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FILED FOR RECORD
At 4:25 O'Clock P M

DECLARATION OF PROTECTIVE COVENANTS
VILLAGE ON THE CREEKS
ROGERS, ARKANSAS

APR 12 1996

SUE HODGES
Clerk and Recorder
BENTON COUNTY, ARK.

ARTICLE 1

1.1 Property Affected. The real property which is the subject of these protective provisions and covenants is located in Rogers, Arkansas, Benton County, State of Arkansas, known as Village On The Creeks (The Village), presently owned by Village on The Creeks, Inc., an Arkansas corporation, and described on **Exhibit "A"** attached.

1.2 Persons Affected. All persons, corporations, or other entities who now own or shall hereinafter acquire any interest in the aforementioned property shall be taken to hold and agree and covenant with the Village property owners and with their successors and assigns to conform to and observe the following covenants, conditions and restrictions, as to use of the property and the construction of improvements thereon.

1.3 Recitals. The Declarants, Arnold D. Lehman, President and Carmen Lehman, Secretary of Village On The Creeks, Inc., are the present corporate officers of The Village.

1.4 Interpretation of Covenants. Declarant is desirous of subjecting the Property to the conditions, covenants, restrictions and reservations hereinafter set forth to insure proper use and appropriate development and improvement of said Property. The Declarant, Owner, and Lessees specifically acknowledge that the property values are interdependent upon one another and that the Declarant and successors and assigns are given broad powers to control the development, maintenance and management of the development. Specifically all parties agree that the interpretation of these covenants shall be liberally constructed in favor of enforcement as interpreted by the ACMC and that any statutory law or case law that sets forth the position that all property rights not specifically waived are to be interpreted against the developer and in favor of the property owner are specifically rejected. It being the intention of the parties to comply with the interpretation of the ACMC. The decision of the ACMC in many cases may be subjective and not necessarily uniform, however, said action shall not be constructed as waiver or arbitrary enforcement.

ARTICLE II

Definition of Terms:

A. "Building Site" shall mean any contiguous plot of land the size and

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dimensions of which shall be established by the legal description in the original conveyance from Declarants to the first fee Owner of said plot of land, other than Declarants. A Building Site may also be established by Declarant by an instrument in writing executed, acknowledged and recorded by the Declarant which designates a plot of land as a Building Site for purposes of these covenants. If two or more Building Sites, as defined hereinabove, are acquired by the same Owner in fee, such commonly owned Building Sites may, at the option of said Owner, be combined and treated as a single Building Site for purposes of the Covenants contained herein.

- B. "Improvements" shall mean and include but not be limited to buildings, parking areas, loading areas, fences, walls, hedges, landscaping, mass plantings, poles, signs and any structures of any kind.
- C. "Declarant" shall mean Village On The Creeks, Inc. Property Owner, its successors and assigns, whose address is P. O. Box 1555, Rogers, Arkansas, 72757.
- D. "Owner" shall mean the future party or parties owning fee title to either a commercial lot or a professional lot.
- E. "ACMC" shall mean the Architectural Control and Management Committee.
- F. "Common Area" shall mean Village property not conveyed to Owners or shared by Owners including but not limited to lake area, sidewalks, street lights, fountains, lake, landscaping, signage, and fences.
- G. "The Village" shall mean Village On The Creeks development.
- H. "POA" shall mean the Property Owners Association.
- I. "The Property" shall mean the property described in **Exhibit "A"** as may be amended, a/k/a The Village.
- J. "Merchants Association" shall mean the owners of commercial lots incorporated as a Merchants Association with each owner being a member of the association. The association shall set its rules and regulations for operation and be able to assess membership fees and dues.

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ARTICLE III

The Property is hereby made subject to the following conditions, covenants, restrictions and reservations all of which shall be deemed to run with the Property and each and every parcel thereof, to insure proper use and appropriate development and improvement of said premises so as to (a) protect the Owners and tenants of Building Sites against such improper development and use of surrounding Building Sites as will depreciate the value and use of their Building Sites; (b) prevent the erection on the Property of structures constructed or improper or unsuitable materials or with improper quality and methods of construction; (c) insure adequate and reasonably consistent development of the Property; (d) encourage and insure the erection of attractively designed permanent improvements appropriately located within the Property in order to achieve harmonious appearance and function; (e) provide adequate off-street parking and loading facilities; and (f) generally promote the welfare and safety of the occupants, tenants and Owners of Building Sites.

ARTICLE IV

4.1 Primary Intended Use. The property herein conveyed shall be used only for C-U, C-2, or as further designated by the ACMC and approved by the Rogers Planning Commission. The purpose of this restriction is to promote the planned development with distinct separation of retail and residential office businesses.

4.2 Prohibited Uses. No land or building shall be used or occupied on said property which produced objectionable smoke, dust, noise, odor or vibration not in compliance with minimum state and federal standards. In addition, the following uses are specifically prohibited:

A. Home Occupations. Home occupations as defined by the Rogers City Codes shall be prohibited.

B. Fences. All fences must be masonry or wrought iron and of a decorative design upon approval by the ACMC. Wooden fences are specifically prohibited.

C. Signs. Billboard posters and other advertising signs are prohibited except those signs which advertise the property owner's business or products as approved by the Architectural Approval Committee. No sign shall be lighted by means of flashing or intermittent illumination.

D. Outbuildings. One (1) outbuilding per lot may be constructed on the back yard provided its design and size is architecturally compatible with material and design with the existing structure.

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Design and size of outbuildings is subject to the approval of the ACMC.

E. Satellite Dishes. Satellite television receiver dishes must be screened from view and must be approved by the ACMC.

F. Oil and Mining Operations. No oil drilling, or mining operations of any kind shall be permitted.

G. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised or kept except for water fowl that may reside in the lakes and streams.

H. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereupon which may be or may become an annoyance or nuisance to the neighborhood. All dead trees or dead limbs shall be removed immediately. Grass, weeds, and tree sprouts shall be kept neatly cut and shall not be allowed to exceed six (6) inches from the ground surface. Fences or outside structures or outdoor decorations shall be maintained so as not to become unsightly or an annoyance or a nuisance. Upon Owner's failure to comply with this subsection, the Developer or other property owners may remove dead trees or remove dead limbs, cut grass or weeds or perform maintenance upon fences, outside structures, or outdoor decorations, or remove building materials and debris, or maintain street lights, and shall be entitled to reasonable charge not less than Five Hundred Dollars (\$500.00) to the Owner of the lot for said service. No building material of any kind or character shall be placed or stored upon any lot in the Village until the Owner is ready to commence construction of the improvements requiring such materials. Construction sites shall always be neat and orderly. Building materials shall not be placed or stored in the street or between the curb and property lines. Job construction sites shall be kept neat and clean during the period of construction. Upon completion of the improvements requiring such materials, all remaining building materials shall be removed from the job site.

I. Inoperative Vehicles. No automobile, truck, tractor, or other vehicle shall be left inoperative on any platted lot for a period of more than three (3) days.

J. Sight Distance at Intersections. No obstructions to sight lines at intersections in The Village shall be permitted.

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K. Liquid or Solid Wastes. The discharge of untreated wastes into a stream or open or closed drain is prohibited.

4.4 Required Conditions. Any buildings or uses permitted in the Village shall comply with the following conditions:

- (a) Setbacks. Setbacks shall be in accordance with Rogers City Codes for the zoning of "the Property".
- (b) Minimum Lot Width. Each lot shall have a minimum lot width of 100 feet measured along the required front street setback lines.
- (c) Outside Storage. No materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be stored or permitted to remain on any Building Site outside of the building unless the same shall otherwise be screened by such walls, fences, and landscaping to attractively conceal areas visible from outside of the Building Site boundaries. Waste and rubbish storage facilities shall be properly screened.
- (d) Height Restrictions. No building or appurtenance, including but not limited to, penthouses, elevators or elevator equipment, stairways, ventilating fans or similar equipment required to operate and maintain any building, fire or parapet walls, skylights, tanks, cooling or other towers, wireless radio or television masts, or flagpoles shall exceed a height of 50 feet above the finished building grade without the prior written approval of the ACMC.
- (e) Landscaping. Each Property Owner shall landscape that portion of his property between building or buildings and the curb line of abutting streets and shall remove undergrowth, weeds, debris and any other unsightly materials from the remainder of the property at his own expense. Each owner in the Village shall maintain his landscaping in a safe, clean, and attractive condition. Should the Declarant, its successors and assigns find any Owner negligent in this regard, it may give notice of the fact to the offending party. Failure of the Owner to take corrective measures shall result in enforcement in accordance with **Article VII** hereof.
- (f) Trees. Owners and lessees in The Village shall exert their best efforts to preserve the natural beauty of their respective

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properties and, in this regard, shall not needlessly destroy or remove live trees, other than those in an area earmarked for construction.

- (g) Off-Street Parking. It shall be the responsibility of the Owner to provide parking space for employees, customers and visitors and public streets shall not be used for parking. Off-Street parking area shall be located at least ten (10) feet from a public street and at least ten (10) feet from a building or two (2) feet from a property line. As per attached drawing **Exhibit "B"**.

Paving. All driveways and parking areas shall be constructed with a hard surfaced pavement asphalt with concrete curbing and shall include adequate drainage facilities to dispose of all storm water. It shall be the Owner's responsibility to extend driveways to the existing or presently projected street at no expense to Declarants, even though part of this construction is within the street right-of-way.

Lighting. Area lighting shall be designed for consideration of adjacent streets and building sites and shall be approved by the ACMC.

- (h) Construction and Appearance. All buildings constructed in The Village shall conform to the standards specified in the National Electric Code and the Southern Standard Building and Plumbing Codes or their successors or enforced by Rogers, Arkansas, and to the health and zoning regulations of said Rogers, Benton County, Arkansas or State of Arkansas. Owner shall submit detailed plans and specifications for initial construction and for any exterior alteration, modification or additional construction to Declarants prior to the commencement of construction and Declarants' written approval shall be proof of compliance with this restriction, in accordance with **Article V** hereof.
- (i) Maintenance. Each Owner shall keep its buildings, improvements and appurtenances in a safe, clean, maintained, neat, wholesome condition and shall comply in all respects with all governmental statutes, ordinances, regulations, health and police and fire requirements. Each such Owner, tenant or occupant shall remove at his own expense any rubbish or trash of any character which may accumulate on its Building Site. Rubbish trash, garbage or other waste shall be kept only in suitable containers. All

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equipment for the storage or disposal of such materials shall be kept in the clean and sanitary condition. Rubbish and trash shall not be disposed of on the premises by burning in open fires.

