.);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner or a Unit (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. **No Priority.** No provision of this Declaration or the By-Laws gives

or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 5. Applicability of Article XIII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Arkansas law for any of the acts set out in this Article.

Section 6. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Article XIV Declarant's Rights

Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Benton County, Arkansas. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by the Declarant and any clubhouse or community center which may be owned by the Association, as models and sales offices, respectively.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant. The rights contained in this Article shall terminate only upon the recording by Declarant of a written statement that all sales activity has ceased and that Declarant releases such rights by express reference thereto.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 27th day of May, 1993.

WOODS CREEK, INC.,
an Arkansas Corporation

By: James F. Gore (Seal)
President

Attest: Joe E. Kunkel (Seal)
Secretary

STATE OF ARKANSAS)
COUNTY OF BENTON)

I, CONNIE SUE BOYTE, a Notary Public in and for said county in said state, hereby certify that JAMES F. GORE, whose name as President and JOE E. KUNKEL, whose name as Secretary, of Woods Creek, Inc., a corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 27th day of May, 1993.

Connie Sue Boyte
Notary Public

My Commission Expires:
Aug 10, 2002

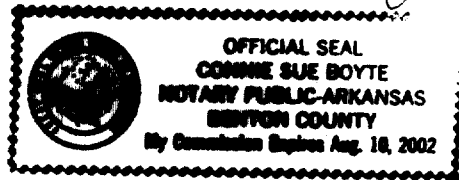


EXHIBIT "A"

McCLAIN RIDGE AT WOODS CREEK
 LOTS 1 THRU 8 OF BLOCK 3 AND ALL OF BLOCKS 1, 2, AND 4
LEGAL DESCRIPTION

All that part of the West half of the Northwest Quarter of Section 27, Township 20 North, Range 30 West and part of the East half of the Northeast Quarter of Section 28, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas, more particularly described as follows:

Commencing at an "X" in the East bound lane of the East Central Avenue/U.S. Highway 71 bridge at the Southwest corner of said Section 27, Township 20 North, Range 30 West, Benton County, Arkansas; thence North 00 degrees 44 minutes 38 seconds East along the West section line of said Section 27, a distance of 4211.08 feet to an iron pin at the Point of Beginning; thence from the Point of Beginning North 00 degrees 47 minutes 25 seconds East, 394.71 feet to an iron pin; thence South 89 degrees 01 minutes 43 seconds East, 67.96 feet to a concrete monument on the southern right-of-way margin of Arkansas Highway No. 72; thence along a non-tangent curve to the left having a tangent bearing to the radius of North 01 degrees 15 minutes 52 seconds East, a radius of 1586.30 feet, a central angle of 16 degrees 44 minutes 02 seconds, and a chord bearing and distance of North 82 degrees 53 minutes 51 seconds East, 461.65 feet to an iron pin; thence leaving the said highway right-of-way South 02 degrees 27 minutes 31 seconds East, 342.16 feet to an iron pin; thence North 89 degrees 12 minutes 35 seconds West, 80.13 feet to an iron pin; thence South 02 degrees 27 minutes 31 seconds East, 404.66 feet to an iron pin; thence South 17 degrees 57 minutes 40 seconds East, 178.43 feet to an iron pin; thence South 47 degrees 42 minutes 10 seconds East, 134.88 feet to an iron pin; thence South 41 degrees 33 minutes 54 seconds West, 99.08 feet to an iron pin; thence South 60 degrees 11 minutes 43 seconds East, 88.16 feet to an iron pin; thence South 31 degrees 25 minutes 10 seconds West, 132.72 feet to an iron pin; thence South 39 degrees 26 minutes 20 seconds West, 340.02 feet to an iron pin; thence North 73 degrees 22 minutes 25 seconds West, 157.23 feet to an iron pin; thence North 43 degrees 37 minutes 05 seconds West, 49.91 feet to an iron pin; thence North 41 degrees 33 minutes 54 seconds East, 78.13 feet to an iron pin; thence North 48 degrees 26 minutes 06 seconds West, 132.32 feet to an iron pin; thence North 38 degrees 19 minutes 47 seconds East, 19.19 feet to an iron pin; thence North 53 degrees 46 minutes 30 seconds West, 205.71 feet to an iron pin; thence North 01 degrees 04 minutes 29 seconds East, 421.07 feet to a three-quarter inch pipe found; thence North 78 degrees 19 minutes 19 seconds West, 114.59 feet to an iron pin; thence North 88 degrees 14 minutes 35 seconds West, 116.98 feet to an iron pin; thence North 45 degrees 48 minutes 29 seconds East, 339.95 feet to the Point of Beginning and containing 16.96 acres, more or less.

EXHIBIT "B"

The SE 1/4 of the NW 1/4 and the NE 1/4 of the SW 1/4 and the W 1/2 of the SE 1/4 and the West 25 acres of the E 1/2 of the SE 1/4 and part of the SE 1/4 of the SW 1/4 of Section 27 described as follows: Beginning at the Southeast corner of the SE 1/4 of the SW 1/4, run thence West 493.02 feet, thence North 764.28 feet, thence North 36 1/2 West 709.5 feet to the North line of said 40 acres, thence East 915.42 feet to the Northeast corner of said 40 acres, thence South 1,320.00 feet to the Place of Beginning, all in Section 27, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas.

Also part of the NW 1/4 of the NE 1/4 of Section 34, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas, described as follows: Beginning at a point 162.03 feet West of the Northeast corner of said 40 acres, run thence West 400 feet, more or less, to a fence, thence South 709.50 feet to a public road, thence easterly with said public road to a point 742.50 feet South of the Point of Beginning, thence North 742.50 feet to the Place of Beginning.

Also, Lot 6, NE 1/4 of the NW 1/4 of Section 34, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas. Containing in all 208 acres, more or less.

Also, all that part of the West half of the Northwest Quarter of Section 27, Township 20 North, Range 30 West and part of the East half of the Northeast Quarter of Section 28, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas, more particularly described as follows:

Commencing at an "X" in the East bound lane of the East Central Avenue/U.S. Highway 71 bridge at the Southwest corner of said Section 27, Township 20 North, Range 30 West, Benton County, Arkansas; thence North 00° 44' 38" East along the West section line of said Section 27, a distance of 2628.22 feet to an iron pin set at the Southwest corner of the Southwest Quarter of the Northwest Quarter of Section 27, said point being further described as the Point of Beginning; thence from the Point of Beginning North 89° 31' 59" West, 124.52 feet to an iron pin set on the Eastern right-of-way of U.S. Highway 71; thence along said right-of-way North 57° 23' 18" West, 107.92 feet to a concrete monument; thence North 44° 04' 10" West, 68.16 feet to an iron pin set; thence leaving said right-of-way North 00° 44' 56" East, 1214.61 feet to a railroad spike found in the center of McClain Road (formerly known as Crooked Road) at the Northwest corner of the East 8 acres of the Southeast Quarter of the Northeast Quarter of said Section 28; thence North 45° 48' 29" East, 373.09 feet to an iron pin set; thence North 00° 47' 25" East, 394.71 feet to a one-half inch rebar on the Southeastern right-of-way of Arkansas Highway No. 72; thence along said right-of-way South 89° 01' 43" East, 67.96 feet to a concrete monument; thence along a curve to the left having a radius of 1586.30 feet, a central angle of 16° 44' 02", and a chord bearing and distance of North 82° 53' 51" East, 461.65 feet to an iron pin set; thence leaving said right-of-way South 02° 27' 31" East, 715.40 feet to a crimped top pipe; thence South 87° 55' 59" East, 753.03 feet to a crimped top pipe at the Northeast corner of the Southwest Quarter of the Northwest Quarter of said Section 27; thence along the East line of said Quarter-Quarter South 00° 31' 50" West, 1302.27 feet to an iron pipe set at the Southeast corner of the Southwest Quarter of the Northwest Quarter of said Section 27; thence along the South line of said Quarter-Quarter North 89° 31' 59" West, 1323.27 feet to the Point of Beginning and containing 57.01 acres, more or less.

