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**DECLARATION OF RESTRICTIONS AND COVENANTS**

**FOR**

**102 at 112 COMMERCIAL DEVELOPMENT  
Bentonville, Arkansas**

**BY**

**102 at 112, LLC**

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**DECLARATION OF RESTRICTIONS AND COVENANTS  
FOR 102 AT 112 COMMERCIAL DEVELOPMENT  
BENTONVILLE, ARKANSAS**

THIS DECLARATION OF RESTRICTIONS AND COVENANTS (this "Declaration") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2003 by 102 at 112, LLC , an Arkansas limited liability company ("102 at 112" or 102 at 112 may hereinafter be referred to as the "Declarant").

RECITALS

WHEREAS, this Declaration is made with respect to that certain commercial real estate development to be built and to be commonly known as the 102 at 112 Development located at the intersection of Highways 102 and 112, City of Bentonville, County of Benton, State of Arkansas, as shown on the Site Plan attached hereto as Exhibit "A" and incorporated herein by reference (the "Site Plan"), which real property is hereinafter referred to as the "Commercial Development" and the legal description of which is contained on Exhibit "A"; and

WHEREAS, the Declarant is the Fee Owner of the Commercial Development; and

WHEREAS, the Declarant desires to file this Declaration to protect its interest and the interests of others which may in the future become Fee Owners of some portion of the Commercial Development. Declarant and those future Fee Owners may be hereinafter collectively referred to as "Parties" or singularly as a "Party"; and

WHEREAS, the Declarant desires that each of the Lots and every portion thereof be developed in conjunction with each other for the mutual benefit of the Parties and of each and all of the Lots and every portion thereof; and

WHEREAS, the Declarant hereby establishes, to the fullest extent permitted by law, a general plan for the improvement, protection, development, maintenance and use as a commercial development and for such purposes the Declarant does hereby establish covenants, restrictions, liens and charges (collectively, the "Restrictions") as are hereinafter set forth, subject to which all of the Commercial Development and every portion thereof, shall be improved, held, exchanged, leased, sold and/or conveyed. Each of the Restrictions is imposed upon each Lot in the Commercial Development as a mutual equitable servitude in favor of the other Lots and every part thereof. Each of the Restrictions shall create reciprocal rights and obligations among each of the Owners; they shall further create a privity of contract and an estate between the current and future Owners of the Lots and their heirs, successors and assigns; and they shall be and

operate as covenants running with the land for the benefit of the Commercial Development and each and every part and portion thereof.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements set forth herein, the Declarants agree as follows:

## I. PRELIMINARY

1.1 Incorporation. The above Recitals are incorporated herein and made a part hereof.

1.2 Definitions.

(a) "Building Area" shall mean those areas shown as Building Area, i.e., within the setback lines or any waiver thereof made by the City of Bentonville and filed of record, on the Site Plan, i.e. which are the areas which are not within the setback lines or areas designated as easements.

(b) "Declaration" shall mean this Declaration of Restrictions and Covenants.

(c) "Detention Pond" shall mean that area of Lot 3 so designated on Exhibit "C".

(d) "Drainage Plan" shall mean that plan as set forth on Exhibit "C".

(e) "Final Plat" collectively shall mean all the Final Plat describing Lots 1 through 5, in Williams/Dean Commercial Subdivision to the City of Bentonville, Arkansas, and any Bill of Assurance filed of record at Plat Book 2003, Page 129 of the real estate records of Benton County, Arkansas, a copy of which is attached hereto as Exhibit "A", as such may now or hereafter be platted, subdivided, replatted or re-subdivided.

(f) "Lot" shall mean any area separately drawn on Exhibit "A" and designated as a Lot and any property hereinafter conveyed by any Owner located within the boundaries shown on Exhibit "A" for the Commercial Development, as such may now or hereafter be platted, subdivided, replatted or re-subdivided.

(g) "Majority in Interests of the Owners" shall mean each of the Owners of Lots whose aggregate area is greater than 165,528square feet (i.e., more than one-half of the square footage contained in Lots 1 through 5), together with 102 at 112, for so long as 102 at 112 owns or leases an interest in the Commercial Development. Provided, however, no Owner may unreasonably withhold or delay its consent unless (i) the request is to change a No Build Area, or (ii) such Owner reasonably believes the amendment requested is in violation of a law, ordinance or governmental regulation.

(h) "No Build Area" shall mean any area designated as nearer a boundary line from a setback line, right-of-way easement area or the Detention Pond where no vertical construction other than signage shall occur. Paving and other "flat" improvements are allowed in the No Build Area.

(i) "Owner" or "Fee Owner" shall mean the Owner of a fee interest in the Commercial Development and their respective assigns, grantees, and successors in interest.

(j) "Site Plan" shall mean that Site Plan attached hereto as Exhibit "A".

Any terms used on Exhibit "A" or Exhibit "C" shall have the same meanings herein as attributed to those terms on Exhibit "A" or Exhibit "C".

## II. BUILDING AREA

2.1 Building Area. No building or other structure shall be constructed upon any Lot in the Commercial Development other than within the "Building Area" on each Lot nor shall any building or other structure be constructed in any No Build Area. Notwithstanding the foregoing, canopies and roof overhangs (including supporting columns or pillars), foundations, doors, trash enclosures, and loading and delivery docks, covered areas attached to such docks, required emergency exits (including stairs and landings and footings and foundations associated therewith), and doors for ingress and egress may project from any building or structure provided that improvements do not encroach on any other Lot; and further provided, any such projection or extension must comply with all applicable laws, rules, ordinances and regulations of every governmental body having jurisdiction over the Commercial Development. Nothing herein shall permit an Owner to violate any parking ratios set forth in Section 4.2.

2.2 Maximum Building Area. The total square footage of floor area of all buildings and other structures within the Building Area on any Lot in the Commercial Development may not exceed the maximum amount designated for each such Lot under Section 4.2 or the Site Plan without the consent of the Majority in Interests of the Owners. Such maximum floor area for each Lot is hereinafter referred to as "Maximum Building Area". For purposes hereof, "floor area" shall be defined as the area within the exterior surfaces of the exterior walls of any building or structure, excluding any "Mezzanine" (i.e., any floor area above the ground floor that does not extend over the entire ground floor area of the building and which is used in connection with the primary commercial use of such building, but is not used for sales area or generally open to the public). The Maximum Building Area for any Lot is only a limitation on building size

and, imposes no obligation whatsoever on the Owner of such Lot to place, erect or construct a building or structure thereon having the maximum floor area.