- (j) Utility Easements. All utility easements as dedicated on the face of the recorded plats encompassing "The Property", shall be kept free of all structures and the removal of any obstruction by a utility company shall in no way obligate the utility company in damages or to restore the obstruction to its original form. Owner herein agrees to offer every reasonable cooperation in providing such easement as may be required and as such may affect this property. Owner agrees to acquire the property subject to any easements which may affect it.
- (k) Utility Connections. All utility connections, including all electrical and telephone connections and installations of wires to building shall be made underground from the nearest available power sources unless approved in writing by the Declarants. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole, but the same shall be placed on or below the surface of the Property and where placed on the surface shall be adequately screened and fenced. The Declarant shall have the right to grant on any Building Site, easements for utilities within the setback of any Building Site.
- (l) Water and Sewage. Each Owner shall be required to connect to the lines and satisfy all water and sewage treatment requirements only through the Rogers Water and Sewer Commission, unless otherwise authorized by the prior written approval of the Rogers Water and Sewer Commission.
- (m) Site Drainage. No driveways, walks, parking areas, etc., may be constructed across any drainage ditch, channel or swale without providing adequate culverts or waterway openings for natural drainage. Such culverts, etc., shall provide the minimum waterway opening and shall be at the proper gradient as established in the development plan. No rain and storm water run-off or such drainage as roof water, street pavement and surface water caused by natural precipitation or ground water from footing or foundation drains or other sub-surface water drainage shall at any time be discharged into or permitted to flow into the sanitary sewer system, which shall be

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a separate sewer system from the storm water and surface water run-off sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the above mentioned storm water, surface and sub-surface sewer system.

ARTICLE V

Site Plan Approval. Prior to construction or alteration of any building or improvement on a building lot, the required number of site plans and specifications for such building or alterations shall be submitted to the ACMC and the Rogers Planning Commission; provided however, that if the ACMC fails to approve or disapprove such plans and specifications within thirty (30) days after such plans have been submitted to it, such approval shall not be required by these Covenants. Site plans shall contain the following minimum information in addition to that required by City Codes:

- A. The site plans shall be drawn to a scale not greater than one-inch equals fifty (50) feet, unless approved by Declarants, and shall show the following:
 - (1) All lot line dimensions.
 - (2) Building setback, side line and rear yard distance.
 - (3) Location of all existing and proposed buildings.
 - (4) Location of off-street parking areas with dimensions showing parking spaces, access drives, traffic circulation and the location and description of lighting in connection with the parking area.
 - (5) Location and description of all proposed signs.
 - (6) Type of surface paving and curbing.
 - (7) Storm drainage facilities and means of disposal of storm water.
 - (8) All landscaping, fences, walls, or similar facilities to be provided.
 - (9) The location of all structures within 50 feet of the property.
 - (10) All existing and proposed grades.
 - (11) Location and size of all existing and proposed utilities.
 - (12) Location of all existing and proposed easements.
 - (13) Location and description of fire and emergency access road, hydrant locations and pumper connections.

- B. If the site plan is rejected by the Planning Commission, or the ACMC, the Owner shall review non-conforming elements in the plan prior to further consideration.

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ARTICLE VII

Recapture. If, after the expiration of twenty-four (24) months from the date of registration of the deed to any Lot, or portion thereof, from Declarants to any Owner, the Owner shall not have begun in good faith the construction of improvements in accordance with the Plans approved by the ACMC and thereafter diligently and continuously pursue (i.e. without a cessation of construction for two (2) months in any six (6) month period) the completion of construction of such improvements in compliance with the approved Plans, Declarant may at any time within a period of ninety (90) days from the expiration of such twenty-four (24) month period or from notice of cessation of construction as the case may be, at the Declarants' option, repurchase such lot or portion thereof from the Owner and require the Owner to reconvey such property to Declarant or their designee, free and clear from all liens and encumbrances not otherwise imposed by these restrictions. If such option is exercised, the repurchase price shall be the price paid by Owner for the Building Site when purchased from Declarant plus reimbursement for any mortgage or deed of trust or other amounts, nonpayment of which may be assessed as liens against the Building Site. The Owner shall be specifically liable to Declarant for all reasonable costs and expenses, including without limitation reasonable attorneys' fees, incurred in retaking and restoring the Lot to its condition as of the date of recording the deed from Declarant to Owner, and such costs and expenses shall be deducted from the purchase price. In the event that the Owner shall have altered the Lot in any manner, by making partial improvements, or otherwise from and after the date of the registration of its deed, Owner shall be liable to Declarant for the reasonable cost of restoration of the Lot to its condition as of the date of registration of such deed. The option herein granted shall be exercised by giving written notice to the Owner at its last known address and such notice shall be deemed to have been given at the time that it was deposited, properly addressed, certified mail, postage paid, in an official depository of the United States Postal Service. The Declarant agrees to subordinate its rights under this **Article VI** to the rights of any institutional mortgage lender providing construction or interim financing to any Owner for the construction of improvements on any such Owner's Lot.

ARTICLE VII

7.1 Architectural Control and Management Committee. In order to promote the quality and aesthetics of The Village and to avoid inconvenience to present Owners, the ACMC may from time to time without notice establish or revise restrictions, procedures, guidelines, or regulations for orderly development and construction within The Village. Such actions may include, but not be limited to: designation of approved builders, approval of design, layout, size, colors, materials, trim, doors, window, and canopies, together with compliance with city, county, state and federal law, set construction standards and procedures for lot owners and builders. The ACMC shall consist of Arnold D. Lehman, Carmen Lehman, and the

resident leasing agent, or, in the agent's absence, any available officer of the POA. Questions concerning the relationship between Village property Owners or problems concerning The Village may be addressed by the ACMC.

7.2 Approval of Construction Plans by ACMC. All design for original construction, plans, modifications, and additions, together with material specifications, must be submitted to the ACMC and approved by the ACMC in writing. No buildings shall be erected on any lot until the construction plans and specifications and a plot plan showing the location of the structure and utilities for the house to be constructed have been approved by the ACMC. The cutting of streets is strictly prohibited.

The name of the Building Contractor, plans and specification, including a plot plan reflecting the location of all improvements, shall be submitted to the ACMC, which shall, within thirty (30) days after such submission, act on the request and either approve or disapprove the planned construction in writing. If plans properly submitted are not either approved or disapproved within thirty (30) days, the written approval of the ACMC shall no longer be required and the planned construction shall be deemed to be in compliance herewith.

A. The exterior walls of each building constructed or placed on a lot shall be at least seventy-five percent (75%) brick, brick veneer, stone or stone veneer, stucco, dryvit or masonry, and the exterior portion of any fireplace chimney shall be one hundred percent (100%) brick, stone or masonry. No concrete block shall be visible from any street, alley or adjoining lot.

B. All exterior colors must be compatible and pre-approved by the ACMC.

C. All design must be compatible and pre-approved by the ACMC. All interiors must be pre-approved by the ACMC.

D. All roofing material exposed to any view must be tile of color and style selected/approved by the ACMC.

7.3 Roofs. All roofing material shall be approved in writing by the ACMC prior to the installation of such materials, and shall be otherwise in compliance in all respects with applicable City of Rogers Ordinances. The roof pitch of any structure shall be five feet by twelve feet (5' X 12') minimum or as approved by the ACMC.

7.4 Approved Buildings. It is specifically understood and agreed between the Declarants and the property Owner that only approved building contractors shall be authorized to construct improvements within The Village. Neither an Owner nor anyone not an approved contractor may construct improvements within The Village. An Owner cannot select a contractor other than an approved contractor. The Declarants shall establish such criteria as they deem appropriate and said criteria may

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be revised from time to time. Such criteria shall include: workmen compensation insurance; \$500,000.00 general liability insurance policy; furnish certificates to ACMC; may be required to furnish either bond or letter of credit; and storm water silt screening.

7.5 Construction Completion Time. If a structure is not completed on any lot on or before ten (10) months from the date of the issuance of the building permit with respect to such lot, Owner will pay to the developers as liquidated damages the sum of One Hundred Dollars (\$100.00) per day for each lot or part of a lot commencing the first day thereafter.

7.6 Yard Space Restrictions and Building Location. No building shall be located on any lot nearer than twenty-five (25) feet to the front of the lot line, nor nearer than twenty-five (25) feet to the side street line, nor nearer than fifteen (15) feet to any interior side lot line, nor nearer than fifteen (15) feet to the rear lot line. No lot shall be subdivided into smaller lots or parcels than shown on the recorded Plat for the purpose of creating additional building sites or lots, except that a lot may be divided to combine portions of it with the adjacent lots on both sides to enlarge the building sites on said respective adjacent lots.

ARTICLE VIII

8.1 Violation Commission. There shall be one Violations Committee operating under the direction of the POA that will exercise jurisdiction for The Village.

8.2 Violations Committee - Action on Alleged Violations. In order to provide for the proper enforcement of these Protective Covenants, there shall be established a Violations Committee for The Village, which shall be composed of three (3) persons who are either Owners of lots in The Village or are officers of The Village. The members of the Violations Committee shall serve for terms of three (3) years, except for the initial members. The three (3) initial members of the Violations Committee shall be appointed by the President of The Village. In the event there are not sufficient lot owners available to receive such appointments, initially, the Violations Committee may function with a minimum of one (1) member until such time as there are sufficient lot owners in The Village to supply the additional members.

The term of the initial members shall be as follows: Position No. 1 - five years; Position No. 2 - four years; Position No. 3 - three years.

The terms of the members of the Violations Committee shall run from the first day of September of each year, commencing September 1, 1995. Any owner of a lot and any officer of The Village shall be eligible to serve as a member of the Violations Committee. On August 25th of each year, beginning in 1998, an election shall be held

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to elect one member to the Violations Committee. The Secretary of the Violations Committee shall mail a notice, by regular mail, to all lot Owners of The Village advising the need to elect one (1) member to the Violations Committee and giving the name of the incumbent member.

Lot members may make nominations to the Secretary of the Violations Committee in writing on or before August 5th of the year in which the election is taking place. The secretary shall mail to all members on or about August 5th a notice setting forth the names of the candidates for election to the vacant spot on the Violations Committee. The members shall vote, by regular mail, and the candidates receiving a majority of the votes cast shall be elected to the position. Each lot shall have one vote, regardless of the number of Owners of the said lot.

It shall be the function of the Violations Committee to receive from Owners and/or Lessees of lots in The Village any complaints as to alleged violation of these Protective Covenants and Restrictions. Upon receipt of any written complaint concerning alleged violations, it shall be the duty of the Violations Committee to carefully consider and review the complaint within five (5) days after having received the same. The complaining lot Owner shall serve as the fourth member of the Committee to hear that complaint as a non-voting member. If the complaining party does not participate on the Committee, the Committee shall not be obligated to hear said complaint.

If a quorum, present and voting, of the Violations Committee shall determine, unanimously, that there is no merit to the complaint, the complaining party shall be so advised and no further action shall be taken.

If a majority of the members of a quorum of the Violations Committee shall vote to forward the complaint to the alleged violator of the complaint and alleged violation. The notification shall be made by ordinary mail and certified mail with return receipt requested.

In the event of any violation or attempted violation of any of the Covenants or Restrictions before the expiration date hereof (whether the original expiration date or the expiration date of any extensions hereof), it shall be lawful for any person or persons owning any lots in The Village to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate such Covenants or Restrictions and either to prevent him or them from so doing and/or to recover damages for such alleged violations. PROVIDED, HOWEVER, that it shall be a prerequisite for the taking of any legal or equitable proceedings against an alleged violator, that the complaining party follow the procedures above set forth in making the alleged violation known to the Violations Committee and having action taken by the Violations Committee, as above provided.