2005 6986
Recorded in the Above
Deed Book & Page
02-14-2005 11:41:07 AM
Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pa#: 2005/6986
Term/Cashier: CIRCLK02 / Fhendricks
Tran: 2679,83021,222424
Recorded: 02-14-2005 11:41:25
DFE Deed
REC Recording Fee
Total Fees: \$ 68.00

68.00
0.00

**Amended and Restated
Declaration of Covenants, Conditions and
Restrictions for Woods Creek Development
City of Bentonville, Benton County, Arkansas**

THIS Amended and Restated Declaration of Covenants, Conditions and Restrictions, referred to herein as the "Amended Declaration", is made this 4th day of November, 2004, by Pinnacle Woods Creek, LLC, an Arkansas limited liability Company, sometimes referred to herein as the "Developer", and the Members of Woods Creek Property Owners' Association, sometimes referred to herein as the "Association Members" concerning the residential subdivision known as Woods Creek Development, referred to as "the Subdivision".

WITNESSETH

WHEREAS, the Developer and the Association Members are the Owners of real property located in Benton County, Arkansas, being more fully described in Exhibit A attached to this Amended Declaration and incorporated herein by reference, sometimes referred to herein as the "Property"; and

WHEREAS, certain portions of the Property have been developed, platted and sold to Association Members; and

WHEREAS, the Developer is in the process of developing and platting the remainder of the aforesaid Property into a residential community, and contemplates subdividing such Property into individual, quality, single-family Residential Lots, and, in addition, contemplates setting aside certain tracts of land for common landscaped areas, for signs identifying the Subdivision and other amenities; and

WHEREAS, the Property is described in that certain Declaration of Covenants, Conditions and Restrictions filed in the Office of the Circuit Clerk and Ex Officio Reporter for Benton County on January 27, 1994 and recorded as Document 94-006259 (hereinafter referred to as the "1994 Declaration").

WHEREAS, the 1994 Declaration provides that it may be amended by written consent of the Developer and the affirmative vote or written consent, or any combination thereof, of Members representing seventy five percent (75%) of the total votes of the Association, including seventy five percent (75%) of the votes held by Members other than the Developer.

WHEREAS, the Developer and the Association Members desire to amend and restate the 1994 Declaration in its entirety

WHEREAS, the Developer and the Association Members desire that the entire Subdivision constitute a single-family residential community, with rights and obligation toward the Ownership and maintenance of landscaped common areas at or near the entries to the Subdivision, as well as the signs identifying the Subdivision; and

WHEREAS, the total development of the Subdivision residential community will take several years and will encompass different Phases of the Subdivision; and

WHEREAS, the Developer and the Association Members desire to provide for building and use restrictions to promote and insure that the entire 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 Developer and the Association Members hereby declare and subjects all of the Property described in Exhibit A, now known as Woods Creek Development, 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 Developer, the Association Members and future Owners of the Property because of the interest of the Developer, Association Members 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.

SECTION I CONCEPTS AND DEFINITIONS

The following words, when used in this Amended Declaration or in any amended or supplementary Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

"Amended Declaration" shall mean and refer to this particular instrument entitled: "Amended and Restated Declaration of Covenants, Conditions and Restrictions for Woods Creek Development, City of Bentonville, Benton County, Arkansas," together with any and all amendments or supplements hereto.

"Architectural Control Committee" or **"ACC"** shall mean and refer to that particular committee which may be from time to time appointed or selected pursuant to Section II hereof.

"Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be from time to time duly amended or modified.

"Association" shall mean and refer to the Woods Creek Property Owners Association, which has been formed as an Arkansas non profit corporation which has the power, duty and responsibility of maintaining and administering certain portions of the Subdivision and all of the Common Properties, administering and enforcing the Amended Declaration and otherwise maintaining and enhancing the quality of life within the Subdivision.

"Board" or **"Board of Directors"** shall mean and refer to the Board of Directors of the Association.

"Building Contractor" shall mean a general contractor, building contractor, construction manager, architect, or Owner, provided that such person meets the criteria established by the ACC under the provisions of Section II.

"By-Laws" shall mean and refer to the Bylaws of the Association, as adopted and amended from time to time in accordance with the provisions of this Amended Declaration and the Arkansas Non Profit Corporation Act of 1993 or other applicable laws promulgated by the State of Arkansas.

"Class A Member" shall mean each Owner of a Residential Lot and each Resident (other than an Owner) of a Residential Lot.

"Class B Member" shall mean the Declarant.

"City" shall mean and refer to the City of Bentonville, Benton County, Arkansas.

"Common Properties" shall mean and refer to any and all areas of land within the Subdivision which are known, described or designated as green areas, common areas, the Streets, any controlled access areas and monitoring devices, Street lighting and signs (and all elements thereof), detention ponds, entryways, monuments, perimeter fences and walls, off-site monuments and directional signs, landscape easements, and any greenbelt and the like, including, without limitation, those shown on any Plat, as well as those not shown on a Plat but which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The "Common Properties" shall also include any and all public right-of-way lands for which the City has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as, but not limited to, Street medians or park areas.

"Covenants" shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Amended Declaration..

"Days" as used herein shall mean calendar days, with the exception of "business days" which term shall mean each day except for any Saturday, Sunday or legal holiday under the laws of the State of Arkansas or the United States of America.

"Declarant" shall mean and refer to The Pinnacle Land Group, LLC, an Arkansas limited liability company, and any or all successors and assigns thereof with respect to the voluntary disposition of all (or substantially all) of the right, title and interest of The Pinnacle Land Group, LLC in and to the Subdivision; provided however, no Person merely purchasing one or more Lots from The Pinnacle Land Group, LLC or its successors or assigns in the ordinary course of business shall be considered a "Declarant."

"Deed" shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

"Development Period" shall mean a period commencing on the date of the recording of the original Amended Declaration in the Records and continuing thereafter until and ending on the earlier of (a) the date of the completion of construction of Dwelling Units on more than ninety-five percent (95%) of the Residential Lots in the Subdivision, or (b) the date the Declarant voluntarily terminates its Class B Member status by recording a written notice of such termination in the Records.

"Director" shall mean and refer to any duly elected member of the Board.

"Dwelling Unit" shall mean and refer to any building or portion of a building situated upon any Residential Lot that is designed and intended for Residential Use.

"Front Yard" shall mean and refer to (a) as to interior Lots, the front yard area of the residence between the Street (on the one hand) and the dwelling exterior and fence (on the other hand) and (b) as to corner Lots, the front yard area of the residence between the Street (on the one hand) and the dwelling exterior and fence (on the other hand), and that portion of the side yard area exposed to the Street, between the Street (on the one hand) and the dwelling exterior and fence (on the other hand), but excluding patios, courtyards and fenced areas, unless otherwise defined by the Board.

“Improvement” shall mean any physical change to raw land or to an existing Structure which alters the physical appearance, characteristics or properties of the land or Structure, including but not limited to the new construction of a Structure or Structures and related amenities, adding or removing square footage area or space to or from a Structure, painting or repainting a Structure, or in any way altering the size, shape or physical appearance of any Structure or any building or other improvement, temporary or permanent, located on any Lot.

“Lot” or **“Lots”** shall mean and refer to a Residential Lot or any other type of Lot reflected on any Plat or all of the Residential Lots.

“Member” shall mean and refer to each Resident or Owner, who is in good standing with the Association, who has filed a proper statement of residency with the Association, who has complied with all directives and requirements of the Association, and who otherwise satisfies the requirements set forth in Section II. B. hereof. Membership shall consist of two (2) classes, the Class A Members and the Class B Member.

“Owner” shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot.

“Person” shall mean an individual, partnership, joint venture, corporation, limited liability company, joint stock company, trust (including a business trust), unincorporated association or other entity, or a government or any political subdivision or agency thereof.