2.3 Design and Construction of Buildings. Declarant must approve all initial construction on any Lot. All exterior construction must be brick, stucco or another approved masonry facade. If following initial construction of buildings on the Commercial Development, the existing exterior of any then existing building is substantially remodeled or there is a rebuilding following a casualty, then unless the remodeling or reconstruction is substantially similar to the prior existing exteriors, the architectural theme, design, color, materials, signage shall be subject to the approval of a Majority in Interest of the Owners. Any rooftop equipment shall be appropriately screened. Once initiated, all building construction must be diligently prosecuted to completion. If an Owner or its tenant commences construction of a building within the Commercial Development, but such construction ceases prior to the completion of the building for a period in excess of one hundred twenty (120) days (subject to force majeure, but not including failure or inability to pay money), and the Majority in Interests of the Owners in their reasonable discretion determine that such unfinished building creates an unsafe or unsightly condition detrimental to the Commercial Development, following written notice and failure of the Owner to immediately begin and diligently continue activity necessary to cure such condition, then the Majority in Interests of the Owners or any one of them may demolish part or all of such building or construct a barricade around such building. Upon completion of any such demolition or barricade work by the Majority in Interests of the Owners or any one of them, the Owner upon whose Lot the building was located shall reimburse the Party(ies) who paid for such other work for monies so expended immediately following demand.

2.4 Maintenance. Following completion of construction of building and improvements on the Building Area(s), the Owner thereof shall maintain all buildings and other improvements in good condition and state of repair, ordinary wear and tear and the effects of time, excepted.

### III. NO CROSS PARKING; MAINTENANCE AND REPAIR

3.1 No Cross Parking. Invitees and Employees or agents of an Owner or any tenant of an Owner shall have no right to park on the Lot of another Owner, except where the parties have made a separate agreement.

3.2 Maintenance and Repair. Each Owner shall, at its own expense, cause the improvements located on its Lot, together with the sidewalks immediately adjacent to the buildings located thereon, to be

maintained at all times in good and clean condition and repair, which shall include, but not be limited to the following:

- (a) Maintaining the paved surfaces, including the entry drives and service drives, in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
- (b) Removing all papers, debris, filth and refuse, ice and snow, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (c) Placing, keeping in repair, and replacing any necessary appropriate directional signs, markers and lines;
- (d) Operating, keeping in repair, and replacing, where necessary, such artificial lighting facilities as shall be reasonably required, which lighting shall be operated, when needed, during hours when stores or businesses in the Commercial Development on their particular Lot are open and for a reasonable period thereafter;
- (e) Maintaining all landscaped areas, to include proper irrigation of all landscaped areas, so that such areas are kept in a first-class manner and repairing automatic sprinkler systems or water lines and making replacements of shrubs and other landscaping as is necessary;
- (f) Subject to Paragraph 14.17, maintaining the Detention Ponds in a condition substantially similar to that of the original design and construction.

#### IV. RESTRICTIONS

4.1 Business. The types of uses permitted in the Commercial Development shall be of a retail and/or commercial nature found in upscale commercial developments in Bentonville, Arkansas; provided, nothing contained herein shall be construed to require any Owner to open or operate any form of business in the Commercial Development for any period of time or at all, but it may operate any form of business not prohibited herein or by law or otherwise. This restriction shall be a servitude upon the Commercial Development and shall be binding upon any person acquiring an interest in any part of the Commercial Development, whether in fee, by lease or otherwise. The uses prohibited in the Commercial Development are:

- (a) Any production, manufacturing, industrial, or storage use of any kind or nature, except for storage of products incidental to the sale or commercial (i.e., sample displays and the like) use thereof from the Commercial Development.



(b) Undesirable entertainment or recreational facilities. As used herein, "undesirable entertainment or recreational facility" includes, a skating rink, massage parlor, discotheque, dance hall, teen club, night club, bar or tavern, flea market, head shop, pornographic or "adult" store, bowling alley, or tattoo or body piercing parlor or establishment.

(c) Training or educational facilities. As used herein, "training or educational facility" includes, but is not limited to, a beauty school, barber college, library, reading room, schools, place of instruction, or any other operation catering primarily to students or trainees rather than to customers. Such term shall not include incidental internal training of staff or employees of any occupant primarily utilizing its premises for uses permitted herein. It is the intent of this provision that the parking and other common facilities should not be burdened by either large scale or protracted use by persons other than customers of occupants of the Commercial Development.

(d) Any use which creates a nuisance or materially increases noise or the emission of dust, odor (but not including restaurants which are otherwise Permitted), smoke, gases, does not preserve the "sprinkler" fire insurance rates, or increases explosion or radioactive hazards on adjacent Lots.

(e) Assembling, manufacturing, distilling, refining, smelting, agriculture, or moving operation;

(f) Any mobile home or trailer court, labor camp, junk yard, stock yard, animal raising or veterinary hospital, except the temporary use of construction trailers during the period of construction, reconstruction or maintenance shall also be permitted;

(g) Any drilling for, in or removal of subsurface substances;

(h) Any dumping, disposing, incinerating or reduction of garbage or refuse (exclusive of garbage compactors located in the rear of any building);

(i) Any fire sale, going out of business sale, bankruptcy sale (unless pursuant to a court order), or auction hours operation;

(j) Any outdoor circuses or outdoor public meetings;

(k) Any unsightly or unscreened garbage or trash receptacle or accumulations of garbage or trash;

(l) Any "second hand" store, Army, Navy or government "surplus" store, except for upscale-type stores; and

(m) any pawnshop, a business whose primary activity is check cashing, paycheck loan operation, or the like.

The restrictions contained in this Section 4.1 may not be amended except with the written consent of a Majority in Interests of the Owners.

4.2 Restrictions. The following additional restrictions as to number of buildings and number of stories on a Lot are imposed on each and every Lot in addition to any restrictions contained in Exhibit "A" are as follows:

**Restrictions on all Lots:**

**The number of Businesses/Buildings shall only be limited by City of Bentonville requirements - One (1) Story:**

Maximum Building Area:	Square footage limited only by the parking ratio
Maximum Building Height:	25 Feet; provided parapets may extend up to 27.5 feet
Minimum Parking Ratio:	6 cars per 1,000 square feet of gross Building Area to the extent used for a restaurant (unless incidental to a permitted primary use), otherwise 3 cars per 1,000 square feet of gross Building Area.

Notwithstanding the foregoing minimum parking ratios, in no event shall the minimum parking ratio for any Lot exceed the maximum parking ratio allowed by the City of Bentonville.

V. SIGNS

Each Owner shall have the right to maintain such signs on the interior of buildings located on its Lot as it desires, whether or not such signs are visible from the exterior. As permitted by applicable governmental regulations, each Owner shall have the right to erect, maintain and replace freestanding signs or signs on the exterior of the buildings ("Building Signage") located on its Lot; provided, such Building Signage shall be constructed so as to lie flat against such exterior fascia facing outward and shall not protrude more than two (2) feet from the surface thereof, and provided further, in no event shall Building Signage be located on the roofs of any buildings in the Commercial Development without the prior written consent of a Majority in Interests of the Owners. Building Signage shall be either back lit or front lit individual channel letter signs and shall be in accordance with any city ordinances.