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ARTICLE IX

Streets, Entryway and Common Area Maintenance Assessments. The Developers and present lot Owners hereby acknowledge and agree that any entryway and common area of The Village, consisting of the rock entry walls, lake, sign and landscaping, is an integral part of the value and quality of the subdivision itself and that it is in the best interest of all owners of lots in The Village that the entryways and common areas be properly maintained and kept in good state of repair. The lot Owners within The Village shall be deemed collectively to have an interest in the maintenance and protection of the said entryway which consists of the rock entry walls, sign, and landscaping.

It is agreed that, as and when from time to time, maintenance and replacement of or repairs to the entryway and streets (stone or brick entry walls, street lights, lake, pond, fountains, fences, walk path, exercise stations, sign and Landscaping) become necessary, the Owners, acting by a majority vote of those attending a meeting called for that purpose, shall be authorized to levy an assessment against all lot Owners, proportionately, to defray the costs of making such maintenance and repairs.

No lot Owner of The Village shall be subject to any liability of any kind or nature to any third party with respect to the construction, maintenance, or repair of the entryway and streets (stone or rock entry walls, sign or landscaping) by reason of the provision of this paragraph, and the only liability to any such lot owner shall be the proportionate share of costs for repair and/or maintenance prescribed by a special assessment levied in accordance with this paragraph.

In the event five (5) or more lot owners of lots in The Village shall, in writing, request the ACMC to cause maintenance to take place or repairs to be made, and shall specify the maintenance and repairs so desired, it shall be the duty of the ACMC to serve upon all owners of lots in The Village a written notice of the time and place for a meeting and the purpose of the meeting. The notice shall be mailed or delivered to each lot Owner at their residence address within The Village, or at the address of the Owner reflected by the records of the Benton County Tax Collector, not less than ten (10) days prior to the date of a meeting to be called for that purpose. Any such notice shall be deemed to have been given when personally delivered or when deposited in the United States mail with proper postage attached and addressed as stated above. At any such meeting, the chairperson shall be the Chairman of the ACMC and secretary shall be the Secretary of the ACMC. The minutes of the meeting shall be recorded by the Secretary and shall be signed by both the Secretary and Chairman when transcribed.

At the meeting, the ACMC shall first give the recommendation, if any, to the lot Owners concerning the request for maintenance or repair under consideration.

After hearing and considering the recommendation of the ACMC and after

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hearing any further recommendations, statements, or comments with respect to the matter, the Chairman shall put the request to a vote and if, by majority vote (one vote per lot) of the lot Owners present at the meeting, either in person or by written proxy, the lot Owners present determine to take any affirmative action such as authorized by the meeting, such action shall be binding upon all lot Owners.

Prior to the commencement of the maintenance and/or repairs which might be so authorized, a detailed and final bid for all costs and expenses to be incurred in connection with same shall be secured by the ACMC and placed on file. The pro rata share of the said bill for which each lot Owner shall be responsible shall be arithmetically determined and the Lot Owners shall be notified by United States mail of their proportionate share of such costs and shall be requested to make payment within thirty (30) days after the mailing of such notice to them.

In the event there shall be a levy of a special assessment for maintenance and repair of the entrance way and streets in accordance with this paragraph, any lot Owner shall fail or refuse to pay his or her pro rata share of such assessment in accordance with the provisions of this paragraph, then the pro rata portion due with respect to that Owner's lot shall constitute a valid lien against the lot until paid. Evidence of the nonpayment of such pro rata share and the establishment of a lien shall take the form of an affidavit executed by the Chairman of the ACMC and notarized by the Secretary of the ACMC, stating that a meeting was properly called and held at which the assessment was levied; attaching a certified copy of the minutes of the meeting so levying such assessment; and further attaching a copy of the letter notifying the lot Owner of the obligation to pay the assessment. The notice shall also include a legal description of the lot on which the unpaid assessment has been levied. The affidavit shall conclude by the verified statement that, to the best knowledge of the Chairman and Secretary of the ACMC, the assessment has not been promptly paid as required by **PARAGRAPH II ARTICLE IX** of the **Articles of the Protective Covenants and Restrictions** for The Village.

ARTICLE X

Property Owner's Association. To further the protection of the development, a Property Owner's Association is established for the purpose of promoting and developing the common good and social welfare of the residents of the Village. Every lot shall have one vote to be voted by members and the developer shall be entitled to one vote in addition to any votes that it might exercise as a lot owner. By affirmative vote of two-thirds (2/3) of the members, the POA may be incorporated under the laws of Arkansas as a not-for-profit corporation. The POA shall have a President, Vice President, Secretary, Treasurer, and a Board of Directors consisting of three to five persons. The POA may assess an annual fee to be established by a majority of the members, but in no event shall it be less than Twenty-five dollars (\$25.00) per annum, due by the 31st day of each year. A member who is not current with the dues is not

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eligible to vote. The POA may establish committees as needed to promote the welfare of The Village and may assume such duties so as to ensure the continuity of the highest character of the development by establishing policies and enforcing them within a formal structure.

ARTICLE XI

11.1 Property Owners Association. The Village on the Creeks shall be designated one of three categories: Professional Office Lot; Commercial/Retail Lot; and Common Area.

11.2 Management of Professional Office Lots. The management of the Professional Office Lots shall be by a Property Owners Association consisting of two owners. Each lot shall have one vote. The majority shall be required for any action. Terms shall be staggered. Each shall serve for a three year term. This committee will manage the area consisting of professional office lots.

11.3 Management of Commercial/Retail Lots. The management of the Commercial/Retail Lots shall be by a Property Owners Association of two owners. Each lot shall have one vote. The majority shall be required for any action. Terms shall be staggered. Each shall serve for a three year term. This committee will manage the area consisting of commercial/retail lots.

11.4 Management of the Common Area. The management of the Common Area shall be by the combined boards of the professional office lots and the commercial/retail lots and the President of Village on the Creeks, Inc. shall have a tie breaking vote.

11.5 Rules and Regulations. Each committee shall make appropriate rules, regulations, procedures, and assessments for the mutual benefit of the development, which shall include but not limited to maintenance, lawn maintenance, landscaping, snow removal, security, traffic, parking, noise and general welfare of the area.

11.6 Enforcement and Invalidation. The Declarant may enforce these covenants by injunctive process or may utilize any other available legal remedy in these premises. Invalidation of any of these protective covenants by legal process in no way affects any of the other covenants which shall remain in full force and effect.

11.7 Severability. Invalidation of no Restriction set forth herein, or any part thereof, by an order, judgment, or decree of any Court, or otherwise, shall not invalidate or affect any of the other Restrictions, or any part thereof, as set forth herein, but they shall remain in full force and effect.

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ARTICLE XII

12.1 Term. This Declaration, every provision hereof and every covenant, condition, restriction and reservation contained herein shall continue in full force and effect for a period of twenty-five (25) years from the date hereof, and shall thereafter be renewed automatically from year to year unless and until terminated as provided in **ARTICLE XII** of the **ARTICLES OF THE PROTECTIVE COVENANTS AND RESTRICTIONS** of The Village thereof.

12.2 Termination and Modification. This declaration or any provision hereof, or any covenant, condition, restriction, or reservation contained herein, may be terminated, extended, modified or amended, as to the whole of said Property or any portion thereof, with the written consent of the Owners of Seventy-five Percent (75%) of the Property subject to these restrictions. Such termination, extension, modification or amendment shall be immediately effective upon recording a proper instrument in writing, executed and acknowledged by such Owner in the office of the Clerk and Recorder of Benton County, Arkansas.

ARTICLE XIII

13.1 No waiver. All of the conditions, covenants, restrictions and reservations contained in this Declaration of Protective Covenants shall be construed together, but if it shall at any time be held that any of said conditions, covenants, restrictions and reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations or any part thereof shall be thereby affected or impaired.

13.2 Notice. Any notices required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested and shall be directed as follows: (1) if intended for a Building Site Owner to the address of the Building Site, if improved; (2) if the Building Site is not improved, to the address set forth in the purchase contract or purchase contract application; (3) if none of the foregoing, to the last known address of the Owner. If intended for Declarant, to the address previously set forth herein.

13.3 Blinding Effect and Amendments of Covenants. All persons or corporations who now or shall hereafter acquire any of the lots in The Village shall be deemed to have agreed and covenanted with the Owners of all other lots in The Village and with their heirs, successors, and assigns to conform to and observe the restrictions, covenants, and stipulations contained herein for a period as hereinafter set forth. These Covenants may be amended at any time with the written approval of the Owners of seventy-five percent (75%) of the lots within The Village, except that the Declarant may amend the Covenants with a simple majority of the lot Owners. Further, no amendments shall be allowed which would be in violation of the zoning

96 028704

designation in effect at the time of the amendment. No charges in these Protective Covenants shall be valid unless the same shall be placed of record in the office of the Clerk and Recorder of Benton County, Arkansas, duly executed and acknowledged by the requisite number of owners.

EXECUTED THIS 1st DAY OF September 1995

VILLAGE ON THE CREEKS, INC.

By: *Arnold D. Lehman, Pres.*
Arnold D. Lehman, President

By: *Carmen Lehman, Sec.*
Carmen Lehman, Secretary

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss:
COUNTY OF BENTON)

On this 1st day of Oct., 19995, before me, a Notary Public, duly commissioned, qualified, and acting within and for said county and state, appeared in person the within named Arnold D. Lehman, President and Carmen Lehman, Secretary/Treasurer of Village on the Creeks, Inc. duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said Village on the Creeks, Inc. and further stated and acknowledged that they had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes herein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as Notary Public the day and year first hereinabove written.