“Phase” shall mean each separately platted area within the Subdivision, some of which may be separately denominated. Examples of Phases developed as of the date of this Amended Declaration include McClain Ridge at Woods Creek, Spinnaker Ridge at Woods Creek, The Meadows at Woods Creek. Irrespective of denomination, each Phase is a part of the Subdivision.

“Plat” or **“Plats”** shall mean and refer to the final Subdivision Plat or plats of the Phases of the Subdivision, which have been approved by the City and filed and recorded in the Records.

“Property” shall mean the real property located in Benton County, Arkansas, being more fully described in Exhibit A attached to this Amended Declaration and incorporated herein by reference.

“Records” shall mean the Public Real Estate Records as maintained in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, including the Map and Plat Records of Benton County, Arkansas.

“Resident” shall mean and refer to:

- (a) each Owner of the fee simple title to any Lot within the Subdivision;
- and
- (b) each Person residing within any part of the Subdivision who is a bona-fide lessee pursuant to a legally cognizable lease agreement with an Owner; and
 - (c) each individual lawfully domiciled in a Dwelling Unit other than an Owner or bona-fide lessee.

“Residential Lot” shall mean and refer to each separately identifiable portion of the Subdivision which is (a) platted into individual Lots and becomes a part of the Subdivision pursuant to a Plat filed and recorded in the Records, (b) assessed by any one or more of the applicable governmental or other taxing authorities, (c) to be used solely for a Residential Use and (d) not intended to constitute any portion of the Common Properties.

“Residential Use” shall mean and refer to any use and/or occupancy of any Residential Lot as a residence by a single person, a couple, a single family or a permitted family size group of persons approved by the Board.

“Streets” shall mean the right-of-way of all private Streets, sidewalks and other rights-of-way situated within, and shown on the Plats, together with all pavement, curbs, Street lights, signs and related facilities thereon.

“Structure” shall mean and refer to: (a) any thing or device, other than trees, shrubbery (less than two (2) feet high if in the form of a hedge in respect to a Lot) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot), including but not limited, to any building, improvement, parking facility or area, garage, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, fence, curbing, paving, wall or hedge (more than two (2) feet high if in the form of a hedge in respect to a Lot), signboard or other living quarters or any temporary or permanent improvement to any Lot; (b) any excavation, fill or ditch; (c) with respect to Lots and, any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and (d) any change in the grade of any Lot which involves a change of more than three (3) inches from the existing grade initially approved by the applicable ACC.

“Subdivision” or **“Subdivisions”** shall mean and refer to a subdivision or subdivisions of all or a portion of the Property, in accordance with a Plat or Plats thereof heretofore or hereafter filed of record in the Records, as well as any and all revisions, modifications, corrections or clarifications thereto.

“Compliance Committee” shall mean and refer to that particular committee which may be from time to time appointed or selected pursuant to Section II. D hereof.

SECTION II GOVERNING BODIES

- A. **GENERALLY.** These Covenants shall be implemented by the Association, the Board of Directors of the Association and the Association’s Architectural Control Committee and Compliance Committee, as established herein.
- B. **PROPERTY OWNERS ASSOCIATION.**
1. **Membership.**
 - a. Each and every Owner of each and every Lot within the Subdivision shall automatically be, and must at all times remain, a Member of the Association in good standing, and shall be bound by the terms and conditions of this Declaration, the Articles and By-Laws of the Association, and such rules and regulations as may be promulgated and adopted by the Association under such Articles and By-Laws. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a non-voting Member of the Association. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to any portion of a Lot. Ownership of any Lot shall be the sole qualification for being a Member; however a Member’s privileges to use the Common Properties may be regulated or suspended as provided in this Declaration, the Bylaws or the rules and regulations promulgated by the Board. Any Person who holds an interest in and to all or any part of a Lot merely as security for the performance of an obligation shall not be a Member.
 - b. During the Development Period, the Association shall have two (2) classes of Members:

Class A: The Class A Members, shall include:

- (i) all Owners (other than the Declarant) of Lots; and
- (ii) all Residents (not otherwise Owners) who have properly and timely fulfilled all registration and related requirements prescribed by the Association.

Class B: The Class B Member shall be the Declarant.

- c. Except as provided in this Declaration, the Association shall be the sole judge of the qualifications of its membership and of the right to participate in and vote at its meetings, and shall have the right to prescribe the procedure to be followed concerning all such meetings and votes.

2. **Transfers.** The membership of an Owner may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale, assignment or transfer of such Owner's interest in all or any part of such Owner's Lot and then only to the purchaser, assignee or transferee as the new Owner of the Lot in question. Each Owner shall notify the Association of any transfer or assignment of the fee title to his/her/its Lot and the name and address of the transferee or purchaser. Such transfer shall automatically operate to transfer the membership to the new Owner thereof. On transfer, conveyance, or sale by any Owner of all of his or her or interest in any Lot, such Owner's membership in the Association shall thereon cease and terminate. An Owner of a Lot, by contracting to sell his Lot on an installment basis, shall be deemed to have transferred his membership to the contract purchaser upon execution of the contract for sale. When an Owner sells his Lot by traditional offer and acceptance providing for a closing of the sale to occur at which time the purchaser will pay the purchase price to the seller or deliver to the seller a promissory note for the purchase price in exchange for a conveyance by deed of the property, the transfer of membership shall be deemed to occur upon delivery of the deed. For purposes of this Declaration, the "Owner" shall be deemed to include the purchaser under an installment contract, regardless of whether a deed has been executed to be held in escrow or whether the deed will be executed and delivered upon payment in full of the installment payments. The Articles of Incorporation and By-Laws of the Association, as may be amended from time to time, are incorporated by this reference to the same effect as if set forth word for word herein.

3. **Voting Rights.**

- a. During the Development Period only the Class B Member shall constitute the voting Members of the Association. The Class B Member shall be entitled to cast one (1) vote for each Lot located within the Subdivision. All votes relating to the Ownership of a Lot shall be cast by the Declarant to the exclusion of the Class A Members.
- b. Following the expiration of the Development Period the Class A Members shall constitute the voting Members of the Association. The Owners of each Lot in good standing shall be entitled to one (1) vote per Lot. Where more than one Owner owns and holds a record fee interest in a Lot, either as joint tenants, tenants in common, or tenants by the entirety, for the purposes of voting at meetings of the Association or on issues submitted to the Members, said multiple Owners shall cast one vote collectively for each Lot owned.
- c. Any Owner or Member shall not be in "good standing" if such Person is: (i) in violation of any portion of these Covenants or any rule or regulation promulgated by the Board or any portion of applicable laws, rules, regulations and ordinances; or (ii) delinquent in the full, complete and timely payment of any assessments or charge

which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board. The Board may suspend the voting rights of any Member who is not in good standing for any period during which such Member remains not in good standing. The preceding clause shall control over any provision of this Declaration to the contrary.

- d. The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable, for: (i) any meeting of Members; (ii) proof of membership in the Association; (iii) the status of good standing; (iv) evidence of right to vote; (v) the appointment and duties of examiners and inspectors of votes; (vi) the procedures for actual voting in person or by proxy; (vii) registration of Members for voting purposes; and (viii) such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

4. **Notice; Voting Procedures; Meeting.** Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and/or Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Arkansas law. During the Development Period, from time to time, as and when determined necessary by the Board, the Board may call and schedule a meeting of the Members. From and after the expiration of the Development Period, the Members shall meet annually to deal with and vote on matters relating to the business of the Association, as directed by the Board, including the election of the Directors.

5. **Matters Generally Subject of the Vote of Members.** Additionally, to the extent that the Board desires to encumber any portion of the Common Properties as security for payment of indebtedness incurred in respect to improvements to the Common Properties, the Board shall obtain the prior approval of the Members.