## VI. INDEMNIFICATION AND INSURANCE

6.1 Indemnification. Each Owner hereby indemnifies, defends and saves the other Owners and tenants harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death, or property damage occurring on or from its own tract, except if caused by the act or negligence of the other Owner or tenant of the other Owner's Lot.

6.2 Insurance. Each Owner agrees to procure or cause to be procured and maintained in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each Owner's insurance to afford protection to the limit of not less than \$1,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$1,000,000.00 for property damage. In the event that inflation renders the foregoing insurance limits commercially unreasonable, then each Owner shall carry insurance in commercially reasonable amounts.

At all times during the term of this Agreement, each Owner shall or shall cause the improvements on its property to be insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the state of Arkansas, with such insurance to be for the full replacement value of the insured improvements.

6.3 Waiver of Certain Rights. Each Owner hereby releases all other Owners for itself and its property insurer from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of the other resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the Owner being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing Owner is obligated hereunder to carry, or, if the releasing Owner is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

6.4 Contractor's Insurance. Prior to commencing any construction activities within the Commercial Development, each Owner shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage:

- (a) Workers' compensation - statutory limits;

- (b) Employer's liability - One Hundred Thousand Dollars (\$100,000);
- (c) Comprehensive General and Comprehensive Auto Liability as follows:

(i) "Combined Single Limit" (covering bodily injury liability, death and property damage) in any one occurrence of not less than One Million Dollars (\$1,000,000); (ii) Independent Contractors Liability or Owner's Protective Liability with the same coverage as set forth in (i) above; (iii) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work; (iv) "XCU" Hazard Endorsement, if applicable; (v) "Broad Form" Property Damage Endorsements; (vi) "Personal Injury" Endorsements; (vii) "Blanket Contractual Liability Endorsement. Provided, however, the Majority-in-Interest of the Owners may increase the coverage amounts required hereunder.

If the construction activity involves the use of another Owner's Lot, then the Owner of such Lot shall be named as an additional insured and such insurance shall provide that the same shall not be canceled without at least thirty (30) days prior written notice to the named insured.

#### VII. DAMAGE OR DESTRUCTION

In the event any building in the Commercial Development is damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Lot upon which such building is located may, in its discretion, tear down or rebuild the damaged building. However, if an Owner determines to tear down a damaged building, that Owner shall either promptly rebuild a new building on the same location or leave and maintain the parcel of land on which the building was located in a smooth, level condition, free and clear of all refuse and weeds and continuously sealed against dust by compaction, paving, lawn or other ground cover.

#### VIII. EMINENT DOMAIN

8.1 Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting any other Owner's Lot or giving the public or any government any rights in the Lots.

8.2 Tenant's Claim. Nothing in this Article shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and Owner for all or a portion of any such

award or payment. Provided, however, the terms of any agreement between the Owner and any lessee shall govern the rights of those parties under condemnation.

#### IX. DEFAULT

9.1 Right to Cure. Should any Owner fail to timely perform any of its obligations hereunder and thereafter fail to perform or, if such performance cannot be reasonably completed within thirty (30) days, to commence the performance of and continue to diligently pursue, such obligation within thirty (30) days of its receipt of any other Owner's written demand therefor, the Owner giving such notice shall, in addition to any other remedy provided at law or in this Declaration, have the right (but not the obligation) to perform such obligation on behalf of the defaulting Owner and the defaulting Owner shall reimburse the curing Owner for the cost of performing such work within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting Owner does not reimburse the curing Owner within such ten (10) days, the curing Owner shall have (i) the right to exercise any and all rights which such curing Owner might have at law to collect the same, and (ii) have a lien on the property owned by the defaulting Owner to the extent of the amount paid by the curing Owner but not reimbursed by the defaulting Owner, which amount shall bear interest at a rate equal to the greater of (i) the Prime Rate as published from time to time in the Southwest Edition of the *Wall Street Journal*, plus four percent (4%), or (ii) highest legal rate of interest, from the date of billing until paid. Such lien may be filed for record by the curing Owner as a claim against the defaulting Owner, in the form required by law, in the office wherein mortgages are recorded, which lien shall contain at least the following information:

- (a) The name of the lien claimant;
- (b) The name of the defaulting Owner;
- (c) A description of the work performed on behalf of such Owner and a statement itemizing the cost thereof; and
- (d) A description of the property being liened.

The lien so claimed shall attach from the date of recordation in the amount claimed by the Owner curing the default and it may be enforced and foreclosed in any manner allowed by law, including, but not limited to, suits to foreclose a mechanic's lien, trust deed or mortgage under applicable law. Such lien, when so established against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien.

9.2 Injunctive Relief. In the event of any violation or threatened violation of any provision of this Declaration, any Owner shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation. Notwithstanding the foregoing, tenants in the Commercial Development shall not have the right of injunction but shall rather be limited to their rights granted by law and by their respective leases.

9.3 Breach Shall Not Permit Termination. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

9.4 No Limitation of Remedies. The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Declaration, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

## X. NOTICES

All notices, requests, demands and other communications required or permitted hereunder shall be in writing, and either (i) delivered in person, (ii) sent by express mail or other overnight delivery service providing receipt of delivery, (iii) mailed by certified or registered mail, postage prepaid, return receipt requested or (iv) sent by telex, telecopy or other facsimile transmission as follows:

102 at 112:                   c/o James G. Dietz  
  4221 Richards  
  North Little Rock, AR 72117  
  Phone: 501-945-9292  
  Fax: 501-945-3132

with a copy to:               FRIDAY, ELDREDGE & CLARK, LLP  
  400 West Capitol Avenue, Suite 2000  
  Little Rock, AR 72201  
  Attn: James M. Saxton  
  Fax No. 501-244-5301

or to such other address as any party may designate by notice.

Any such notice or communication, if properly given or made by prepaid, registered or certified mail or by recorded express delivery, shall be deemed to have been made when actually received, but not later than three (3) business days after the same was posted or given to such express delivery service, and if made properly by telex, telecopy or other facsimile transmission, such notice or communication shall be deemed to have been made at the time of dispatch. The Seller of any property subject to the terms hereof shall provide notice of the addresses of the Owners to his Purchaser and notice to the other Owners of the Purchaser's address upon any sale.

#### XI. ATTORNEYS' FEES

In the event legal proceedings are brought or commenced to enforce any of the terms of this Declaration against any Owner or other person with an interest in the Commercial Development, the successful Owner in such action shall be entitled to receive and shall receive from the defaulting Owner, a reasonable sum as attorneys, fees and costs, to be fixed by the court in the same action.