Cyndi Bradt
Notary Public

My Commission Expires:
10-01-2005

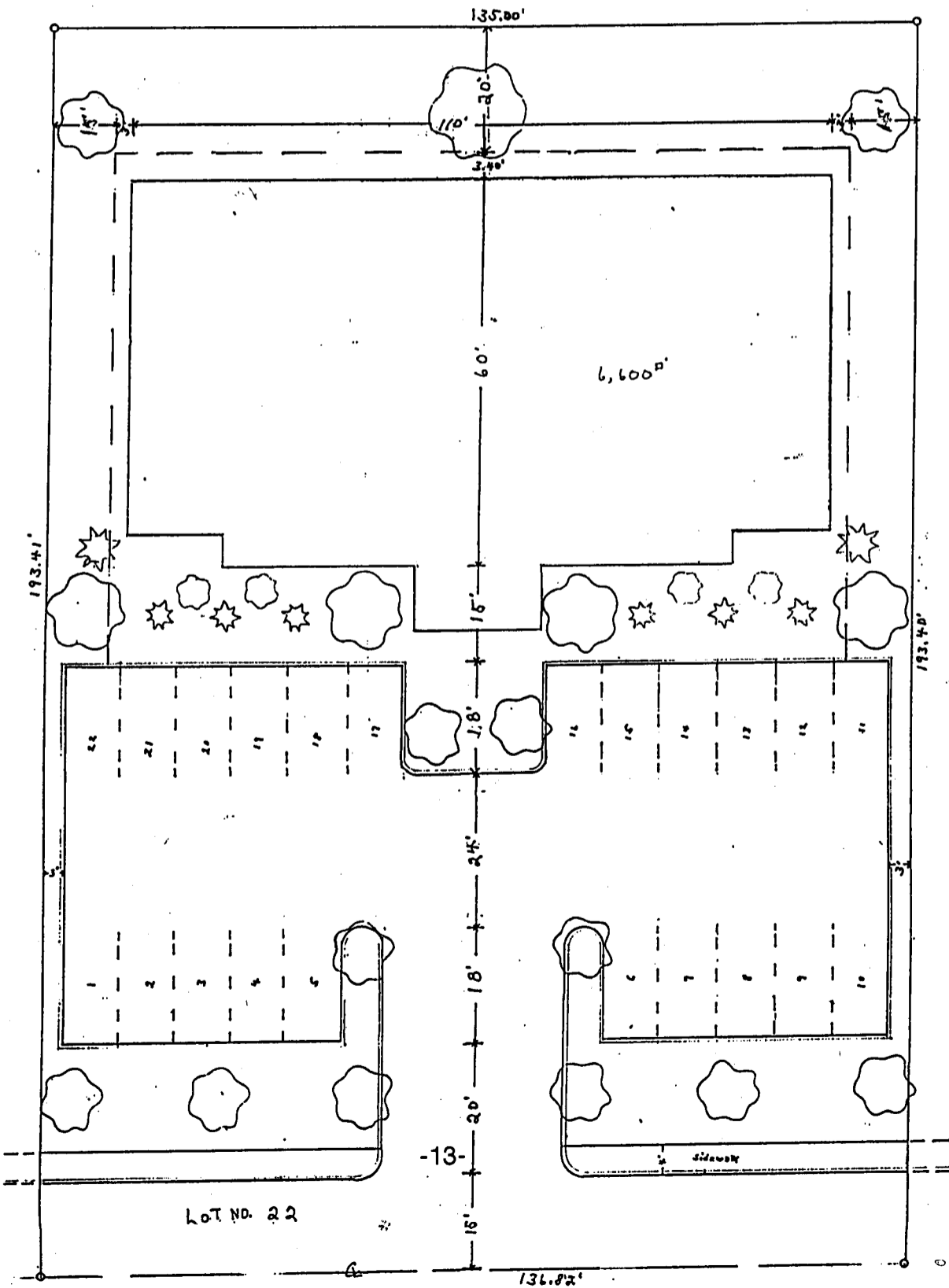
EXHIBIT "A"
LEGAL DESCRIPTION

96 028705

A part of the W 1/2 of the SW 1/4 of section 16, a part of the S1/2 of the SE 1/4 and all that part of the NE 1/4 lying south of the County Road in Section 17, all in Township 19 North, range 30 West of the Fifth Principal Meridian, Benton County, Arkansas and being described as follows: Beginning at the NW Corner of the SE 1/4 of the SE 1/4 of Section 17, T-19-N, R-30-W; thence North 89 degrees, 49 minutes, 13 seconds West, 429.15 feet; thence South 08 degrees, 34 minutes, 00 seconds East 1078.06 feet; thence North 80 degrees, 45 minutes, 32 seconds East 421.55 feet; thence South 88 degrees, 01 minutes, 34 seconds East 421.55 feet; thence South 88 degrees, 01 minutes, 34 seconds East 61.20 feet; thence 66 degrees, 13 minutes, 40 seconds East 1238.87 feet; thence North 79 degrees, 29 minutes, 57 seconds East 777.84 feet to the Westerly Right of Way Line of the relocated U.S. Highway 71; thence along said Right of Way the following courses, North 15 degrees, 15 minutes, 47 seconds West 180.69 feet; thence North 21 degrees, 23 minutes, 54 seconds West 299.04 feet; thence North 14 degrees, 00 minutes, 43 seconds West 255.49 feet; thence leaving said Right of Way, North 71 degrees, 43 minutes, 28 seconds East 28.57 feet to the centerline of Horsebarn Road; thence along said centerline of Horsebarn Road, North 20 degrees, 43 minutes, 45 seconds West 9.39 feet; thence along said centerline of Horsebarn Road, North 20 degrees, 41 minutes, 04 seconds West 108.70 feet; thence along the said centerline of Horsebarn Road, North 27 degrees, 32 minutes, 01 seconds West 133.30 feet to a point in the intersection of Horsebarn Road and Stoney Brook Road; thence along Stoney Brook Road, South 74 degrees, 44 minutes, 59 seconds West 268.90 feet to a point on the centerline of Stoney Brook Road; thence along the centerline of Stoney Brook Road the following courses; thence South 81 degrees, 24 minutes, 22 seconds West 217.22 feet; thence South 78 degrees, 26 minutes, 07 seconds West 105.42 feet; thence South 68 degrees, 35 minutes, 39 seconds West 111.02 feet; thence South 65 degrees, 17 minutes, 59 seconds West 178.84 feet; thence South 65 degrees, 00 minutes, 55 seconds West 341.37 feet; thence South 68 degrees, 22 minutes, 14 seconds West 144.86 feet; thence south 76 degrees, 07 minutes, 26 seconds West 540.89 feet; thence leaving the centerline of Stoney Brook Road, south 00 degrees, 05 minutes, 20 seconds East 13.45 feet to the TRUE POINT OF BEGINNING, containing 53.67 acres.

96 028705

EXHIBIT "B"



AMENDED AND RESTATED DECLARATION
OF PROTECTIVE COVENANTS FOR
VILLAGE ON THE CREEKS
ROGERS, ARKANSAS

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2011/7363
Term/Cashier: CASH4/Mistie Hance
02/14/2011 2:58:50PM
Tran: 143611
Total Fees: \$90.00

Book **2011** Page **7363**
Recorded in the Above
DEED Book & Page
02/14/2011

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, that certain Declaration of Protective Covenants, Village on the Creeks, Rogers, Arkansas, was originally executed September 1st, 1995, and recorded April 12, 1996, as Instrument No. 96-028688; and,

WHEREAS, said Declaration of Protective Covenants specifically provides for their amendment by the approval of seventy-five percent (75%) of the lots within Village on the Creeks; and,

WHEREAS, the undersigned own seventy-five percent (75%) or more of the lots in Village on the Creeks.

NOW, THEREFORE, the undersigned do hereby re-state and amend said Declaration of Protective Covenants and declare as follows:

ARTICLE I

1.1 Property Affected The real property which is the subject of these protective provisions and covenants is located in Rogers, Arkansas, Benton County, State of Arkansas, known as Village On The Creeks (the "Village"), presently owned by VOC, LP, an Arkansas limited partnership, and is more fully described on Exhibit "A" attached (the "Property").

1.2 Persons Affected. All persons, corporations, or other entities who now own or shall hereinafter acquire any interest in the aforementioned property shall be taken to hold and agree and covenant with the Village property owners and with their successors and assigns to conform to and observe the following covenants, conditions and restrictions, as to use of the property and the construction of improvements thereon.

1.3 Recitals. The Declarant shall be defined as VOC, LP, and its General partner is Devereux Management Company.

1.4 Interpretation of Covenants Declarant is desirous of subjecting the Property to the conditions, covenants, restrictions and reservations hereinafter set forth to insure proper use, sound management, and continuity and a common scheme of development and improvement of said Property. The Declarant, Owners, and Lessees specifically acknowledge that the property values are interdependent upon one another and that the Declarant and its successors and assigns are given broad powers to control the development, maintenance and management of the development. Specifically all parties agree that the interpretation of these covenants shall be liberally construed in favor of enforcement interpreted by the Architectural Control and Management Committee (the "ACMC") and that any statutory law or case law that sets forth the position that all property rights not specifically waived are to be interpreted against the developer and in favor of the property owner are specifically rejected. The decisions and interpretations of these Covenants by the ACMC shall be final and binding. The decision of the ACMC in many cases may be subjective and not necessarily uniform; however, said action shall not be construed as waiver or arbitrary enforcement.

ARTICLE II

Definition of Terms:

2.1. "Building Site" shall mean any contiguous plot of land the size and dimensions of which shall be established by the legal description in the original conveyance from Declarants to the first fee Owner of said plot of land, other than Declarants. A Building Site may also be established by Declarant by an instrument in writing executed, acknowledged and recorded by the Declarant which designates a plot of land as a Building Site for purposes of these covenants. If two or more Building Sites, as defined hereinabove, are acquired by the same Owner in fee, such commonly owned Building Sites may, at the option of said Owner, be combined and treated as a single Building Site for purposes of the Covenants contained herein.

2.2. "Improvements" shall mean and include but not be limited to buildings, parking areas, loading areas, fences, walls, hedges, landscaping, mass plantings, poles, signs and any structures of any kind.

2.3. "Declarant" shall mean VOC, LP., its successors and assigns, whose address is 5308 Village Parkway, Rogers, AR, 72758.

2.4. "Owner" shall mean the future party or parties owning fee title to either a commercial lot or a professional lot.

2.5. "ACMC" shall mean the Architectural Control and Management Committee.

2.6. "Common Area" shall mean Village property not conveyed to Owners or shared by Owners including but not limited to lake area, sidewalks, street lights, fountains, lake, landscaping, signage, and fences, regardless of whether or not any of such structures or improvements are located on common property or on a building site.

2.7. "POA" shall mean the Property Owners Association.

2.8. "Proportionate Share" shall mean an individual lot owners pro-rata share based upon number of lots owned as a proportion of the total number of lots.

2.9. "Retail Merchants Advisory Committee (hereafter "RMAC")" shall mean the tenants of buildings located at 5204, 5206, 5208, and 5212, Village Parkway who are engaged in retail sales to the public or otherwise elect to be members of the RMAC. The function of the RMAC shall be to advise the Owner in promoting or advertising the Village and the members of the RMAC. The RMAC shall be advisory in nature only and shall have no decision making authority.

ARTICLE III

The Property is hereby made subject to the following conditions, covenants, restrictions and reservations all of which shall be deemed to run with the Property and each and every parcel thereof, to insure proper use and appropriate development and improvement of said premises so as to (a) protect the Owners and tenants of Building Sites against such improper development and use of surrounding Building Sites as will depreciate the value and use of their Building Sites; (b) prevent the erection on the Property of structures constructed of or with improper or unsuitable materials or with Improper quality and methods of construction; (c) insure adequate and reasonably consistent development of the Property;

(d) encourage and insure the erection of attractively designed permanent improvements appropriately located within the Property in order to achieve harmonious appearance and function; (e) provide adequate off-street parking and loading facilities; and (f) generally promote the welfare and safety of the occupants, tenants and Owners of Building Sites.

ARTICLE IV

4.1 Primary Intended Use. The property herein conveyed shall be used only for C-U, C-2, or as further designated by the ACMC and approved by the Rogers Planning Commission. The purpose of this restriction is to promote the planned development with distinct separation of retail and residential office businesses.

4.2 Prohibited Uses. No land or building shall be used or occupied on said property which produced objectionable smoke, dust, noise, odor or vibration not in compliance with minimum state and federal standards. In addition, the following uses are specifically prohibited:

A. Home Occupations. Home occupations as defined by the Rogers City Codes. The space located on the second floor of 5204 Village Parkway shall be specifically excluded from this prohibition.

B. Fences. All fences must be masonry or wrought iron and of a decorative design upon approval by the ACMC. Wooden fences shall be prohibited unless a specific exception is made by the ACMC.