6. **Registration with the Association.**

- a. In order that the Declarant and the Association can properly acquaint every Lot purchaser and every Owner, Member and Resident with these Covenants and the day-to-day matters within the Association's jurisdiction, no acquisition of any Lot within the Subdivision shall become effective until and unless all directives by, and all obligations to, the Association and the Declarant have been properly and timely satisfied.
- b. Each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as: (a) the full name and address of each Owner, Member and Resident; (b) the full name of each individual family member who resides within the Dwelling Unit of the Lot Owner in question; (c) the business address, occupation and telephone numbers of each Resident; (d) the name, address and telephone numbers of other local individuals who can be contacted (in the event the Resident cannot be located) in case of an emergency; and (e) such other information as may be reasonably requested from time to time by the Association. Failure to provide the Association with a name and proper mailing address shall constitute a waiver of any notice otherwise required hereunder.

7. **Other Matters.**

- a. The official address of the Association is to be provided to all Members by the Board of Directors of the Association, and shall remain so until changed by a majority of the Board of Directors of the Association, at which time the Association shall notify each Member thereon of the change in address.

- b. The Association shall, at all times, observe all of the laws, regulations, ordinances, and the like of all governmental authorities recognized in the City, the State of Arkansas, and of the United States of America, and if, at any time, any of the provisions of this Declaration shall be found to be in conflict with such laws, regulations, ordinances, and the like, the same shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby.
- c. By written consent of a majority of the Owners of all the Lots within the Subdivision (one per Lot), the Association may be given such additional powers and duties as may be deemed necessary and reasonable, and by such vote, this Declaration may be modified or amended in any manner.
- d. Subject to the limitations set forth in this Declaration, the Association shall have the right to make such reasonable rules and regulations and to provide such means and to employ such agents as will enable it adequately and properly to carry out the provisions of this Declaration.

C. PROPERTY OWNERS ASSOCIATION BOARD OF DIRECTORS. The Board of Directors of the Association shall consist initially of three (3) directors, as follows:

Gaetano T. Rizzo, Dominic D. Geric and Bart T. Bauer

The initial directors shall each serve a single ten (10) year term. In the event of the death or resignation of any initial director prior to the expiration of his or her term, the vacancy shall be filled by an appointment of the remaining directors. After the expiration of the terms of the initial directors, elections shall be held to fill each of the three (3) seats, which shall thereafter serve five (5) year terms. These subsequent directors shall be residents of the Subdivision. These elections will be held at called meetings upon giving ten (10) days' written notice to all Lot Owners, who may cast one vote for each platted Lot owned. The Board of Directors of the Association shall have the power to enforce these covenants and to review all violations of these covenants for proper action.

D. ARCHITECTURAL CONTROL COMMITTEE.

- 1. **Purpose and Composition.** To insure that all Dwelling Units, Structures, Improvements and accessory or other buildings constructed in the Subdivision have good quality materials and workmanship and are compatible with other Dwelling Units, Structures, Improvements and accessory or other buildings constructed or to be constructed in the Subdivision, there is hereby established an Architectural Control Committee. Upon its initial formation, the ACC shall be composed of three (3) members, to be appointed by the Developer, who shall serve during the Development Period, following which time the Board of Directors of the Association shall assume its authority to designate no more than five (5) total members. Members, other than those initially appointed by the Developer, shall serve three (3) year terms. No absentee Owner, other than the Developer's appointed representative, may serve on the ACC. In the event of the death or resignation of any member prior to the expiration of his or her term, the Board of Directors of the Association shall appoint a successor to complete the term of the deceased or resigning member.
- 2. **Authority and Duties.**
 - a. Any Owner seeking to construct a new home or other pertinent Structure, or to add or to modify any portion of the exterior of an existing home, shall submit the plans and written specifications to the ACC for review. All specifications of the home exterior shall include, but shall not be limited to, decks, hot tubs, patios, pools,

additions to or deletions of planted or landscaped areas, equipment and material storage buildings, dog runs, gazebos, arbors, roofing material, exterior lighting, exterior building materials, and other similar construction.

- b. No construction, change, modification or alteration shall commence until the plans and specifications detailing the nature, kind, shape, height, construction materials, and location of the Improvements on the Lot, and a landscaping plan for the Lot, shall have been submitted to, and approved in writing by, the ACC. In the event the ACC fails to approve or disapprove said specifications within ten (10) days after written confirmation by the ACC that sufficiently complete plans and specifications have been submitted to it, approval will not be required and full compliance with this section of the Declaration will be deemed to have occurred. It shall be the responsibility of the Lot Owner to obtain the written confirmation that sufficiently complete plans and specifications have been submitted.
- c. Without limiting the factors to be considered in the approval or disapproval of any plans and specifications submitted to it, the ACC shall apply the building restrictions set forth below under Section III of this Declaration
- d. Notwithstanding the foregoing provisions, the ACC and the Association shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in the Declaration, and no member of the ACC or the Association and its Board of Directors shall have any liability, responsibility or obligation whatsoever for any action or decision, or lack thereof. The ACC and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the Lot Owner. Each Lot Owner agrees to save, defend, and hold harmless the ACC and the Association and its members on account of any activities of the ACC relating to such Lot Owners' property or Improvements to be constructed.
- e. Only Building Contractors who have been approved by the ACC shall be allowed to construct any improvements within the Subdivision. The ACC shall, from time to time establish such criteria, as it may deem appropriate for the approval of Building Contractors. Such criteria may include, but shall not be limited to, a current certificate of workmen's compensation insurance, a current certificate of general liability insurance in an amount of not less than \$1 million, and current appropriate licensing, if applicable. A clean-up deposit and storm silt screening on the construction site will be required. Additionally, the ACC may require the Building Contractor to secure an appropriate letter of credit prior to commencing construction. Any Building Contractor approved by the ACC impliedly consents to the authority of the ACC to set forth additional requirements or restrictions as may be deemed appropriate.

E. COMPLIANCE COMMITTEE

1. **Purpose and Structure.** A Compliance Committee is hereby created to receive grievances and form complaints for submission to the Board of Directors regarding the breach of any of the Covenants, Conditions and Restrictions. The Compliance Committee shall be composed of three (3) members, who shall be appointed by the Board of Directors; and the terms of such members shall be three (3) years. In the event of the death or resignation of a member, the Board shall have the authority to appoint a successor to complete the term of the deceased or resigning member.
2. **Procedure.** The Compliance Committee, or its designated representative, may make such inspections and other trips as may be necessary throughout the Subdivision in order to determine compliance herewith. In addition, any Lot Owner may file a written

grievance with the Compliance Committee regarding a breach, or attempted breach, of these Covenants. The identity of the reporting Owner may, at the reporting Owner's election, remain anonymous, and in that case, no governing body of the Subdivision may disclose the identity of the reporting Owner. If the Compliance Committee substantiates the breach, the Committee shall draft a formal complaint and forward it to the Board of Directors for action not inconsistent with this section. All Owners and Residents consent to be bound by this Committee's decision.