#### XII. DURATION

Unless otherwise canceled or terminated, all of the easements granted in this Declaration shall continue in perpetuity and all other rights and obligations hereof shall automatically and be of no further force and effect ninety nine (99) years after the date of filing hereof.

#### XIII. MODIFICATION

All negotiations and oral agreements acceptable to the Owners have been incorporated herein. Except as otherwise provided herein, this Declaration may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by a Majority in Interest of Owners.

#### XIV. GENERAL PROVISIONS

14.1 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Commercial Development to the general public or for any public purposes whatsoever,

it being the intention of the Owners that this Declaration shall be strictly limited to and for the purposes herein expressed.

14.2 Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

14.3 Pronouns. When required by context, the singular shall include the plural, and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

14.4 Captions. The captions in this Declaration are for convenience only and do not constitute a part of the provisions hereof.

14.5 Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship between the Owners.

14.6 Governing Law. This Declaration shall be construed and enforced in accordance with, and governed by, the law of the State of Arkansas.

14.7 No Presumption. This Declaration shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Owner.

14.8 Inurement. This Declaration and the easements, covenants, benefits and obligations created hereby shall inure to the benefit and be binding upon each Owner, and their respective successors and assigns; provided, except as otherwise expressly provided herein, if any Owner conveys any portion or all of its interest in any Lot owned by it, such Owner shall thereupon be released and discharged from any and all further obligations under this Declaration accruing after the date of sale (and upon request, the remaining Owners agree to execute a document so confirming); and provided further, no such sale shall release any such selling Owner from any liabilities, actual or contingent, existing as of the time of such conveyance.

14.9 Estoppel Certificate. Each Owner agrees that upon request by any other Owner, it will issue to a prospective lender of such other Owner or to a prospective purchaser of such other Owner's interest, an estoppel certificate substantially in the form of Exhibit "B".

14.10 Authority. The individuals who execute this Declaration represent and warrant that they are duly authorized to execute on behalf of the respective named Parties, that the Parties named are all the necessary and proper persons and that no other signature, act or authorization is necessary to bind any such person to the provisions contained herein. The term "person" means an individual, partnership, corporation,



trust, unincorporated association, syndicate, joint venture or organization, or a government or any department or agency thereof.

14.11 Counterparts. This Declaration may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

14.12 Other Agreements. Nothing herein shall restrict an Owner from imposing upon an tenant of its Lot more restrictions and/or higher standards than set forth herein.

14.13 Subdivision and Zoning Ordinances. Notwithstanding any provision hereof to the contrary, any lawful restrictions imposed by the City of Bentonville which is more restrictive on use than the provisions hereof shall be applicable and shall supersede the provisions hereof.

14.14 Common Area Maintenance. Subject to the mutual agreement of any of the Owners ("Agreeing Owners"), a third party(ies) may be appointed as an agent of any of the Agreeing Owners to maintain the Common Areas owned by the Agreeing Owners in the manner set forth herein. Said third party(ies) may receive for the performance of such duties, a fee that is acceptable to all the Agreeing Owners.

14.15 Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the Lot of any Owner, such lien shall be expressly subordinate and inferior to the lien of any first lienholder, now or hereafter placed on such Lot. Any party which is an "Affiliate" (as that term is defined in the Investment Act of 1940, as amended) to any Owner shall not be deemed a lienholder for the purposes of this provision. Further provided, that except for the foregoing lien provision, all other provisions hereof shall be superior to the rights of any Lender.

14.16 Exhibits. To the extent that the terms hereof conflict with the depictions shown on Exhibit "A", the terms hereof shall govern.

14.17 Detention Pond. Each Owner is granted, so long as it or its property has complied with the provisions hereof, the right to cause surface run off water from its Lot to drain in accordance with the Drainage Plan, some of which may drain into the Detention Pond. Each Owner shall indemnify and hold the Owner of Lot 3 from and against any and all damages suffered by the Owner of Lot 3 including response costs, environmental clean-up costs and attorneys' fees and costs resulting from any environmental contamination to Lot 3 which contamination came from, over, under or across that respective Owner's Lot to Lot 3. Each Owner agrees that from time to time it will reimburse the Owner its "pro rata share" of Lot 3 for the reasonable and necessary expenses of maintaining the Detention Pond. Each Owner's "Pro Rata Share" shall mean 331,056 square feet, i.e., the total square footage of Lots 1 through 5, divided by the square footage for that Owner's Lot as shown on Exhibit "A". Failure to promptly pay Owner's pro rata

share shall create a lien on the defaulting Owner's Lot with no further action and such lien shall be superior to any interest of a tenant or lender.

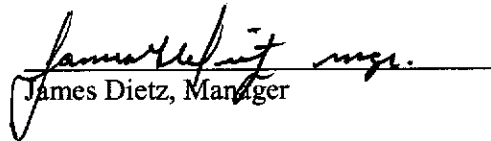
14.18 Entire Agreement. This Declaration constitutes the entire agreement regarding this subject matter between the Parties hereto. The Parties do not rely on any statement, promise or representation not herein expressed, and this Declaration, once executed, delivered and filed, shall not be modified or altered in any respect except as provided herein.

14.19 No Third Party Beneficiaries. No party, other than the Owners and 102 at 112, shall have any rights or benefits of this Declaration.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

102 AT 112, LLC

By:


  
James Dietz, Manager

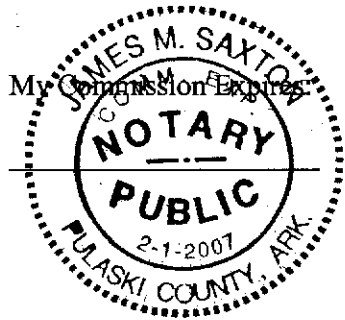
ACKNOWLEDGMENT

STATE OF ARKANSAS        )  
  ) ss.  
COUNTY OF PULASKI     )

On this day, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named James Dietz, to me personally well known, who stated that he was the Manager of 112 AT 112, LLC, an Arkansas limited liability company, and that he was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 9<sup>th</sup> day of May, 2003.

  
Notary Public



**EXHIBIT "A"**

**SITE PLAN**

**2003 14641**

Recorded in the Above

Deed Book & Page

05-30-2003 11:10:43 AM



**EXHIBIT "B"**

FORM OF ESTOPPEL CERTIFICATE

[DATE]

RE: \_\_\_\_\_

\_\_\_\_\_:

\_\_\_\_\_ (the "Undersigned") is an owner of Lot(s) \_\_\_\_\_, \_\_\_\_\_  
Subdivision, (Phase \_\_\_) Bentonville, Arkansas which is subject to that certain Declaration of Restrictions  
and Covenants ("Declaration") executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003, and recorded  
in the Land Deed Records of the Office of the County Clerk of Benton County, Arkansas as Instrument  
No. \_\_\_\_\_.