C. Signs. Billboard posters and other advertising signs are prohibited except those signs which advertise the property owner's business or products as approved by the Architectural Approval Committee. No sign shall be lighted by means of flashing or intermittent illumination.

D. Outbuildings. One (1) outbuilding per lot may be constructed on the back yard provided its design and size is architecturally compatible with material and design with the existing structure. Design and size of outbuildings is subject to the approval of the ACMC.

E. Satellite Dishes. Satellite television receiver dishes must be screened from view and must be approved by the ACMC.

F. Oil and Mining Operations. No oil drilling, or mining operations of any kind shall be permitted.

G. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised or kept except for water fowl that may reside in the lakes and streams.

H. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereupon which may be or may become an annoyance or nuisance to the neighborhood. All dead trees or dead limbs shall be removed immediately. Grass, weeds, and tree sprouts shall be kept neatly cut and shall not be allowed to exceed six (6) inches from the ground surface. Fences or outside structures or outdoor decorations shall be maintained so as not to become unsightly or an annoyance or a nuisance. Upon Owner's failure to comply with this subsection, the Developer or other property owners may remove dead trees or remove dead limbs, cut grass or weeds or perform maintenance upon fences, outside structures, or outdoor decorations, or remove building materials and debris, or maintain street lights, and shall be entitled to reasonable charge not less than Five Hundred

Dollars (\$500.00) to the Owner of the lot for said service. **Any such charges which remain unpaid thirty (30) after invoice date shall be come a lien upon the property as provided in paragraphs 9.2 and 9.5, below.** No building material of any kind or character shall be placed or stored upon any lot in the Village until the Owner is ready to commence construction of the improvements requiring such materials. Construction sites shall always be neat and orderly. Building materials shall not be placed or stored in the street or between the curb and property lines. Job construction sites shall be kept neat and clean during the period of construction. Upon completion of the improvements requiring such materials, all remaining building materials shall be removed from the job site.

I. Trailers or Inoperative Vehicles. No trailer or inoperative automobile, truck, tractor, trailer, or other vehicle shall be left on any platted lot for a period of more than three (3) days. The Owner may cause the removal of any such inoperative vehicle and charge the owner of the lot upon which it was located a reasonable fee for such service not less than Five Hundred Dollars (\$500.00). **Any such charges which remain unpaid thirty (30) after invoice date shall be come a lien upon the property as provided in paragraphs 9.2 and 9.5, below**

J. Sight Distance at Intersections. No obstructions to sight lines at intersections in The Village shall be permitted.

K. Liquid or Solid Wastes. The discharge of untreated wastes into a stream or open or closed drain is prohibited.

4.3 Required Conditions. Any buildings or uses permitted in the Village shall comply with the following conditions:

A. Setbacks. Setbacks shall be in accordance with Rogers City Codes for the zoning of "the Property".

B. Minimum Lot Width. Each lot shall have a minimum lot width of 100 feet measured along the required front street, setback lines.

C. Outside Storage. No materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be stored or permitted to remain on any Building Site outside of the building unless the same shall otherwise be screened by such walls, fences, and landscaping to attractively conceal areas visible from outside of the Building Site boundaries. Waste and rubbish storage facilities shall be properly screened.

D. Height Restrictions. No building or appurtenance, including but not limited to, penthouses, elevators or elevator equipment, stairways, ventilating fans or similar equipment required to operate and maintain any building, fire or parapet walls, skylights, tanks, cooling or other towers, wireless radio or television masts, or flagpoles shall exceed a height of 50 feet above the finished building grade without the prior written approval of the APMC.

E. Landscaping. Each Property Owner shall landscape that portion of his property between building or buildings and the curb line of abutting streets and shall remove undergrowth, weeds, debris and any other unsightly materials from the remainder of the property at his own expense. Each owner in the Village shall maintain his landscaping in a safe, clean, and attractive condition. Should the Declarant, its successors and assigns find any Owner negligent in this regard, it may give notice of the fact to the offending party. Failure of the Owner to take corrective measures shall result in enforcement in accordance with Article VII hereof.

F. Trees. Owners and lessees in The Village shall exert their best efforts to preserve the natural beauty of their respective properties and, in this regard, shall not needlessly destroy or remove live trees, other than those in an area earmarked for construction.

G. Off-Street Parking. it shall be the responsibility of the Owner to provide parking space for employees, customers and visitors and public streets shall not be used for parking. Off-Street parking area shall be located at least ten (10) feet from a public street and at least ten (10) feet from a building or two (2) feet from a property line. As per attached drawing Exhibit "B".

H. Paving. All driveways and parking areas shall be constructed with a hard surfaced pavement asphalt with concrete curbing and shall include adequate drainage facilities to dispose of all storm water. It shall be the Owner's responsibility to extend driveways to the existing or presently projected street at no expense to Declarant even though part of this construction may be within the street right-of-way.

I. Lighting. Area lighting shall be designed for consideration of adjacent streets and building sites and shall be approved by the ACMC.

J. Construction and Appearance. All buildings constructed in The Village shall conform to the standards specified in the National Electric Code and the Southern Standard Building and Plumbing Codes or their successors as enforced by the City of Rogers, Arkansas, and to the health and zoning regulations of said City of Rogers, Benton County, Arkansas or State of Arkansas. Owner shall submit detailed plans and specifications for initial construction and for any exterior alteration, modification or additional construction to Declarant prior to the commencement of construction and Declarant's written approval shall be proof of compliance with this restriction, in accordance with Article V hereof.

K. Maintenance. Each Owner shall keep its buildings, improvements and appurtenances in a safe, clean, maintained, neat, wholesome condition and shall comply in all respects with all governmental statutes, ordinances, regulations, health and police and fire requirements. Each such Owner, tenant or occupant shall remove at his own expense any rubbish or trash of any character which may accumulate on its Building Site. Rubbish trash, garbage or other waste shall be kept only in suitable containers. All equipment for the storage or disposal of such materials shall be kept in the clean and sanitary condition. Rubbish and trash shall not be disposed of on the premises by burning in open fires.

L. Utility Easements. All utility easements as dedicated on the face of the recorded plats encompassing "The Property", shall be kept free of all structures and the removal of any obstruction by a utility company shall in no way obligate the utility company in damages or to restore the obstruction to its original form. Owner herein agrees to offer every reasonable cooperation in providing such easement as may be required and as such may affect this property. Owner agrees to acquire the property subject to any easements which may affect it.

M. Utility Connections. All utility connections, including all electrical and telephone connections and installations of wires to building shall be made underground from the nearest available power sources unless approved in writing by the Declarant. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole, but the same shall be placed on or below the surface of the Property and where placed on the surface shall be adequately screened and fenced. The Declarant shall have the right to grant on any Building Site, easements for utilities within the setback of any Building Site.

N. Water and Sewage. Each Owner shall be required to connect to the lines and

satisfy all water and sewage treatment requirements only through the Rogers Water and Sewer Commission, unless otherwise authorized by the prior written approval of the Rogers Water and Sewer Commission.

O. Site Drainage. No driveways, walks, parking areas, etc., may be constructed across any drainage ditch, channel or swale without providing adequate culverts or waterway openings for natural drainage. Such culverts, etc., shall provide the minimum waterway opening and shall be at the proper gradient as established in the development plan. No rain and storm water run-off or such drainage as roof water, street pavement and surface water caused by natural precipitation or ground water from footing or foundation drains or other sub-surface water drainage shall at any time be discharged into or permitted to flow into the sanitary sewer system, which shall be a separate sewer system from the storm water and surface water run-off sewer system, No sanitary sewage shall at any time be discharged or permitted to flow into the above mentioned storm water, surface and sub-surface sewer system.

ARTICLE V

Site Plan Approval. Prior to construction or alteration of any building or improvement on a building lot, the required number of site plans and specifications for such building or alterations shall be submitted to the ACMC and the Rogers Planning Commission; provided however, that if the ACMC fails to approve or disapprove such plans and specifications within thirty (30) days after such plans have been submitted to it, such approval shall not be required by these Covenants. Site plans shall contain the following minimum information in addition to that required by City Codes:

A. The site plans shall be drawn to a scale not greater than one-inch equals fifty (50) feet, unless approved by Declarant, and shall show the following:

1. All lot line dimensions.
2. Building setback, side line and rear yard distance.
3. Location of all existing and proposed buildings.
4. Location of off-street parking areas with dimensions showing parking spaces, access drives, traffic circulation and the location and description of lighting in connection with the parking area.
5. Location and description of all proposed signs.
6. Type of surface paving and curbing.
7. Storm drainage facilities and means of disposal of storm water.
8. All landscaping, fences, walls, or similar facilities to be provided.
9. The location of all structures within 50 feet of the property.
10. All existing and proposed grades.
11. Location and size of all existing and proposed utilities,
12. Location of all existing and proposed easements.
13. Location and description of fire and emergency access road, hydrant locations and pumper connections.

B. If the site plan is rejected by the Planning Commission, or the ACMC, the Owner shall review non-conforming elements in the plan prior to further consideration.

ARTICLE VI

Recapture. If, after the expiration of twenty-four (24) months from the date of registration of the deed to any Lot, or portion thereof, from Declarant to any Owner, the Owner shall not have begun in good faith the

construction of improvements in accordance with the Plans approved by the ACMC and thereafter diligently and continuously pursue (i.e. without a cessation of construction for two (2) months in any six (6) month period) the completion -of construction of such improvements in compliance with the approved Plans, Declarant may at any time within a period of ninety (90) days from the expiration of such twenty-four (24) month period or from notice of cessation of construction as the case may be, at the Declarant' option, repurchase such lot or portion thereof from the Owner and require the Owner to reconvey such property to Declarant or their designee, free and clear from all liens and encumbrances not otherwise imposed by these restrictions. If such option is exercised, the repurchase price shall be the price paid by Owner for the Building Site when purchased from Declarant plus reimbursement for any mortgage or deed of trust or other amounts, nonpayment of which may be assessed as liens against the Building Site. The Owner shall be specifically liable to Declarant for all reasonable costs and expenses, including without limitation reasonable attorneys' fees, incurred in retaking and restoring the Lot to its condition as of the date of recording the deed from Declarant to Owner, and such costs and expenses shall be deducted from the purchase price. In the event that the Owner shall have altered the Lot in any manner, by making partial improvements, or otherwise from and after the date of the registration of its deed, Owner shall be liable to Declarant for the reasonable cost of restoration of the Lot to its condition as of the date of registration of such deed. The option herein granted shall be exercised by giving written notice to the Owner at its last known address and such notice shall be deemed to have been given at the time that it was deposited, properly addressed, certified mail, postage paid, in an official depository of the United States Postal Service. The Declarant agrees to subordinate its rights under this Article VI to the rights of any institutional mortgage lender providing construction or interim financing to any Owner for the construction of improvements on any such Owner's Lot.