3. **Enforcement.** Upon receipt of a formal complaint from the Compliance Committee, the Board of Directors shall notify the offending party of the breach and request that the offending party remedy the breach of the terms of these Covenants within ten (10) days. If the breach is not corrected within that time, after proper notice of the breach having been given, the Board of Directors, or its designated representative, is hereby authorized to enter upon the Lot or property in question, as the agent of the Lot Owner, without being liable in any way therefore (including without limitation trespass), to take the specified action and do whatever else is necessary to correct or eliminate said breach. The costs incurred by the Association shall be charged against the Lot Owner involved and shall become a lien on the affected Lot or property as soon as it is due and payable. By acceptance of the Deed or other instrument of conveyance for his or her Lot within the Subdivision, each Lot Owner shall be deemed to covenant and agree to the inspections provided herein and the imposition of the costs and liens referenced herein. Provided however, that nothing herein shall authorize any member of the Compliance Committee or Board of Directors to breach the peace in enforcing these Covenants.
4. **Notice required.** The written notification required herein shall: (a) state the date of the inspection; (b) state the condition or conditions that must be corrected; (c) order the owner or occupant to correct the same within ten (10) days of receipt of the notice; and (d) state that if the situation is not corrected within ten (10) days the Board, or its designated representative, may enter upon the Lot or property and take all steps necessary to remove, abate or eliminate said breach or conditions and the cost will be charged against the Owner and shall constitute a lien on said Lot or property.
5. **Notification of unknown Owner.** In case the Owner is unknown or his whereabouts are not known or he is a nonresident of this state, a copy of the written notice referred to herein shall be posted upon the Lot. Before any action to enforce the lien shall be had, the President of the Association shall make an affidavit setting out the facts as to unknown address or whereabouts of nonresidents. Service of publication, as now provided for by law against nonresident defendants, may be had, and an attorney *ad litem* shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.
6. **Damages and Expenses.** The Association will be damaged by any Lot Owner's breach of the Declaration. By acceptance of a deed or other instrument of conveyance for his or her lot within the Subdivision, each Lot Owner shall be deemed to covenant and agree to pay the Association any and all damages, expenses and costs, including attorneys' fees, incurred in connection with any breach of the Declaration by the Lot Owner or any breach of the Declaration affecting a lot in the Subdivision, and the Association's efforts to enforce this Declaration. All such damages, expenses and costs may, at the option of the Board, be in addition to, or as an alternative to any of the above provisions. Further, all such damages, expenses and costs shall be charged against the Lot Owner involved, and shall become a lien on the affected Lot or property as soon as it is due and payable.
7. **Enforcement of liens and collection of costs.** The liens herein provided for may be enforced and collected in the same manner as liens for general and special assessments as provided in Section VI, Regular and Special Assessments for Association.

8. **Other remedies.** In addition to the foregoing, the Board may seek judicial enforcement of its decisions. In the event the Board seeks judicial enforcement, the offending Owner shall be held liable to the Board for payment of all costs incurred by it in seeking the enforcement of the Covenants, including attorney's fees.

**SECTION III
BUILDING AND USE RESTRICTIONS**

- A. A "building site" shall consist of one or more numbered Lots as shown on the face of the Plat or any modifications or adjustments thereto. No individual Lot may be split to create two or more Lots.
- B. No Dwelling Units, or other buildings, Improvements or Structures shall be erected, constructed, maintained, or permitted on such Residential Lots, except on a "building site" as defined above.
- C. No building, except a single-family residential Dwelling Units, with approved guest accommodations, caretaker and household servant's quarters, together with detached garage and/or such other accessory buildings as may be permitted by local land use rules, regulations or ordinances, and as may be approved by the ACC, shall be permitted. Such accessory buildings shall not be used for or in connection with multi-family living, and each building site shall be used for no more than one family, together with attendants or domestic servants of that family.
- D. **BUILDING TYPE.**
1. No residence shall be constructed that is more than two (2) stories in height or less than two thousand one hundred square feet (2,100 sq. ft.) of heated area, exclusive of carports, garages, basements and storage rooms, with the exception of ranch style one-level homes, which shall be a minimum of one thousand eight hundred square feet (1,800 sq. ft.) of heated area, exclusive of carports, garages, basements and storage rooms. No residence shall be constructed that is a quad or bi-level floor plan. Particular architectural styles, features, appointments and details may not be approved, at the discretion of the ACC, if deemed to be incompatible or non-conforming to the standard of quality or aesthetics promoted within the Subdivision. Additionally, "minimum code" specifications shall not be the standard by which the ACC shall be bound, but rather by any level above that is deemed appropriate minimums for consistency of quality within the Subdivision.
 2. A minimum of one (1) two-car garage, with the size to be approved by the ACC, will be required for each dwelling and must be kept and maintained as part of the house. Garage doors must be kept closed when not in use for the purpose of ingress or egress of automobiles.
 3. Any limitations in this Amended Declaration to the contrary notwithstanding, until Dwelling Units have been constructed on all Lots in the Subdivision, the Developer shall be entitled to use any Lot owned by Developer for construction of model homes, sales offices, construction sheds or for storage of materials. Revisions to approved architectural plans are discouraged; however, any revision to any previously approved plan should be for upgrade purposes only. All revisions must be submitted to the ACC as set forth herein prior to commencing construction.
- E. **BUILDING MATERIALS.** The first floor exterior walls of each building constructed or placed on a Lot shall be full brick or ACC approved masonry material, and the front elevation of each building must be a minimum of seventy-five percent (75%) brick or ACC approved masonry product. Any and all exceptions must first be approved by the ACC. The exterior portion of any fireplace chimney shall be such fire resistant material as approved by the ACC. All concrete blocks and concrete foundations shall be covered with a decorative masonry material. All siding

or other non-masonry material shall require prior ACC approval. All exterior colors of any material must be compatible and approved by the ACC.

- F. **ROOFS.** All roofing material shall be approved by the ACC prior to the installation of such materials. Such materials shall be shake, tile, upper grade architectural shingle or better and shall be otherwise in compliance in all respects with applicable City ordinances. The roof pitch of any structure shall be approved by the ACC.
- G. **EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved on each Lot as reflected on the recorded Plat. Within these easements, no Structure, planting or other material (except driveways across any Lot) shall be placed or permitted to remain which may interfere with the operation, installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water toward or through drainage in the easement. Driveways permitted within the easement shall be constructed so as not to prevent any flow of water or change the flow in the area of each Lot and all improvements for which a public authority, the Association, or any utility company is responsible.
- H. **EXTERIOR MECHANICAL DEVICES.** Air conditioning units, heat pumps, solar devices, chimney flues, hot tub pumps, swimming pool pumps and filtration systems, satellite dishes, and similar mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns. The location of such devices and the shielding to be used shall all be reviewed and approved by the ACC prior to installation.
- I. **YARDS AND LANDSCAPING REQUIREMENTS.** All Structures, landscape plans and additions must first be approved by the ACC. No approval is necessary for the planting of flowers, shrubs, or trees, except where it may affect easements or drainage onto adjacent Lots. All newly constructed Dwelling Units must meet minimum landscape requirements as set by the ACC within six (6) months of completion of construction, provided that each Owner, within ninety (90) days of the completion of a Dwelling Unit shall sod all Front Yards on a Street. The refund of any clean-up deposit secured from any approved building contractor will not be returned unless the conditions of this paragraph have been completed, in addition to any further clean-up which may be necessary. All toys, newspapers, etc., must be picked up so as not to accumulate in an unsightly manner in view of any Street. Only porch furniture, flower pots, etc., are permissible in front yards. Front Yard grass is to be kept mowed so as to never be above six inches (6").
- J. **FENCING.** Fencing of Front Yards is prohibited. Any fence located on any Lot must be approved by the ACC as to material, location, height and quality prior to the commencement of construction. Any fence erected around the rear perimeter of a Lot must contain a gate or gates of adequate size, according to City requirements for City utility vehicles to have access to the utility easement for ingress and egress, if applicable. Fencing in of access/drainage easements is prohibited. Any necessary alteration to fences to maintain utilities will be done at the Owner's expense. Dog pens, property screened as required by the ACC, must be in rear yard portions and kept so as not to be a nuisance or obnoxious to any adjoining Lot Owner.
- K. **SWIMMING POOLS.** Any swimming pool located on any Lot must be approved by the ACC as to material, location, and quality prior to the commencement of any construction. Above-ground pools are prohibited. All swimming pools shall be kept in a good state of repair at all times and shall be properly fenced in, with said fencing to be subject to the requirements hereof and approval of the ACC.
- L. **SIDEWALKS.** Sidewalks shall be installed on each Lot by the Owner as required by the City and the Final Plat for any Phase of Woods Creek Development, and shall be installed prior to the issuance of a certificate of occupancy by the City.