We understand this letter and the information contained herein is a necessity in your determination  
of whether or not [\_\_\_\_\_] (the "Requesting Party") will (a) purchase certain real estate from the owner  
of Lot \_\_\_\_\_ (the "Owner") or (b) make a certain real estate loan to said Owner.

Except as noted hereinbelow, the Undersigned certifies and affirms to the best of its knowledge that:

- a. The Declaration (has or has not) been modified and is in full force and effect as written.
- b. There are no defaults by the Owner (other than) \_\_\_\_\_.

The information provided and the representations made herein are intended only for the use of the  
addressee. Any party having information and knowledge to the contrary should not rely on the  
representations made herein as a waiver of any rights, warranties, or credits of Undersigned.

The Undersigned requires written notification of any change of address, necessitated by the above  
contemplated change of ownership. The representations made herein are hereby made specifically contingent  
upon receipt by the Undersigned of a copy of the document evidencing change of ownership or real estate  
loan, along with a cover letter from the addressee.

[UNDERSIGNED]

By: \_\_\_\_\_

2003 14644  
Recorded in the Above  
Deed Book & Page  
05-30-2003 11:10:43 AM

**EXHIBIT "C"**

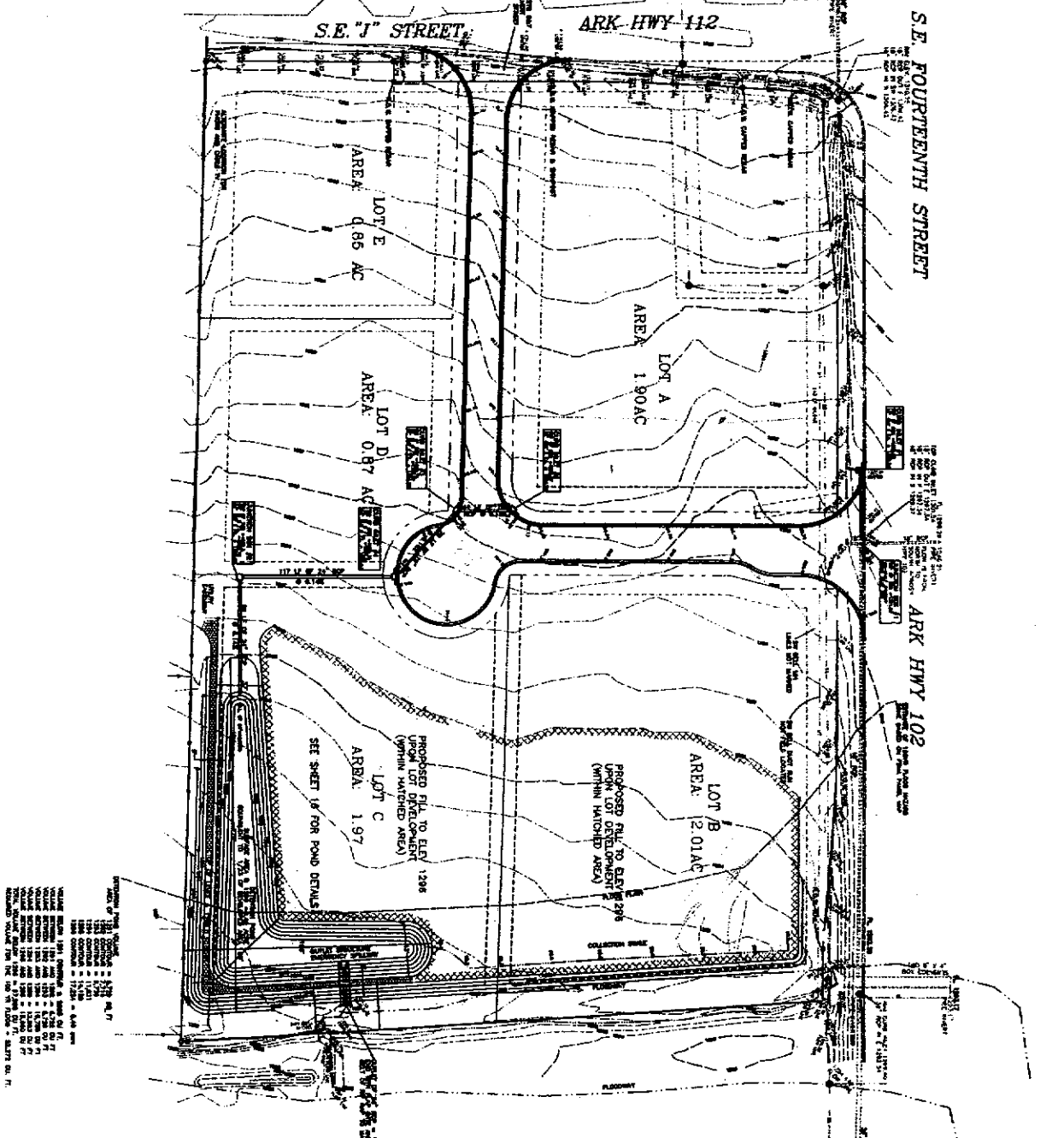
DRAINAGE PLAN

2003 14645

Recorded in the Above  
Deed Book & Page

05-30-2003 11:10:43 AM

Brenda DeShields-Circuit Clerk  
Benton County, AR



PROPOSED FILL TO ELEV. 298  
(WITHIN HATCHED AREA)

PROPOSED FILL TO ELEV. 296  
(WITHIN HATCHED AREA)

PROPOSED FILL TO ELEV. 288  
(WITHIN HATCHED AREA)

PROPOSED FILL TO ELEV. 286  
(WITHIN HATCHED AREA)

SEE SHEET 15 FOR POND DETAILS

Lot C AREA: 1.97

Lot D AREA: 0.87 AC

Lot E AREA: 0.86 AC

Lot A AREA: 1.90 AC

Lot B AREA: 2.01 AC

40 20 0 40 80  
30 10  
SCALE: 1" = 40'