ARTICLE VII

7.1 Architectural Control and Management Committee. In order to promote the quality and aesthetics of The Village and to avoid inconvenience to present Owners, the ACMC may from time to time without notice establish or revise restrictions, procedures, guidelines, or regulations for orderly development and construction within The Village. Such actions may include, but not be limited to: designation of approved builders, approval of design, layout, size, colors, materials, trim, doors, window, and canopies, together with compliance with city, county, state and federal law, set construction standards and procedures for lot owners and builders. The ACMC shall consist of Dewitt H. Smith, Gabe Morris, and a representative designated by Arvest Bank. Questions concerning the relationship between Village property Owners or problems concerning the Village may be addressed by the ACMC.

7.2 Approval of Construction Plans by ACMC. All design for original construction, plans, modifications, and additions, together with material specifications, must be submitted to the ACMC and approved by the ACMC in writing. No buildings shall be erected on any lot until the construction plans and specifications and a plot plan showing the location of the structure and utilities for the house to be constructed have been approved by the ACMC. The cutting of streets is strictly prohibited.

The name of the Building Contractor, plans and specification, including a plot plan reflecting the location of all improvements, shall be submitted to the ACMC, which shall, within thirty (30) days after such submission, act on the request and either approve or disapprove the planned construction in writing. If plans properly submitted are not either approved or disapproved within thirty (30) days, the written approval of the ACMC shall no longer be required and the planned construction shall be deemed to be in compliance herewith.

A. The exterior walls of each building constructed or placed on a lot shall be at least seventy-five percent (75%) brick, brick veneer, stone or stone veneer, stucco, or masonry, and the exterior portion of any fireplace chimney shall be one hundred percent (100%) brick, stone or masonry. No concrete

block shall be visible from any street, alley or adjoining lot.

B. All exterior colors must be compatible and pre-approved by the ACMC.

C. All design must be compatible and pre-approved by the ACMC. All ' interiors must be pre-approved by the ACMC.

D. All roofing material exposed to any view must be tile of color and style selected/approved by the ACMC.

7.3 Roofs. All roofing material shall be approved in writing by the ACMC prior to the installation of such materials, and shall be otherwise in compliance in all respects with applicable City of Rogers Ordinances. The roof pitch of any structure shall be five feet by twelve feet (5' X 12') minimum or as approved by the ACMC.

7.4 Approved Buildings. It is specifically understood and agreed between the Declarant and the property Owner that only approved building contractors shall be authorized to construct improvements within The Village. Neither an Owner nor anyone not an approved contractor may construct improvements within The Village. An Owner cannot select a contractor other than an approved contractor. The Declarant shall establish such criteria as they deem appropriate and said criteria may be revised from time to time. Such criteria shall include, but are not limited to: workmen compensation insurance; \$1,000,000.00 general liability insurance policy; furnish certificates to ACMC; may be required to furnish either bond or letter of credit; and storm water silt screening.

7.5 Construction Completion Time. If a structure is not completed on any lot on or before ten (10) months from the date of the issuance of the building permit with respect to such lot, Owner will pay to the developers as liquidated damages the sum of Five Hundred Dollars (\$500.00) per day for each lot or part of a lot commencing the first day thereafter.

7.6 Yard Space Restrictions and Building Location. No building shall be located on any lot nearer than twenty-five (25) feet to the front of the lot line, nor nearer than twenty-five (25) feet to the side street line, nor nearer than fifteen (15) feet to any interior side lot line, nor nearer than fifteen (15) feet to the rear lot line. No lot shall be subdivided into smaller lots or parcels than shown on the recorded Plat for the purpose of creating additional building sites or lots, except that a lot may be divided to combine portions of it with the adjacent lots on both sides to enlarge the building sites on said respective adjacent lots.

ARTICLE VIII

8.1 Enforcement. The POA will have jurisdiction and authority for enforcement of these Covenants within the Village. However, nothing herein shall restrict the right of any property owner to bring an independent action for enforcement of these Covenants.

8.2 Delivery of Complaints. The POA may receive from Owners and/or Lessees of lots in the Village any complaints as to alleged violation of these Protective Covenants and Restrictions. Upon receipt of any written complaint concerning alleged violations the POA may then review the complaint and determine whether to proceed with enforcement. If the POA elects not to pursue enforcement the owner or lessee may independently do so as provided by law.

8.3. Legal Proceedings. In the event of any violation or attempted violation of any of the Covenants before the expiration date hereof (whether the original expiration date or the expiration date of any

extensions hereof), it shall be lawful for any person or persons owning any lots in the Village to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate such Covenants and either to prevent him or them from so doing and/or to recover damages for such alleged violations. PROVIDED, HOWEVER, that it shall be a prerequisite for the taking of any legal or equitable proceedings against an alleged violator, that the complaining party follow the procedures above set forth in making the alleged violation known to the POA as provided above.

ARTICLE IX

9.1 Creation of Property Owners Association. For the purpose of enforcing the provisions of these Covenants, maintaining or repairing areas to be used in common with some or all of the owners or tenants of lands in the Village, including but not limited to, the entryway and streets, stone or brick entry walls, street lights, lake, pond, fountains, fences, walking path, signage, landscaping, drainage, retention and detention areas, if any of the above, and such other activities and undertakings as may be for the general use and benefit of owners and tenants of the Village, each and every lot owner, in accepting a conveyance of any lot in this property, agrees to and shall become a member of and be subject to the obligations and duly enacted by-laws and rules of the Property Owners Association, a non-profit corporation established under the laws of the State of Arkansas. Each such member of the POA, including the Declarant, shall have one (1) vote for each lot owned in the Village.

9.2. Establishment of Assessments or Dues. The Property Owners Association may, by majority vote of its duly elected officers, levy assessments or dues against all lot owners in order to defray the costs of performing maintenance or repairs upon common property within the Village, maintenance upon common signage, and its administrative costs. All property owners in the property shall pay the required dues to the Property Owners Association promptly when the same become due, and in the event of failure to pay the same promptly when the same become due, such dues shall constitute a lien upon the property owned by such owner in the Village and the same may be enforced in equity as in the case of any lien foreclosure authorized in the State of Arkansas.

9.3 Special Assessments. It is agreed that, as and when from time to time, extraordinary maintenance and replacement, repairs, or additions to capital items such as, but not limited to, the entryway and streets, stone or brick entry walls, street lights, lake, pond, fountains, fences, walking path, signage, drainage structures, and landscaping become necessary, the POA, acting by a majority vote of the lots represented by Owners attending a meeting called for that purpose, shall be authorized to levy an assessment against all lot Owners, proportionately, based upon number of lots owned, to defray the costs of making such maintenance and repairs. Such special assessments shall have the force and effect of regular assessments as described in paragraph 9.2, above.

9.4 Disclaimer of Liability. No lot Owner of the Village shall be subject to any liability of any kind or nature to any third party with respect to the construction, maintenance, or repair of the entryway and streets (stone or rock entry walls, sign or landscaping) by reason of the provision of this paragraph, and the only liability to any such lot owner shall be the proportionate share of costs for repair and/or maintenance prescribed by a special assessment levied in accordance with this paragraph.

9.5 Method of Filing Liens for unpaid Assessments. Evidence of the lien for the nonpayment of any assessment as provided above shall take the form of an affidavit executed by the President of the POA, notarized by the Secretary of the POA, stating that the assessment was properly levied as provided herein on by the By-laws of the POA and setting forth the amount(s) of unpaid assessments and the period(s) for which they are due. The affidavit shall also include a legal description of the lot on which the lien for unpaid assessment(s) has been levied and shall be recorded in the real estate records of the Benton County Circuit

Clerk.

ARTICLE X

10.1 Severability. Invalidation of no Restriction set forth herein, or any part thereof, by an order, judgment, or decree of any Court, or otherwise, shall not invalidate or affect any of the other Restrictions, or any part thereof, as set forth herein, but they shall remain in full force and effect.

ARTICLE XI

11.1 Term. This Declaration every provision hereof and every covenant, condition, restriction and reservation contained herein shall continue in full force and effect for a period of twenty-five (25) years from the date hereof, and shall thereafter be renewed automatically for another Twenty-five (25) year term unless and until terminated as provided in paragraph 11.2, below.

11.2 Termination and Modification. This declaration or any provision hereof, or any covenant, condition, restriction, or reservation contained herein, may be terminated, extended, modified or amended as to the whole of said Property or any portion thereof, by written instrument executed by the Owners of not less than Seventy Percent (70%) of the lots in the Village. Such termination, extension, modification or amendment shall be immediately effective upon recording such instrument, properly acknowledged, in the office of the Clerk and Recorder of Benton County, Arkansas. Further, no amendments shall be allowed which would be in violation of the zoning designation in effect at the time of the amendment.

ARTICLE XII

12.1 Non Waiver. All of the conditions, covenants, restrictions and reservations contained in this Declaration of Protective Covenants shall be construed together, but if it shall at any time be held that any of said conditions, covenants, restrictions and reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations or any part thereof shall be thereby affected or impaired.

12.2 Notice. Any notices required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested and shall be directed as follows: If intended for a Building Site Owner (1) to the address of the Building Site, if improved; (2) if the Building Site is not improved, to the address set forth in the purchase contract or purchase contract application; (3) if none of the foregoing, to the last known address of the Owner. If intended for Declarant, to the address previously set forth herein.

12.3 Binding Effect. All persons or corporations who now or shall hereafter acquire any of the lots in The Village shall be deemed to have agreed and covenanted with the Owners of all other lots in The Village and with their heirs, successors, and assigns to conform to and observe the restrictions, covenants, and stipulations contained herein for a period as hereinafter set forth.

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal this 4th day of February, 2011

SIGNATURES APPEAR ON THE FOLLOWING PAGE

VOC, LP.
BY: DEVEREUX MANAGEMENT COMPANY,
GENERAL PARTNER

FIRST PLACE ON THE CREEKS, LLC

BY: Dewitt H. Smith
Dewitt H. Smith, President

BY: Valerie J. Corak
Manager or Managing Member

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF BENTON)

ON THIS DAY before the undersigned, a Notary Public, duly qualified and acting in and for the County and State aforesaid, personally appeared Dewitt Smith, to me well known or satisfactorily proven to be the President of Devereux Management Company, General Partner of VOC, LP., a party in the foregoing instrument and state that he had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 8th day of February, ~~December~~, 2010.

Christiam Cornog
NOTARY PUBLIC

My Commission Expires:
Jan. 21, 2020



ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF BENTON)

ON THIS DAY before the undersigned, a Notary Public, duly qualified and acting in and for the County and State aforesaid, personally appeared Valerie J. Corak, to me well known or satisfactorily proven to be the authorized officer of First Place on the Creeks, LLC, a party in the foregoing instrument and state that he /she had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 4th day of February, 2011.

Sandra G. Valdes
NOTARY PUBLIC

My Commission Expires:
4-15-17

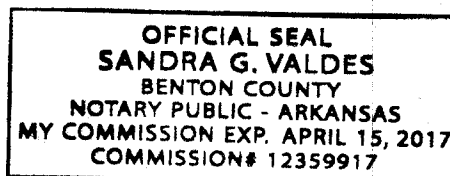


EXHIBIT "A"

Book 2011 Page 7374
Recorded in the Above
DEED Book & Page
02/14/2011

TRACT 1:

LOT 1A, REPLAT OF LOTS 1 AND 3, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "23L" AT PAGE 49. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 2:

LOT 2A, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P2" AT PAGE 798. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215 AND PLAT RECORD "P2" AT PAGE 798.