- M. **MAILBOXES.** All mailboxes shall be constructed entirely of masonry or metal approved by the ACC, and must be approved by the ACC as to design and location. Additionally, all mailboxes must be of a type approved by the United States Postal Service, and shall be kept in a good state of repair at all times.
- N. **ANTENNAS AND SIGNALS.** No exterior antenna, aerial wires or other device (including, without limitation, radio or television transmitting or receiving antennae and satellite dishes) for the transmission or reception of any form of electromagnetic radiation shall be erected, installed, used or maintained on any Lot, unless the same is expressly approved and permitted by the ACC and appropriately screened so as to not be visible from the front of any other Lot or any public Street. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of television or radio signals on any other Lot. No satellite dish antenna shall be erected unless the same is approved by the ACC and appropriately screened so as to not be visible from the front of any other Lot or any public Street.
- O. **GENERAL MAINTENANCE.** Each Owner shall maintain and care for all improvements and all trees, foliage, plants and lawns on his or her Lot and otherwise keep his or her Lot and all improvements thereon in a neat manner and prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot, and otherwise keep his or her Lot in conformity with the general character and quality of properties in the immediate area. In addition, by acceptance of a Deed to any Lot, the Owner thereof covenants and agrees to mow weeds and grass and to keep and maintain said Lot in a neat and clean condition at all times.

SECTION IV ADDITIONAL BUILDING USE AND GENERAL RESTRICTIONS

- A. **OFFENSIVE ACTIVITIES.** No noxious or offensive activity shall be carried on or permitted upon any Lot or on any Street or sidewalk adjacent thereto, nor shall anything be done thereon which may be or may become an annoyance or nuisance to adjacent Lot Owners or to the Subdivision. Any Lot Owner violating this paragraph shall be required to indemnify and hold harmless the ACC for any expense it incurs in alleviating the noxious or offensive activity, annoyance or nuisance.
- B. **OIL AND MINING OPERATIONS.** No oil drilling, oil refining, quarrying, or mining operation of any kind whatsoever shall be permitted upon, about, or in any Lot, nor shall any oil well, tank tunnels, mineral excavations or shafts be permitted upon or in any Lot, except that one (1) storm shelter may be constructed with proper ACC approval.
- C. **SIGNAGE.** No signage shall be permitted on any Lot or any Dwelling Unit after it is initially sold; provided, however, that one "For Sale" sign may be placed in front of the Lot within ten (10) feet of the curb, and such sign shall be no larger than five (5) square feet. Any such "For Sale" sign must be removed within ten (10) days of the date of the sale of the Lot. However, Developer hereby reserves the right to erect construction site signs, Lot signs, and signs to designate the name of the addition and the advertisement thereof, without regard to the above restriction. The Developer or the ACC reserves the right to remove any sign which it deems to be obnoxious or non-compliant or unsightly due to shape, color, size, etc. Contractors may display only one contractor's sign and building permit. No other advertising signs shall be permitted.
- D. **SIGHT DISTANCES AT INTERSECTIONS.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the Streets shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the Street if property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a Street property line with the edge of the driveway.

- E. **CURBS AND STREET.** All Street cuts are specifically prohibited unless a waiver is granted by the Developer. No curb cut for driveways shall be closer than three (3) feet to the side property line. All curbs are to be neatly blended into driveway radius.
- F. **PARKING.** All Dwelling Units must have off-Street parking only, and shall not be permitted to park off of designated driveways or parking pads. The ACC shall have the right to have vehicles of this provision towed at the Owner's expense. No parking of any type of vehicle, boat, RV, camper, etc., will be permitted on grass, landscape, sidewalks, or on Streets at any time.
- G. **VEHICLES.** Any boat, RV, camper, untagged or off-road vehicle must have a separate, concealed concrete parking pad and may not be parked at any time in front of the front building line and must be permanently screened from view, with such screening to be approved by the ACC. Likewise, no vehicle repairs or maintenance is to be performed other than in garages or in concealed areas to the rear of building lines. No inoperative vehicles of any kind shall be left on any Lot or easement.
- H. **LOT AND GROUND MAINTENANCE.** No Lot or easement or any part of the Property shall be used or maintained as a dumping ground. Rubbish, leaves, grass, trash, garbage and/or other wastes shall be kept in non-corrosive/non-breakable trash containers. All equipment for the storage and/or disposal of such rubbish, trash, garbage or other wastes shall be kept in a clean and sanitary condition. No garbage or trash containers are to be kept in view of the Street unless it is to be picked up within 24 hours.
- I. **ANIMALS.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other domestic pets may be kept and maintained, provided that they are registered with the City and/or county, if required. Household pets shall be maintained in a clean and sanitary condition and shall not be obnoxious or a nuisance to the surrounding Owners. Any Owners with pets are required to provide containment or backyard fencing in accordance with the ACC specified acceptable fence requirements. Pet Owners shall be liable for all damages caused by their pets.
- J. **TEMPORARY INHABITANTS.** The inhabiting of any structure or vehicle such as a boat, trailer, basement, tent, shack, garage, camper, mobile or manufactured home or other outbuilding shall not be permitted on any Residential Lot, whether temporarily or permanently.
- K. **BASKETBALL GOALS.** No basketball goals or courts may be erected or constructed on the front of any house, or facing the front Street, unless approved by the ACC.
- L. **CLOTHING LINES.** No outdoor clotheslines shall be permitted.

**SECTION V
COMMON SPACE AND AMENITIES**

- A. There shall be created, as shown on the face of the Plat of the Subdivision and identified as "Common Properties", such common tracts as the Developer shall create for landscaping and signage for the Subdivision. Such tracts shall be for the benefit of all Lots and properties in the Subdivision and the landscaping and signage thereon shall be maintained by the Association as provided in this Amended Declaration.
- B. Unless earlier conveyed, the mentioned Common Properties located in the Subdivision that are owned by the Developer shall be conveyed to and accepted by the Association upon the filing of the final Subdivision Plat. In addition, any property or amenity may be deeded/sold to the Association by the Developer if deemed to be for the common good of the Subdivision by the Developer.

- C. Maintenance of the Common Properties and landscaping and signage thereon shall be at the cost and expense of the Members of the Association (Lot Owners) within the Subdivision. All of such costs, including, but not limited to, maintenance expenses, insurance, and real property taxes, shall be borne by the Lot Owners based on the ratio of the total number of Lots they own to the total number of Lots that have been created by the filing of the final Plat and any amendments thereto.
- D. The Board of Directors of the Association shall have the authority to promulgate such rules and regulations and amendments thereto regarding the use of the Common Properties and amenities as it from time to time deems appropriate. Additionally, the Board reserves the right to make such Common Properties and amenities available to non-residents by membership subject to such terms and conditions as the Board may deem appropriate.