**LEGEND**

--- EXISTING PROPERTY LINE

--- EXISTING RIGHT OF WAY

--- EXISTING EASEMENT

--- EXISTING DRAINAGE

--- EXISTING CONDUIT LINE

--- EXISTING UTILITY LINE

--- EXISTING FENCE LINE

--- EXISTING DRIVEWAY

--- EXISTING DRIVE

--- EXISTING SIDEWALK

--- EXISTING CURB

--- EXISTING PAVEMENT

--- EXISTING ASPHALT

--- EXISTING CONCRETE

--- EXISTING BRICK

--- EXISTING STONE

--- EXISTING SAND

--- EXISTING GRAVEL

--- EXISTING DIRT

--- EXISTING VEGETATION

--- EXISTING WATER

--- EXISTING SWAMP

--- EXISTING MUD

--- EXISTING SLUDGE

--- EXISTING SILT

--- EXISTING CLAY

--- EXISTING SANDSTONE

--- EXISTING LIMESTONE

--- EXISTING GNEISS

--- EXISTING GRANITE

--- EXISTING QUARTZITE

--- EXISTING SLATE

--- EXISTING SCHIST

--- EXISTING METAMORPHIC

--- EXISTING IGGNEOUS

--- EXISTING SEDIMENTARY

--- EXISTING METAMORPHIC

--- EXISTING IGGNEOUS

--- EXISTING SEDIMENTARY

GRADING AND DRAINAGE PLAN SHEET NO. 4	WILLIAMS/DEAN COMMERCIAL SUBDIVISION BENTONVILLE, ARKANSAS	McClain & Deane Consulting Engineers Incorporated Fayetteville Little Rock 190 N. College 909 E. Barbara	APPROVED 
	DATE: 05-30-2003 DRAWN BY: [Name] CHECKED BY: [Name]	SCALE: 1" = 40' SHEET NO. 4	PROJECT NO. [Number] CLIENT: [Name]



Q  
LTC B 12-038802-500 AR

Brenda DeShields-Circuit Clerk  
Benton County, AR  
Book/Pg: 2012/26928  
Term/Cashier: CASH2/Teresa Baber  
07/13/2012 3:17PM  
Tran: 198929  
Total Fees: \$50.00


Book 2012 Page 26928  
Recorded in the Above  
DEED Book & Page  
07/13/2012

**PREPARED BY, AND AFTER  
RECORDING, RETURN TO:**

Jeb H. Joyce, Esq.  
Quattlebaum, Grooms, Tull & Burrow PLLC  
4100 Corporate Center Drive, Suite 310  
Springdale, Arkansas 72762  
(479) 444-5200

STATE OF ARKANSAS           §  
  §  
COUNTY OF BENTON       §

**JULY 2012 AMENDMENT TO DECLARATION OF RESTRICTIONS  
AND COVENANTS FOR 102 AT 112 COMMERCIAL DEVELOPMENT**

This July 2012 Amendment to Declaration of Restrictions and Covenants for 102 at 112 Commercial Development (this "July 2012 Amendment") is made this 21 day of June, 2012, by **N.C.K. PROPERTIES, LLC**, an Arkansas limited liability company ("NCK"), **RICHARD L. THOMAS, LLC**, a California limited liability company "Thomas"), and **O R PROPERTIES, LLC**, an Arkansas limited liability company ("ORP"). 

**WITNESSETH**

WHEREAS, 102 at 112, LLC, an Arkansas limited liability company ("Developer"), entered into that certain "Declaration of Restrictions and Covenants" dated May 9, 2003, and recorded in **Deed Book 2003** at **Page 14622** of the Records of Clerk and Recorder of Benton County, Arkansas (the "Initial Declaration"), which presently encumbers certain property located in Benton County, Arkansas as more particularly described on **Exhibit A** attached hereto (the "Commercial Development");

WHEREAS, Article XIII and Article I, Section 1.2(g) of the Initial Declaration provide that the Initial Declaration may be amended by a "Majority in Interests of the Owners", defined in the Initial Declaration as the Owners of Lots whose aggregate area is greater than 165,528 square feet, together with Developer if at the time of such amendment Developer owns or leases an interest in the Commercial Development;

WHEREAS, Developer is no longer an owner or tenant of real property in the Commercial Development; and

WHEREAS, by execution hereof, the undersigned, comprising a Majority in Interests of the Owners, hereby desire to amend Article IV, Section 4.1 of the Initial Declaration so as to expressly permit property within the Commercial Development to be used as training or education facilities, as the term "training or educational facilities" is defined in the Initial Declaration.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants and agreements hereinafter set forth in this July 2012 Amendment, the Initial Declaration is hereby amended as follows:

1. Amendment of Initial Declaration. Notwithstanding anything to the contrary contained in the Initial Declaration, at all times after the date of this July 2012 Amendment, property within the Commercial Development may be used as a training or educational facility. In connection therewith, the parties to this July 2012 Amendment agree that Article IV, Section 4.1(c) of the Initial Declaration is hereby deleted.

The Initial Declaration is further amended to add Section 2.5 to Article II, as follows:

"2.5 Restriction for Lot 3, Williams/Dean Subdivision. So long as Lot 3, Williams/Dean Subdivision is used as a teaching or childcare facility, an outdoor fenced play area for minor children shall only be allowed in the south half of said Lot 3, but not within 100 feet of the west boundary line of the said Lot 3, so as not to disturb or disrupt the other occupants within the Commercial Development."

The Initial Declaration is further amended to add Section 3.3 to Article III, as follows:

"3.3 No Cross-Use of Waste Receptacles or Refuse Containment Units. Invitees and Employees or agents of an Owner or any tenant of an Owner shall have no right to use the waste receptacles or other refuse containment units on the property of another Owner, except where the parties have made a separate agreement."

2. Defined Terms. The capitalized terms used herein shall have the same meaning ascribed to them in the Initial Declaration, except as otherwise provided for in this July 2012 Amendment.

3. Binding Effect. Except as expressly amended by this July 2012 Amendment, the Initial Declaration shall remain unchanged and in full force and effect.

4. Captions. Captions used herein are for convenience only and are not to be utilized to ascribe any meaning to the contents thereof.

5. Counterparts; Usage. This July 2012 Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this July 2012 Amendment by signing any such counterpart. Where required for proper interpretation, words used herein in the singular tense shall include the plural, and vice versa; the masculine gender shall include the neuter and the feminine, and vice versa.

**[Signature Pages Follow]**

Book 2012 Page 26930  
Recorded in the Above  
DEED Book & Page  
07/13/2012

[Signature Pages to July 2012 Amendment]

EXECUTED as of the date first written above.

NCK:

**N.C.K. PROPERTIES, LLC,**  
an Arkansas limited liability company

By: 

Name: Matthew H. Deamley

Title: Flake & Kelley Northwest, LLC D/B/A Flake & Kelly Commercial, as receiver for N.C.K. Properties, LLC as granted in order granting appointment of receiver; CASE No: CV-2011-2200-6

STATE OF ARKANSAS )  
COUNTY OF Benton ) ss:

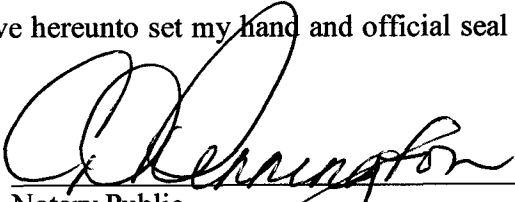
ACKNOWLEDGMENT

On this day personally appeared before the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified, commissioned and acting, the within named Matthew Deamley personally well known, who stated that he/she was agent in fact, pursuant to an Order for Sale of Subject Property, for **N.C.K. PROPERTIES, LLC**, an Arkansas limited liability company, and he stated that he/she was duly authorized in said capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 11<sup>th</sup> day of July, 2012.