TRACT 3:

LOT 6, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "20" AT PAGE 215. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 4:

LOT 8, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "20" AT PAGE 215. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 5:

LOT 9, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "20" AT PAGE 215 AND PLAT RECORD "P1" AT PAGE 554. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 6:

LOT 10, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "20" AT PAGE 215. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 7:

LOT 12, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "20" AT PAGE 215. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 8:

LOT 13A, A LOT SPLIT OF LOT 13, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P1" AT PAGE 458. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 9:

LOT 13B A LOT SPLIT OF LOT 13, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P1" AT PAGE 458. TOGETHER WITH

THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 10:

LOT FOURTEEN (14), FINAL PLAT OF VILLAGE ON THE CREEKS, TO THE CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON THE FINAL PLAT FILED FOR RECORD IN PLAT BOOK 20 AT PAGE 215 AND IN PLAT BOOK 20 AT PAGE 254.

TRACT 11:

LOT 16A, A REPLAT OF LOTS 11 AND 16, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "23L" AT PAGE 98. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 12:

LOT 15A, A REPLAT OF LOTS 15 & 17, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "22L" AT PAGE 195. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 13:

LOT 18, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "20" AT PAGE 215. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 14:

LOT 19, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "20" AT PAGE 215. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 15:

LOT 20, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "20" AT PAGE 215. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 16:

LOT 21A, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P2" AT PAGE 74 AND REVISED REPLAT RECORD "P2" AT PAGE 106. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 17:

LOT 22A, A REPLAT OF LOT C-2 AND PART OF LOT 24, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "22L" AT PAGE 144. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" PAGE 215.

TRACT 18:

LOT C-2A, A REPLAT OF LOT C-2 AND PART OF LOT 24, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "22L" AT PAGE 144.

TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" PAGE 215.

TRACT 19:

LOT C-5C, LOT SPLIT OF C-5A, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P1" AT PAGE 694. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 20:

LOT C-6A, A REPLAT OF LOTS C-5 C-6 C-7 AND C-8, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P1" AT PAGE 500. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 21:

LOT C-9A-1A, BEING A LOT SPLIT OF LOT C-9C, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P2" AT PAGE 464. TOGETHER WITH THE RIGHT TO USE PRIVATE DRIVE AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 22:

LOT C-9A-1D, BEING A LOT SPLIT OF LOT C-9A-1B, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P3" AT PAGE 363. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TOGETHER WITH AN EASEMENT BY AND BETWEEN C.R. LEHMAN PROPERTIES, LIMITED PARTNERSHIP AND VILLAGE ON THE CREEKS, INC., AS TO RECIPROCAL RIGHTS TO USE THE PARKING LOTS, RESPECTIVE ENTRANCES, DRIVEWAYS AND PAVED AREAS, FILED FOR RECORD JUNE 11, 2002 AS INSTRUMENT NO. 2002-101768, RECORDS OF BENTON COUNTY, ARKANSAS.

TRACT 23:

LOT C-9A-1C, BEING A LOT SPLIT OF LOT C-9A-1B, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P3" AT PAGE 363. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 24:

LOT C-9B, LOT SPLIT OF C-9, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "23L" AT PAGE 203. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" PAGE 215.

TRACT 25:

LOT C-9C, BEING A LOT SPLIT OF LOT C-9A, FINAL PLAT OF VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P1" AT PAGE 459. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS (VILLAGE PARKWAY DRIVE) ALONG THE NORTH SIDE OF SUBJECT PROPERTY AS SHOWN ON PLAT RECORD "P1" AT PAGE 459.

TRACT 26:

LOT C-10-A OF THE LOT SPLIT OF C-10, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "22L" AT PAGE 116. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 27:

LOT C-10-B OF THE LOT SPLIT OF C-10, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "22L" AT PAGE 116. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 28;

LOT C-11, BEING A REPLAT OF LOTS C-3 C-4 AND C-5D, VILLAGE ON THE CREEKS, CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON PLAT RECORD "P4" AND PAGE 520. TOGETHER WITH THE RIGHT TO USE PRIVATE STREETS AS ESTABLISHED IN PLAT RECORD "20" AT PAGE 215.

TRACT 29:

A PART OF THE SOUTHWEST QUARTER (SW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 16, A PART OF THE SOUTHEAST QUARTER (SE1/4) OF THE SOUTHEAST QUARTER (SE1/4) AND PART OF THE SOUTHWEST QUARTER (SW1/4) OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION 17 AND PART OF THE NORTH HALF (N1/2) OF THE NORTHEAST QUARTER (NE1/4) OF SECTION 20, ALL IN TOWNSHIP 19 NORTH, RANGE 30 WEST, BENTON COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE NW CORNER OF THE SE1/4 OF THE SE1/4 OF SAID SECTION 17; THENCE N89°49'13"W 429.15 FEET; THENCE S08°34'00"E 1078.06 FEET TO THE POINT OF BEGINNING; THENCE N80°45'32"E 421.55 FEET; THENCE S88°01'34"E 61.20: THENCE N66°13'40"E 1238.87 FEET; THENCE N79°29'57"E 717.32 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 540; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE S10°58'56"E 34.32 FEET; THENCE CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE S00°26'19"E 80.96 FEET; THENCE S82°29'02"W 626.82 FEET; THENCE N68°28'13"W 97.87 FEET; THENCE S48°59'00"W 400.30 FEET; THENCE S72°57'00"W 199.70 FEET; THENCE S57°03'00"W 102.60 FEET; THENCE S75°19'00"W 215.30 FEET; THENCE S44°33'00"W 203.30 FEET; THENCE S36°18'00"W 269.30 FEET; THENCE S48°14'00"W 354.40 FEET; THENCE S40°50'09"W 238.03 FEET; THENCE N08°34'00"W 682.34 FEET, CONTAINING 475,242.24 SQUARE FEET OR 10.91 ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIVE CONVENANTS OF RECORD OR FACT.

TRACT 30:

ALL OF THE COMMON AREA OF VILLAGE ON THE CREEKS, TO THE CITY OF ROGERS, BENTON COUNTY, ARKANSAS, AS DESIGNATED AND SHOWN UPON THE FINAL PLAT FILED FOR RECORD IN PLAT BOOK 20 AT PAGE 215 AND IN PLAT BOOK 20 AT PAGE 254.

LESS AND EXCEPT FROM TRACTS 21 & 22 THAT PORTION PREVIOUSLY DEEDED TO THE ARKANSAS STATE HIGHWAY COMMISSION, AS SHOWN IN WARRANTY DEED FILED FOR

RECORD JANUARY 12, 2007, AS LAND DOCUMENT NO 2007-1656, RECORDS OF BENTON COUNTY, ARKANSAS, AND FURTHER DESCRIBED AS FOLLOWS:

STARTING AT 5/8 INCH REBAR WITH CAP BEING USED AS THE NORTHWEST CORNER OF LOT C-9A-1D OF A LOT SPLIT OF LOT C-9A-1B OF VILLAGE ON THE CREEKS SUBDIVISION; THENCE N82°25'53"E ALONG THE NORTH LINE OF LOT C-9A-1D A DISTANCE OF 457.37 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 540 AS ESTABLISHED BY AHTD JOB 1534 SECTION 3; THENCE S71°48'55"E ALONG SAID RIGHT OF WAY LINE A DISTANCE ON 89.49 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 540 AS ESTABLISHED BY AHTD JOB 090165 FOR THE POINT OF BEGINNING; THENCE CONTINUE S17°48'55"E ALONG THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 540 AS ESTABLISHED BY AHTD JOB 1534 SECTION 3 A DISTANCE OF 128.53 FEET TO A POINT; THENCE S11°40'58"E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 180.63 FEET TO A POINT; THENCE S82°06'29"W A DISTANCE OF 60.50 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 540 AS ESTABLISHED BY AHTD JOB 090165; THENCE N07°41'51"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 215.95 FEET TO A POINT; THENCE N07°52'71"E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 94.45 FEET TO THE POINT OF BEGINNING AND CONTAINING 13,262 SQUARE FEET MORE OR LESS AS SHOWN ON PLANS PREPARED BY THE AHTD REFERENCED AS JOB 090165.

AND ALSO EXCEPT,

PART OF LOT C-9A-1A OF A LOT SPLIT OF LOT 9 VILLAGE ON THE CREEKS SUBDIVISION, BEING PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 19, RANGE 30 WEST, BENTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

STARTING AT A 5/8 INCH REBAR WITH CAP BEING USED AS THE NORTHWEST CORNER OF LOT C-9A-1D OF A LOT SPLIT ON LOT C-9A-1B OF A LOT SPLIT OF LOT 9 OF VILLAGE ON THE CREEKS SUBDIVISION; THENCE N82°24'53"E ALONG THE NORTH LINE OF LOT C-9A-1D A DISTANCE OF 457.37 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 540 AS ESTABLISHED BY AHTD JOB 1534 SECTION 3; THENCE N17°48'55"W ALONG SAID RIGHT OF WAY LINE A DISTANCE 80.98 FEET TO A POINT; THENCE N13°12'17"W ALONG SAID RIGHT IF WAY LINE A DISTANCE OF 99.89 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 540 AS ESTABLISHED BY AHTD JOB 090165 FOR THE POINT OF BEGINNING; THENCE N62°19'16"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 32.32 FEET TO A POINT; THENCE N18°02'13W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 26.14 FEET TO A POINT; THENCE N82°18'18" E A DISTANCE OF 29.80 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 540 AS ESTABLISHED BY AHTD JOB 1534 SECTION 3; THENCE S13°12'17"E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 46.95 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,028 SQUARE FEET MORE OR LESS AS SHOWN ON PLANS PREPARED BT THE AHTD REFERENCED AS JOB 090165.

Benton County, AR
I certify this instrument was filed on
02/14/2011 2:59:58PM
and recorded in DEED Book
2011 at pages 7363 - 7378
Brenda DeShields-Circuit Clerk

FIRST AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION
OF PROTECTIVE COVENANTS FOR
VILLAGE ON THE CREEKS
ROGERS, ARKANSAS

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2011/27098
Term/Cashier: CASH4/Mistie Hance
05/27/2011 2:26PM
Tran: 154229
Total Fees: \$35.00

Book 2011 Page 27098
Recorded in the Above
DEED Book & Page
05/27/2011

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, that certain Declaration of Protective Covenants, Village on the Creeks, Rogers, Arkansas, was originally executed September 1st, 1995, and recorded April 12, 1996, as Instrument No. 96-028688; and,

WHEREAS, that certain Amended and Restated Declaration of Protective Covenants for Village on the Creeks, Rogers, Arkansas, was originally executed February 4th, 2011, and recorded February 14, 2011, in Book 2001 at Page 7363 of the Benton County Real Estate Records and,

WHEREAS, said Amended and Restated Declaration of Protective Covenants specifically provides for their amendment by the approval of seventy-five percent (75%) of the lots within Village on the Creeks; and,

WHEREAS, the undersigned owns seventy-five percent (75%) or more of the lots in Village on the Creeks.