**SECTION VI
REGULAR AND SPECIAL ASSESSMENTS FOR ASSOCIATION**

- A. By acceptance of the Deed or other instrument of conveyance for his or her Lot within the Subdivision, each Lot Owner shall be deemed to covenant and agree to pay the Association annual/monthly assessments and special assessments for operating expenses incurred by the Association and for maintenance and care of the Common Properties and hereby consents to the imposition of any liens provided herein in connection therewith without further notice. The first such assessments shall be due and payable at the time any Lot is transferred from a builder to a homeowner at closing and shall be that amount last approved by the Board on the question of annual assessment and shall be prorated from the date of closing. Thereafter, such assessments shall be fixed, established, and collected from time to time as provided in this Amended Declaration and by the Association. The annual and special assessments, together with such interest thereon and costs of collection as provided below, shall be a continuing lien on the property affected and shall also be a personal obligation of the Owner of such property from the date when the assessment is due and payable until paid in full. Such personal obligation shall not pass to successors in title to the affected Lot or property unless expressly assumed by such successors. Unless changed by a majority vote of the Lot Owners casting votes, the annual assessment for any Lot in the Subdivision shall be that amount last approved by the Board on the question of annual assessment. On vote of the Board of Directors of the Association in the manner set forth in the Articles of Incorporation and By-Laws of the Association, the assessments from time to time for the purpose of defraying, in whole or in part, the cost of reconstruction, repair or replacement of the landscaping and signage on the Common Properties in the Subdivision, as well as any common amenity owned by the Association, including fixtures and appurtenances related thereto. The Board of Directors of the Association must approve any special assessments or change in annual assessments.
- B. It shall be the duty of the Association to notify all Owners or contract purchasers of Lots within the Subdivision, whose addresses shall be supplied by the Owner or contract purchaser to the Association, by sending written notice to each of such Owners within fifteen (15) days after the date on which the assessment has been fixed or levied, giving the amount of the charge or assessment for the current year, when the same shall be due, and the amount due for each Lot. Failure of the Association to levy an assessment due to lack of address for the Owner of any particular Lot within the Subdivision or for any other reason, shall not discharge the obligation of any such Owner from paying such assessment, and it shall be the obligation of any such Owner to notify the Association of such Owner's current address.
- C. Any general or special assessment levied as set forth in this Amended Declaration shall become a lien on the affected Lot or property as soon as such assessment is due and payable as set forth above. In the event any Owner fails to pay the assessment when due, then the assessment shall bear interest at the maximum legal rate permitted by the State of Arkansas on the date when such assessment is due and shall continue to accrue at that rate, until it is paid in full. Forty-five (45) days after the date of any such assessment has been fixed and levied, the assessment, if not paid, shall become delinquent and the payment of both principal and interest may be enforced as in the

case of a laborer's lien on the affected real estate, and notice of such lien may be filed with the Circuit Clerk and E-Officio Recorder of Benton County, Arkansas, and venue shall be laid in the appropriate Court of competent jurisdiction in Benton County, Arkansas. It shall be the duty of the Board of Directors of the Association, as provided below, to bring actions to enforce such liens before they expire. For each notice of lien so filed, or for any lien so filed, the Association shall be entitled to collect from the Lot Owner or Owners of the Lot described in such notice of lien a fee of \$50.00, and shall be collectible in the same manner as the original assessment provided for in this Amended Declaration. Any such lien shall continue for a period of five (5) years from the date of delinquency and no longer, unless within such time period legal proceedings shall be instituted to collect such assessments, in which event, the lien shall continue therewith, the non-paying Owner or Owners shall be obligated to pay all costs incurred, plus reasonable attorney fees, which costs and fees shall become a portion of the lien and may be foreclosed on in the same manner as the assessment provided above.

- D. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, enjoyment, and welfare of the residents of the Subdivision, and, in particular, for the improvement and maintenance of property, services and facilities devoted to the above stated purpose and related to the use and enjoyment of the Common Properties and of the Dwelling Units situated in the Subdivision. Without limiting the generality of the foregoing statement of purpose, such assessments shall be applied by the Association to the payment of the costs of the following:
1. To enforce any and all building and land-use restrictions that exist as of the date of this Amended Declaration or which may be lawfully imposed hereafter on or against any of the Property in the Subdivision.
 2. To maintain the Common Properties and amenities and improvements thereon as provided in this Amended Declaration.
 3. To pay expenses to carry out the above, such as attorney's fees, manager's fees, expenses of liability, fire and other insurance, bookkeeping and accounting expenses, and any and all other expenses that may from time to time be deemed necessary to carry out the intent of this Amended Declaration by the Association.
 4. To protect property values in the Subdivision by promoting pride in and enthusiasm for it; to work for improved transportation, schools, libraries, and recreation facilities within the community in which the Subdivision is located, and to do all lawful things and tasks that the Association, in its discretion, may deem to be in the best interest of the Subdivision and the Owners of the Lots in the Subdivision.

**SECTION VII
ENFORCEMENT**

- A. Any dispute between an Owner and the Association, including its ACC or Violation Committee, shall be resolved by a Committee of three (3) Arbiters, with one Arbiter to be designed by the Owner and one to be designated by the Association. The two (2) Arbiters so appointed shall agree on the selection of a third Arbiter, and if agreement cannot be reached within fifteen (15) days after their appointment, the two shall request appointment of a third Arbiter by a Court of competent jurisdiction in Benton County, Arkansas, or its successor.
- B. The arbitration shall generally follow the procedure prescribed in Arkansas Code Annotated §16-1018-201, et seq., and the decision of the Committee of Arbiters, which shall be made in writing and signed by at least two Arbiters, shall be final and binding on all interested persons.
- C. In the event a party fails to comply with the decision of the Arbiters within the time period specified in the decision, any Owner or the Association may seek confirmation of the decision in a Court of competent jurisdiction in Benton County, Arkansas, as provided in the above-referenced Arkansas Code provisions.

**SECTION VIII
DURATION AND AMENDMENT**

- A. **DURATION.** The Covenants of this Amended Declaration shall run with and bind the Property subject to this Amended Declaration, and shall be binding on and inure to the benefit of and be enforceable by the Association and/or the Owners and Residents of any Lot or any of the Property subject to this Amended Declaration, their respective legal representatives, heirs, devisees, personal representatives, successors and assigns, for an original thirty (30) year term expiring on the thirtieth (30th) anniversary of the date of recordation of this Amended Declaration, after which time these Covenants shall be automatically extended for successive periods of five (5) years unless an instrument is signed by the Owners of at least seventy-five percent (75%) of all Lots within this Subdivision and recorded in the Records, which contains and sets forth an agreement to abolish these Covenants.
- B. **AMENDMENT OR MODIFICATION.** The Covenants, restrictions and other terms contained herein may be altered, amended or modified by written declaration, signed and acknowledged by the Owners of 75% or more of the Lots and recorded in the Records. Notwithstanding the above, no alteration or modification of the Covenants or the provisions of this Amended Declaration may be made prior to expiration of the Development Period without the express written consent of the Developer. Notwithstanding any provisions hereof to the contrary, the Developer may at its sole discretion and without notice or consent being required of anyone: (i) modify, amend, or repeal any one or more of these Covenants or the provisions of this Amended Declaration at any time prior to the expiration of the Development Period, provided said amendment, modification or repeal is in writing and properly recorded in the Records; and/or (ii) amend these Covenants or the provisions of this Amended Declaration to cause these covenants and restrictions to be in compliance with any and all applicable laws, rules and regulations (including without limitation any and all applicable laws, rules and regulations of the Federal Housing Administration and/or the Veterans Administration).

**SECTION IX
GOVERNING LAW**

This Amended Declaration and the Covenants, terms and provisions hereof shall be construed in accordance with and governed by the laws of the State of Arkansas in the same manner as any other similar instruments or agreements that are made and to be performed wholly within such jurisdiction, without regard to the conflicts of laws provisions thereof. The courts of the State of Arkansas for Benton County and the federal courts for the Western District of Arkansas shall have jurisdiction over any and all disputes which arise between the parties under this Agreement, whether in law or in equity, and each of the parties hereto, and the Owners and Residents of the Subdivision shall submit and hereby consents to such courts' exercise of jurisdiction.

PINNACLE WOODS CREEK, LLC
an Arkansas limited liability company

By:



Gaetano T. Rizzo, Manager of Pinnacle
Communities, LLC, its Member

WOODS CREEK PROPERTY OWNERS
ASSOCIATION,
an Arkansas nonprofit corporation

By:



Gaetano T. Rizzo, President

By:



Bart T. Bauer, Secretary

ACKNOWLEDGEMENT

STATE OF Arkansas)
COUNTY OF Benton) ss.

BE IT REMEMBERED that on this day came before me, the undersigned, a Notary Public duly commissioned, qualified and acting, within and for the said County and State, the within named **Gaetano T. Rizzo**, being the person authorized by said Trust to execute such instrument, stating his capacity in that behalf, to me personally known, who stated that he was the **Manager of Pinnacle Communities, LLC**, a Member of **Pinnacle Woods Creek, LLC**, an Arkansas limited liability company, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said entity, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 4th day of November, 2004.

