

This Instrument Prepared By
and When Recorded Return to:
Jason N. Bramlett
Friday, Eldredge & Clark, LLP
3425 North Futrall Drive, Suite 103
Fayetteville, Arkansas 72703-4811

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2008/3186
Term/Cashier: CASH5/SWINZENBURG
01/28/2008 9:12:10AM
Tran: 25215
Total Fees: \$25.00
Book 2008 Page 3186
Recorded in the Above
DEED Book & Page
01/28/2008

**FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS
For
BRAEMAR SUBDIVISION**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS (this "Amendment") is made effective this 13th day of August, 2007.

WHEREAS, that certain document entitled DECLARATION OF COVENANTS AND RESTRICTIONS for BRAEMAR SUBDIVISION (the "Subdivision") was filed of record in the real property records of Benton County, Arkansas on July 7, 2006 in Deed Book 2006 Page 33703 (the "Declaration") establishing certain covenants, conditions, restrictions and obligations governing the Subdivision and the use and development thereof;

WHEREAS, pursuant to Section 14.3 of the Declaration, the City of Centerton has given its approval of the amendment made herein;

WHEREAS, by its terms, Section 14.2 of the Declaration permits the Declaration to be amended by written instrument duly executed and acknowledged by seventy-five percent (75%) of the then current lot owners; and

WHEREAS, the undersigned owner, being the owner of one hundred percent (100%) of the lots in the Subdivision now desires to amend the Declaration as set forth herein by executing this Amendment.

NOW THEREFORE, the undersigned owner hereby amends the Declaration as follows:

1. Section 4.6 is hereby amended and restated as follows:

"4.6 DWELLING QUALITY AND SIZE. All Buildings, Dwellings, Structures and Improvements erected upon a Lot shall be constructed in accordance with the applicable governmental building and zoning codes and with such additional standards that may be required by the Covenants and Restrictions and the Architectural Control Committee; and no Dwelling shall be constructed or permitted to remain on any Lot in Braemar Subdivision unless the finished heated living area, exclusive of porches, patios, garages, breezeways, exterior stairways, porte cocheres, storage areas and outbuildings, shall equal or exceed one thousand seven hundred fifty (1,750) square feet."


2. Except as otherwise expressly amended herein, the remaining provisions of the Declaration are hereby restated and the terms and provisions therein are ratified and affirmed.

IN WITNESS WHEREOF, the undersigned owner has executed this Amendment as of the day and year first set forth above.

COMMUNITY DEVELOPMENT OF ARKANSAS, LLC, Owner of All
Lots Within Braemar Subdivision

By: 
Chris Gregory, Authorized Member

APPROVAL BY THE CITY OF CENTERTON:


Judy Coffelt, Planning Chairperson 1-17-08
Date

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ACKNOWLEDGMENT

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01/28/2008

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

On this the 3rd day of October 2007, before me, the undersigned officer, personally appeared Chris Gregory known to me (or satisfactorily proven) to be the Authorized Member of COMMUNITY DEVELOPMENT OF ARKANSAS, LLC, an Arkansas limited liability company, and stated that he subscribed his name to the within instrument in his capacity as such Authorized Member for the consideration, uses, and purposes therein contained.

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

[Handwritten Signature]

My Commission Expires:

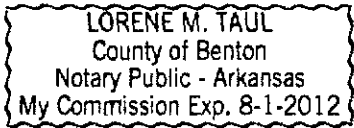


ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF Benton)

On this the 17 day of January 2008, before me, the undersigned officer, personally appeared Judy Coffelt known to me (or satisfactorily proven) to be the Planning Chairperson for the City of Centerton, Arkansas, and stated that she subscribed her name to the within instrument in such capacity for the consideration, uses, and purposes therein contained.

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



[Handwritten Signature: Lorene M. Taul]
NOTARY PUBLIC

My Commission Expires:

08/01/2012

Benton County, AR
I certify this instrument was filed on
01/28/2008 9:12:27AM
and recorded in DEED Book
2008 at pages 0003186 - 0003188
Brenda DeShields-Circuit Clerk

**DECLARATION OF COVENANTS AND RESTRICTIONS
OF
BRAEMAR SUBDIVISION**

This Declaration, made this 9th day of June, 2006, by COMMUNITY DEVELOPMENT OF ARKANSAS, LLC, an Arkansas limited liability company ("Developer" or the "Declarant").