[ SEAL ]

CHRISTINE D. PENNINGTON  
BENTON COUNTY  
NOTARY PUBLIC -- ARKANSAS  
My Commission Expires March 2, 2019  
Commission No. 12369949

  
Notary Public  
My commission expires: 3-2-2019

THOMAS:

**RICHARD L. THOMAS, LLC,**  
a California limited liability company

By: *Richard L. Thomas*  
Name: Richard L. Thomas  
Title: manager

STATE OF ARKANSAS    )  
  ) ss:  
COUNTY OF \_\_\_\_\_)

ACKNOWLEDGMENT

On this day personally appeared before the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified, commissioned and acting, the within named \_\_\_\_\_, to me personally well known, who stated that he was the \_\_\_\_\_ for **RICHARD L. THOMAS, LLC**, a California limited liability company, and he stated that he was duly authorized in said capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of July, 2012.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA )  
COUNTY OF Los Angeles )

Book 2012 Page 26933  
Recorded in the Above  
DEED Book & Page  
07/13/2012

On June 21, 2012 before me, Eileen A. Rech, notary public  
DATE INSERT NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC

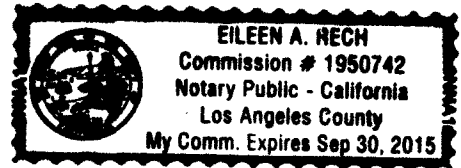
personally appeared, Richard L. Thomas

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Eileen A. Rech (SEAL)  
NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT \_\_\_\_\_

DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES \_\_\_\_\_

SIGNERS(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

SIGNER'S NAME \_\_\_\_\_ SIGNER'S NAME \_\_\_\_\_

RIGHT THUMBPRINT  
[Empty box for right thumbprint]

RIGHT THUMBPRINT  
[Empty box for right thumbprint]

ORP:

**O R PROPERTIES, LLC,**  
an Arkansas limited liability company

By: *Lance Osborne*  
Name: *Lance Osborne*  
Title: *Owner*

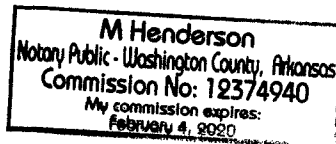
STATE OF ARKANSAS     )  
  ) ss:  
COUNTY OF *Washington* )

ACKNOWLEDGMENT

On this day personally appeared before the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified, commissioned and acting, the within named *Lance Osborne* to me personally well known, who stated that he was the *owner* for **O R PROPERTIES, LLC**, an Arkansas limited liability company, and he stated that he was duly authorized in said capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this *11th* day of July, 2012.

*M Henderson*



**EXHIBIT "A"**

Lots One (1), Two (2), Three (3), Four (4) and Five (5), Williams/Dean Subdivision, Bentonville, Benton County, Arkansas, as shown on Plat Record 2003 at page 129.

Book **2012** Page **26935**  
Recorded in the Above  
DEED Book & Page  
07/13/2012

Benton County, AR  
I certify this instrument was filed on  
07/13/2012 3:18PM  
and recorded in DEED Book  
2012 at pages 26928 - 26935  
Brenda DeShields-Circuit Clerk



Brenda DeShields-Circuit Clerk  
Benton County, AR  
Book/Pg: 2012/34866  
Term/Cashier: CASH3/Rozalia J. McCabe  
08/31/2012 1:11PM  
Tran: 204734  
Total Fees: \$55.00

**SECOND AMENDMENT TO  
DECLARATION OF RESTRICTIONS  
AND COVENANTS FOR 102 AT 112  
COMMERCIAL DEVELOPMENT**

Book 2012 Page 34866  
Recorded in the Above  
DEED Book & Page  
08/31/2012

This Second Amendment to Declaration of Restrictions and Covenants for 102 at 112 Commercial Development (the "Second Amendment") is made this 27 day of August, 2012, by **RICHARD L. THOMAS, LLC**, a California limited liability company "Thomas"), as Majority in Interests of the Owners.

**WITNESSETH**

WHEREAS, 102 at 112, LLC, an Arkansas limited liability company ("Developer"), entered into that certain "Declaration of Restrictions and Covenants" dated May 9, 2003, and recorded in **Deed Book 2003 at Page 14622** of the Records of Clerk and Recorder of Benton County, Arkansas (the "Initial Declaration"), which presently encumbers certain property located in Benton County, Arkansas as more particularly described on "**Exhibit A**" attached hereto (the "Commercial Development"); and

WHEREAS, all of the Owners of the Commercial Development entered into that certain July 2012 Amendment to Declaration of Restrictions and Covenants for 102 at 112 Commercial Development, dated June 21, 2012, and recorded in **Deed Book 2012 at Page 26928** of the Records of Clerk and Recorder of Benton County, Arkansas (the "First Amendment"); and

WHEREAS, Article XIII and Article I, Section 1.2(g) of the Initial Declaration provide that the Initial Declaration may be amended by a "Majority in Interests of the Owners", defined in the Initial Declaration as the Owners of Lots whose aggregate area is greater than 165,528 square feet, together with Developer if at the time of such amendment Developer owns or leases an interest in the Commercial Development; and

WHEREAS, Developer is no longer an owner or tenant of real property in the Commercial Development; and

WHEREAS, Richard L. Thomas, LLC, owns 62.8% of the Commercial Development, comprising a Majority in Interest of the Owners; and

WHEREAS, by execution hereof, the undersigned, comprising a Majority in Interests of the Owners, hereby desire to amend Article IX, Section 9.1, and Article XIV, Section 14.17, of the Initial Declaration so that liens may only be placed on properties within the Commercial Development for defaults under the Initial Restrictions (and all amendments thereto) with the approval of a Majority in Interest of the Owners of the Commercial Development; and to amend Article X to provide notice to Richard L. Thomas, LLC, as a Majority in Interest of the Owners.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants

and agreements hereinafter set forth in this Second Amendment, the Initial Declaration, as amended, is hereby further amended as follows:

1. Amendment of Initial Declaration. Notwithstanding anything to the contrary contained in the Initial Declaration or First Amendment, at all times after the date of this Second Amendment, no property within the Commercial Development may be liened as provided in Article IX, Section 9.1, or Article XIV, Section 14.17, unless such action has been approved by a Majority in Interest of the Owners.