My Commission Expires:
July 5, 2010

Deborah J. DeShields
Notary Public

Deborah J. DeShields
NOTARY PUBLIC
Benton County, Arkansas
My Commission Exp. 7-5-2010

CORPORATE ACKNOWLEDGMENT

STATE OF Arkansas)
COUNTY OF Benton) ss.

BE IT REMEMBERED that on this day came before me, the undersigned, a Notary Public, (or before any officer within this State or without the State now qualified under existing law to take acknowledgments) duly commissioned, qualified and acting, within and for the said County and State, the within named **Gaetano T. Rizzo and Bart T. Bauer** (being the persons authorized by said corporation to execute such instrument, stating their respective capacities in that behalf), to me personally known, who stated that they were the President and Secretary, respectively, of **Woods Creek Property Owners Association**, an Arkansas nonprofit corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 4th day of November, 2004.

My Commission Expires:
July 5, 2010

Deborah J. DeShields
Notary Public

Deborah J. DeShields
NOTARY PUBLIC
Benton County, Arkansas
My Commission Exp. 7-5-2010

EXHIBIT "A"
**TO AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR WOODS CREEK DEVELOPMENT**

(Exhibit "A" to original Declaration Covenants):

McCLAIN RIDGE AT WOODS CREEK
LOTS 1 THRU 8 OF BLOCK 3 AND ALL OF BLOCKS 1,2, AND 4

All that part of the West half of the Northwest Quarter of Section 27, Township 20 North, Range 30 West and part of the East half of the Northeast Quarter of Section 28, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas, more particularly described as follows:

Commencing at an "X" in the East bound lane of the East Central Avenue/U.S. Highway 71 bridge at the Southwest corner of said Section 27, Township 20 North, Range 30 West, Benton County, Arkansas; thence North 00 degrees 44 minutes 38 seconds East along the West section line of said Section 27, a distance of 4211.08 feet to an iron pin at the Point of Beginning; thence from the Point of Beginning North 00 degrees 47 minutes 25 seconds East, 394.71 feet to an iron pin; thence South 89 degrees 01 minutes 43 seconds East, 67.96 feet to a concrete monument on the southern right-of-way margin of Arkansas Highway No. 72; thence along a non-tangent curve to the left having a tangent bearing to the radius of North 01 degrees 15 minutes 52 seconds East, a radius of 1586.30 feet, a central angle of 16 degrees 44 minutes 02 seconds, and a chord bearing and distance of North 82 degrees 53 minutes 51 seconds East, 461.65 feet to an iron pin; thence leaving the said highway right-of-way South 02 degrees 27 minutes 31 seconds East, 342.16 feet to an iron pin; thence North 89 degrees 12 minutes 35 seconds West, 80.13 feet to an iron pin; thence South 02 degrees 27 minutes 31 seconds East, 404.66 feet to an iron pin; thence South 17 degrees 57 minutes 40 seconds East, 178.43 feet to an iron pin; thence South 47 degrees 42 minutes 10 seconds East, 134.88 feet to an iron pin; thence South 41 degrees 33 minutes 54 seconds West, 99.08 feet to an iron pin; thence South 60 degrees 11 minutes 43 seconds East, 88.16 feet to an iron pin; thence South 31 degrees 25 minutes 10 seconds West, 132.72 feet to an iron pin; thence South 39 degrees 26 minutes 20 seconds West, 340.02 feet to an iron pin; thence North 73 degrees 22 minutes 25 seconds West, 157.23 feet to an iron pin; thence North 43 degrees 37 minutes 05 seconds West, 49.91 feet to an iron pin; thence North 41 degrees 33 minutes 54 seconds East, 78.13 feet to an iron pin; thence North 48 degrees 26 minutes 06 seconds West, 132.32 feet to an iron pin; thence North 38 degrees 19 minutes 47 seconds East, 19.19 feet to an iron pin; thence North 53 degrees 46 minutes 30 seconds West, 205.71 feet to an iron pin; thence North 01 degrees 04 minutes 29 seconds East, 421.07 feet to a three-quarter inch pipe found; thence North 78 degrees 19 minutes 19 seconds West, 114.59 feet to an iron pin; thence North 88 degrees 14 minutes 35 seconds West, 116.98 feet to an iron pin; thence North 45 degrees 48 minutes 29 seconds East 339.95 feet to the Point of Beginning and containing 16.96 acres, more or less.

(Exhibit "B" to original Declaration of Covenants):

The SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ and the West 25 acres of the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ and part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 27 described

2005 7006

Recorded in the Above

Deed Book & Page

02-14-2005 11:41:07 AM

Brenda DeShields-Circuit Clerk

Benton County, AR

as follows: Beginning at the Southeast corner of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, run thence West 493.02 feet, thence North 764.28 feet, thence North 36 $\frac{1}{2}$ West 709.5 feet to the North line of said 40 acres, thence East 915.42 feet to the Northeast corner of said 40 acres, thence South 1,320.00 feet to the Place of Beginning, all in Section 27, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas.

Also part of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas, described as follows: Beginning at a point 162.03 feet West of the Northeast corner of said 40 acres, run thence West 400 feet, more or less, to a fence, thence South 709.50 feet to a public road, thence easterly with said public road to a point 742.50 feet South of the Point of Beginning, thence North 742.50 feet to the Place of Beginning.

Also, Lot 6, NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas. Containing in all 208 acres, more or less.

Also, all that part of the West half of the Northwest Quarter of Section 27, Township 20 North, Range 30 West and part of the East half of the Northeast Quarter of Section 28, Township 20 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas, more particularly described as follows:

Commencing at an "X" in the East bound lane of the East Central Avenue/U.S. Highway 71 bridge at the Southwest corner of said Section 27, Township 20 North, Range 30 West, Benton County, Arkansas; thence North 00° 44' 38" East along the West section line of said Section 27, a distance of 2628.22 feet to an iron pin set at the Southwest corner of the Southwest Quarter of the Northwest Quarter of Section 27, said point being further described as the Point of Beginning; thence from the Point of beginning North 89° 31' 59" West, 124.52 feet to an iron pin set on the Eastern right-of-way of U.S. Highway 71; thence along said right-of-way North 57° 23' 18" West, 107.92 feet to a concrete monument; thence North 44° 04' 10" West, 68.16 feet to an iron pin set; thence leaving said right-of-way North 00° 44' 56" East, 1214.61 feet to a railroad spike found in the center of McClain Road (formerly known as Crooked Road) at the Northwest corner of the East 8 acres of the Southeast Quarter of the Northeast Quarter of said Section 28; thence North 45° 48' 29" East, 373.09 feet to an iron pin set; thence North 00° 47' 25" East, 394.71 feet to a one-half inch rebar on the Southeastern right-of-way of Arkansas Highway NO. 72; thence along said right-of-way South 89° 01' 43" East, 67.96 feet to a concrete monument; thence along a curve to the left having a radius of 1586.30 feet, a central angle of 16° 44' 02", and a chord bearing and distance of North 82° 53' 51" East, 461.65 feet to an iron pin set; thence leaving said right-of-way South 02° 27' 31" East, 715.40 feet to a crimped top pipe; thence South 87° 55' 59" East, 753.03 feet to a crimped top pipe at the Northeast corner of the Southwest Quarter of the Northwest Quarter of said Section 27; thence along the East line of said Quarter-Quarter South 00° 31' 50" West, 1302.27 feet to an iron pipe set at the Southeast corner of the Southwest Quarter of the Northwest Quarter of said Section 27; thence along the South line of said Quarter-Quarter North 89° 31' 59" West, 1323.27 feet to the Point of Beginning and containing 57.01 acres, more or less.

Benton County, AR

I certify this instrument was filed on

02-14-2005 11:41:07 AM

and recorded in Deed Book

2005 at pages 6986 - 7006

Brenda DeShields-Circuit Clerk