NOW, THEREFORE, the undersigned does hereby amend said Amended and Restated Declaration of Protective Covenants as follows

1. Article IV, paragraph 4.2(H), is hereby amended to provide as follows:

H. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereupon which may be or may become an annoyance or nuisance to the neighborhood. All dead trees, limbs, bushes, or shrubs shall be removed immediately. Grass, weeds, and tree sprouts shall be kept neatly cut and shall not be allowed to exceed six (6) inches from the ground surface. Fences or outside structures or outdoor decorations shall be maintained so as not to become unsightly or an annoyance or a nuisance. Privately owned parking areas shall be kept free of trash, structurally sound, reasonably free of pot holes or other dangers, properly striped, and properly maintained. Upon Owner's failure to comply with this subsection, the Declarant, POA, or other property owners may remove dead trees, limbs, bushes, or shrubs, cut grass or weeds or perform necessary maintenance upon fences, outside structures, outdoor decorations, parking lots, or remove building materials and debris, or maintain street lights, and shall be entitled to recover the actual cost of such work plus a reasonable charge not less than Five Hundred Dollars (\$500.00) to the Owner of the lot for said service plus a Fifteen percent (15%) administrative charge. **Any such charges which remain unpaid thirty (30) after invoice date shall be come a lien upon the property as provided in paragraphs 9.2 and 9.5, below.** No building material of any kind or character shall be placed or stored upon any lot in the Village until the Owner is ready to commence construction of the improvements requiring such materials. Construction sites shall always be neat and orderly. Building materials shall not be placed or stored in the street or between the curb and property lines. Job construction sites shall be kept neat and clean during the period of construction. Upon completion of the improvements requiring such materials, all remaining building materials shall be removed from the job site. Failure of the Owner to take corrective measures after proper written notice from the POA shall result in enforcement in accordance

with Article VIII hereof.

2. Article IV, paragraph 4.3(E), is hereby amended and shall provide as follows:

E. Landscaping. Each Property Owner shall landscape that portion of his property between building or buildings and the curb line of abutting streets and shall remove undergrowth, weeds, debris and any other unsightly materials from the remainder of the property at his own expense. Each owner in the Village shall maintain his landscaping in a safe, clean, and attractive condition. Should the Declarant, its successors and assigns or the POA find any Owner negligent in this regard, it may give notice of the fact to the offending party. Failure of the Owner to take corrective measures after proper written notice from the POA shall result in enforcement in accordance with Article VIII hereof.

3. Article IV, paragraph 4.3(K), is hereby amended to provide as follows:

K. Maintenance. Each Owner shall keep its buildings, improvements and appurtenances, specifically including, but not limited to, building exteriors, landscaping, and parking areas, in a safe, clean, well maintained, neat, wholesome condition consistent with Class A office space located in Rogers, Arkansas, and shall comply in all Property Owners' Association Rules and Regulations regarding same and conform in all respects with all governmental statutes, ordinances, regulations, health and police and fire requirements. Non-compliance with this provision shall include, but not be limited to, visible wear and tear or deferred maintenance, specifically including, but not limited to, deteriorated building exteriors, landscaping, and parking areas, having an adverse effect on the appearance of any building within the Village in the sole reasonable discretion of the POA. In order to maintain a consistent, attractive appearance throughout the Village, an Owner may be required by the POA to resurface and / or re-stripe any privately owned parking area adjoining commonly owned parking whenever the commonly owned parking area is resurfaced and / or re-striped. Further, each such Owner, Lessee, or occupant shall remove at his own expense any rubbish or trash of any character which may accumulate on its Building Site. Rubbish trash, garbage or other waste shall be kept only in suitable containers. All equipment for the storage or disposal of such materials shall be kept in the clean and sanitary condition. Rubbish and trash shall not be disposed of on the premises by burning in open fires. Failure of the Owner to take any measures required hereunder after proper written notice from the POA as provided in paragraph 8.1(B), below, shall result in enforcement in accordance with Article VIII hereof.

4. Article VIII is hereby amended to provide as follows:

ARTICLE VIII

8.1 Enforcement.

A. In the event of a failure by any Lessee or property owners to comply with the Required Conditions set out in paragraph 4.3, above, the POA shall have the authority, after due notice as provided in paragraph 8.1(B), below, to cure such condition and charge the performance of such remedial work to the property owner or Lessee. In addition to the cost of such work, the POA shall charge an additional Fifteen percent (15%) administrative charge. **Any such charges which remain unpaid thirty (30) after invoice date shall be come a lien upon the property as provided in paragraphs 9.2 and 9.5, below.**

B. In the event of a violation of any provision of these Protective Covenants and Restrictions the POA shall provide written notice to the offending property owner or Lessee providing such violator Fifteen (15) days to cure the defective condition. If, in the reasonable discretion of the

POA, the defective condition cannot be cured within Fifteen (15) days from the date of such notice the POA may, in its sole reasonable discretion, provide for a longer period to cure.

C. The POA will have jurisdiction and authority for enforcement of any of these Covenants within the Village. However, nothing herein shall restrict the right of any property owner to bring an independent action for enforcement of these Covenants.

8.2 Delivery of Complaints. The POA may receive from Owners and/or Lessees of lots in the Village any complaints as to alleged violation of these Protective Covenants and Restrictions. Upon receipt of any written complaint concerning alleged violations the POA may then review the complaint and determine whether to proceed with enforcement. If the POA elects not to pursue enforcement the owner or lessee may independently do so as provided by law. The POA may pursue enforcement of any violation of these covenants *sua sponte* without prior receipt of a complaint from a Owner or Lessee.

8.3. Legal Proceedings. In the event of any violation or attempted violation of any of the Covenants before the expiration date hereof (whether the original expiration date or the expiration date of any extensions hereof), it shall be lawful for any person or persons owning any lots in the Village to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate such Covenants and either to prevent him or them from so doing and/or to recover damages for such alleged violations. PROVIDED, HOWEVER, that it shall be a prerequisite for the taking of any legal or equitable proceedings against an alleged violator, that the complaining party follow the procedures above set forth in making the alleged violation known to the POA as provided above.

5. Article IX is hereby amended to provide as follows:

ARTICLE IX

9.1 Creation of Property Owners Association. For the purpose of enforcing the provisions of these Covenants, improving, maintaining or repairing areas to be used in common with some or all of the owners or Lessees of lands in the Village, including but not limited to, the entryway and streets, traffic control (including both ingress / egress to the Village and internal traffic control), stone or brick entry walls, street lights, lake, pond, fountains, fences, walking path, signage, landscaping, drainage, retention and detention areas, if any of the above, and such other activities and undertakings as may be for the general use and benefit of owners and Lessees of the Village, each and every lot owner, in accepting a conveyance of any lot in this property, agrees to and shall become a member of and be subject to the obligations and duly enacted by-laws and rules of the Property Owners Association, a non-profit corporation established under the laws of the State of Arkansas. Each such member of the POA, including the Declarant, shall have one (1) vote for each lot owned in the Village.

9.2. Establishment of Assessments or Dues. The Property Owners Association may, by majority vote of its duly elected officers, levy assessments or dues against all lot owners in order to defray the costs of performing any of the POA functions or purposes described in paragraph 9.1, above, within the Village, such other purposes or functions as may be in the best interests of the Owners and Lessees within the Village as determined by the POA officers, and its administrative costs. All property owners in the Village shall pay the required dues to the Property Owners Association promptly when the same become due, and in the event of failure to pay the same promptly when the same become due, such dues shall constitute a lien upon the property owned by such owner in the Village and the same may be enforced in law or in equity as in the case of any lien foreclosure authorized in the State of Arkansas.

9.3 Special Assessments. It is agreed that, as and when from time to time, extraordinary maintenance and replacement, repairs, improvements, or additions to capital items such as, but not limited to, the entryway and streets, traffic control (including both ingress / egress to the Village and internal traffic control), parking, stone or brick entry walls, street lights, lake, pond, fountains, fences, walking path, signage, drainage structures, and landscaping become necessary, the POA, acting by a majority vote of the lots represented by Owners attending a meeting called for that purpose, shall be authorized to levy an assessment against all lot Owners, proportionately, based upon number of lots owned, to defray the costs of making such maintenance and repairs. Such special assessments shall have the force and effect of regular assessments as described in paragraph 9.2, above.

9.4 Disclaimer of Liability. No lot Owner of the Village shall be subject to any liability of any kind or nature to any third party with respect to the construction, maintenance, or repair of the entryway and streets (stone or rock entry walls, sign or landscaping) by reason of the provision of this paragraph, and the only liability to any such lot owner shall be the proportionate share of costs for repair and/or maintenance prescribed by a special assessment levied in accordance with this paragraph.

9.5 Method of Filing Liens for unpaid Assessments. Evidence of the lien for the nonpayment of any assessment as provided above shall take the form of an affidavit executed by the President of the POA, notarized by the Secretary of the POA, stating that the assessment was properly levied as provided herein on by the By-laws of the POA and setting forth the amount(s) of unpaid assessments and the period(s) for which they are due. The affidavit shall also include a legal description of the lot on which the lien for unpaid assessment(s) has been levied and shall be recorded in the real estate records of the Benton County Circuit Clerk.

6. Except as herein specifically amended, the Amended and Restated Declaration of Protective Covenants for Village on the Creeks, Rogers, Arkansas, executed February 4th, 2011, and recorded February 14, 2011, in Book 2001 at Page 7363 of the Benton County Real Estate Records shall remain in full force and effect.

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal this 25
day of May, 2011

VOC, LP.
BY: DEVEREUX MANAGEMENT COMPANY,
GENERAL PARTNER

BY: Dewitt H. Smith
Dewitt H. Smith, President

FIRST PLACE ON THE CREEKS,
LLC

BY: Jalisco Orh
Manager or Managing Member

ACKNOWLEDGMENT

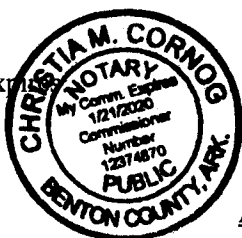
Book 2011 Page 27102
Recorded in the Above
DEED Book & Page
05/27/2011

STATE OF ARKANSAS)
)ss
COUNTY OF BENTON)

ON THIS DAY before the undersigned, a Notary Public, duly qualified and acting in and for the County and State aforesaid, personally appeared Dewitt Smith, to me well known or satisfactorily proven to be the President of Devereux Management Company, General Partner of VOC, LP., a party in the foregoing instrument and state that he had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 25th day of May, 2011.

Christina M. Cornog
NOTARY PUBLIC



My Commission Expires _____

ACKNOWLEDGMENT

Benton County, AR
I certify this instrument was filed on
05/27/2011 2:26PM
and recorded in DEED Book
2011 at pages 27098 - 27102
Brenda DeShields-Circuit Clerk

STATE OF ARKANSAS)
)ss
COUNTY OF BENTON)

ON THIS DAY before the undersigned, a Notary Public, duly qualified and acting in and for the County and State aforesaid, personally appeared Valerie Cook, to me well known or satisfactorily proven to be the authorized officer of First Place on the Creeks, LLC, a party in the foregoing instrument and state that he /she had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 23 day of May, 2011.

[Signature]
NOTARY PUBLIC

My Commission Expires:
2-15-2016