Article IX, Section 9.1, is hereby amended and restated, as follows:

“9.1 Right to Cure. Should any Owner fail to timely perform any of its obligations hereunder and thereafter fail to perform or, if such performance cannot be reasonably completed within thirty (30) days, to commence the performance of and continue to diligently pursue, such obligation within thirty (30) days of its receipt of any other Owner’s written demand therefor, the Owner giving such notice shall, in addition to any other remedy provided at law or in this Declaration, have the right (but not the obligation) to perform such obligation on behalf of the defaulting Owner and the defaulting Owner shall reimburse the curing Owner for the cost of performing such work within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting Owner does not reimburse the curing Owner within such ten (10) days, the curing Owner shall have (i) the right to exercise any and all rights which such curing Owner might have at law to collect the same, and (ii) only with the consent of a Majority in Interest of the Owners, have a lien on the property owned by the defaulting Owner to the extent of the amount paid by the curing Owner but not reimbursed by the defaulting Owner, which amount shall bear interest at a rate equal to the greater of (a) the Prime Rate as published from time to time in the Southwest Edition of the *Wall Street Journal*, plus four percent (4%), or (b) highest legal rate of interest, from the date of billing until paid. Such lien may be filed for record by the curing Owner as a claim against the defaulting Owner, in the form required by law, in the office wherein mortgages are recorded, which lien shall contain at least the following information:

- (a) The name of the lien claimant;
- (b) The name of the defaulting Owner;
- (c) A description of the work performed on behalf of such Owner and a statement itemizing the cost thereof; and
- (d) A description of the property being liened.

The lien so claimed shall attach from the date of recordation in the amount claimed by the Owner curing the default and it may be enforced and foreclosed in any manner allowed by law, including, but not limited to, suits to foreclose a mechanic’s lien, trust deed or mortgage under applicable law. Such lien, when so established against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien.”

Article XIV, Section 14.17, is hereby amended and restated, as follows:

“14.17 Detention Pond. Each Owner is granted, so long as it or its property has complied with the provisions hereof, the right to cause surface run off water from its Lot to drain in accordance with the Drainage Plan, some of which may drain into the Detention Pond. Each Owner shall indemnify and hold the Owner of Lot 3 harmless from and against any and all damages suffered by the Owner of Lot 3 including response costs, environmental clean-up costs and attorneys’ fees and costs resulting from any environmental contamination to Lot 3 which contamination came from, over, under or across that respective Owner’s Lot to Lot 3. Each Owner agrees that from time to time it will reimburse the Owner its “pro rata share” of Lot 3 for the reasonable and necessary expenses of maintaining the Detention Pond. Each Owner’s “Pro Rata Share” shall mean 331,056 square feet (i.e., the total square footage of Lots 1 through 5), divided by the square footage for that Owner’s Lot as shown on “Exhibit A”. Failure to promptly pay Owner’s pro rata share shall, only with the approval of the Majority in Interest of the Owners, create a lien on the defaulting Owner’s Lot with no further action and such lien shall be superior to any interest of a tenant or lender.”

Article X, is hereby amended and restated, as follows:

“All notices, requests, demands and other communications required or permitted hereunder shall be in writing, and either (i) delivered in person, (ii) sent by express mail or other overnight delivery service providing receipt of delivery, (iii) mailed by certified or registered mail, postage prepaid, return receipt requested, or (iv) sent by telex, telecopy, or other facsimile transmission as follows:

Richard L. Thomas, LLC: c/o Richard L. Thomas, Manager  
1971 West 190th Street, #100  
Torrance, CA 90504  
Phone: (310) 715-1300  
Fax: (310) 715-2339 (Attn: Rick Thomas)

with a copy to: Jennifer E. Gray  
Watkins, Boyer, Gray & Noblin, PLLC  
1106 West Poplar Street  
Rogers, AR 72756  
Fax: (479) 636-6098

or to such other address as any party may designate by notice.

Any such notice or communication, if properly given or made by prepaid, registered or certified mail or by recorded express delivery, shall be deemed to have been made when actually received, but not later than three (3) business days after the same was posted or given to such express delivery service, and if made properly by telex, telecopy or other facsimile transmission, such notice or communication shall be deemed to have been made at the time of dispatch. The Seller of any property subject to the

terms hereof shall provide notice of the addresses of the Owners to his Purchaser and notice to the other Owners of the Purchaser's address upon any sale."

2. Defined Terms. The capitalized terms used herein shall have the same meaning ascribed to them in the Initial Declaration, except as otherwise provided for in this Second Amendment.

3. Binding Effect. Except as expressly amended by this Second Amendment, the Initial Declaration, as amended, shall remain unchanged and in full force and effect.

4. Captions. Captions used herein are for convenience only and are not to be utilized to ascribe any meaning to the contents thereof.

EXECUTED as of the date first written above.

**RICHARD L. THOMAS, LLC,**  
a California limited liability company

By:   
RICHARD L. THOMAS, Manager

EXHIBIT A

TO SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS  
AND COVENANTS FOR 102 AT 112 COMMERCIAL DEVELOPMENT

Lots One (1), Two (2), Three (3), Four (4), and Five (5), Williams/Dean Subdivision,  
Bentonville, Benton County, Arkansas, as shown on Plat Record 2003 at Page 129.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

STATE OF CALIFORNIA }  
  } S.S.  
COUNTY OF LOS         }  
ANGELES

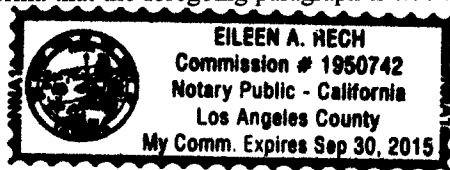
Instrument  
Benton County, AR  
I certify this instrument was filed on  
08/31/2012 1:13PM  
and recorded in DEED Book  
2012 at pages 34866 - 34871  
Brenda DeShields-Circuit Clerk

On August 23, 2012, before me, **Eileen A. Rech**, a notary public in and for said State, personally appeared **Richard L. Thomas** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Eileen A. Rech (Seal)



**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**DESCRIPTION OF ATTACHED DOCUMENT**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) other than named above \_\_\_\_\_

**CAPACITY(IES) CLAIMED BY SIGNER(S)**

INDIVIDUAL

CORPORATE OFFICER(S)

TITLE(S) \_\_\_\_\_

PARTNER(S)-    LIMITED  
                          GENERAL

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN OR CONSERVATOR

OTHER \_\_\_\_\_

Right Thumbprint Of Signer
Top of thumb here

INDIVIDUAL

CORPORATE OFFICER(S)

TITLE(S) \_\_\_\_\_

PARTNER(S)-    LIMITED  
                          GENERAL

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN OR CONSERVATOR

OTHER \_\_\_\_\_

Right Thumbprint of Signer
Top of thumb here

**SIGNER IS REPRESENTING:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_