WITNESSETH:

WHEREAS, Developer is the owner of the real property described on that certain plat filed of record in the office of the Circuit Court and Ex-Officio Recorder of Benton County, Arkansas on July 7, 2006, in plat book 2006, at page 808-811 (the "Plat"), hereinafter mentioned as Lots 1-50, Braemar Subdivision, Centerton, Benton County, Arkansas (hereinafter the "Property" or "Braemar Subdivision") and desires to create a single family residential community with facilities and improvements, landscaped entrances and other Common Use Areas for the benefit of the community, which shall be known as "Braemar Subdivision"; and

WHEREAS, consistent with the covenants and restrictions set forth herein, Lots 1-48 as identified on the Plat (as defined below) shall be for residential uses; Lots 48 and 49 shall each be a Common Use Area (as defined below); and Lot 50 shall be used as a detention basin; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in Braemar Subdivision and for the maintenance of the landscaped entrances, the clubhouse, swimming pool, and other recreational facilities to be constructed on Lot 48, the landscaped green space to be constructed on Lot 49, and other Common Use Areas; and to this end, desires to subject the Property to these covenants, restrictions, easements, charges and liens, each of which is for the benefit of the Property, each owner of any Lot in Braemar Subdivision, and the Braemar Subdivision Property Owners Association, Inc. (the "Association"), which has been incorporated under the laws of the State of Arkansas as a non-profit corporation; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in Braemar Subdivision, to create the Association which shall be assigned the powers of maintaining, administering and enforcing these covenants and restrictions and doing all other things necessary to preserve the values and amenities of this community; and

WHEREAS, Developer has caused to be incorporated the Association, for the purpose of exercising these functions; and

WHEREAS, the Property is subjected to the covenants and restrictions to insure proper use and appropriate development and improvement of the Property and every part thereof; to guard against the erection thereon of buildings, structures or improvements built of improper or unsuitable materials; to insure adequate and reasonable development of the Property and the use and enjoyment of property ownership therein; to encourage the erection of attractive improvements thereon, with appropriate locations thereof; to prevent haphazard and inharmonious improvement; to secure and maintain proper setbacks from streets, and adequate free spaces between structures; and in general to provide adequately for a type and quality of improvement in Braemar Subdivision consistent with the covenants and restrictions; and to

insure desired standards of maintenance and operation of the Common Use Areas for the benefit of all owners of Braemar Subdivision. It is the intention and purpose of these covenants and restrictions to assure that all dwellings in Braemar Subdivision shall be of a quality of design, workmanship, and materials approved by the Architectural Control Committee (as defined below). It is understood and agreed that the purpose of architectural control is to secure an attractive harmonious residential development having continuing appeal, and in an effort to assure the same, the quality of architectural design will be considered.

WHEREAS, it is deemed advisable that all of the Property shown on the plat hereinafter mentioned, be subdivided into building lots, tracts and streets as shown on the plat filed herewith, and that said Property be held, owned and conveyed subject to the protective covenants, restrictions, easements and charges herein contained, in order to enhance the value of Braemar Subdivision.

NOW THEREFORE, Declarant, for and in consideration of the benefits to accrue to it, its successors and assigns, which benefits it acknowledges to be of value, has caused to be made the Plat, showing survey PLS #1370 made by Robert J. Caster, Registered Land Surveyor dated 10/26/2005, and showing the boundaries and dimensions of the Property now being subdivided into lots, tracts and streets.

There are shown on said Plat certain easements for drainage, access, entry sign, landscape and construction, which Declarant hereby reserves to and for the use of Declarant, its successors and assigns, and/or the Association which are more specifically defined in Article V hereof. There are shown on said Plat certain easements for utilities which Declarant hereby grants to and for the use of public utilities, the same being, without limiting the generality of the foregoing, electric power, gas, telephone, water, sewer and cable television with the right hereby granted to the persons, firms or corporations engaged in the supplying of such utilities to use and occupy such easements, and to have free ingress and egress therefrom for the installation, maintenance, repair and replacement of such utility services.

The areas designated on the Plat as Common Use Areas are hereby donated and dedicated by Declarant and an easement is hereby granted to the Owners of all lots within Braemar Subdivision with the right to use these areas for pedestrian and aesthetic purposes and the Association shall maintain such areas and improvements at its sole cost. Additionally, Declarant hereby grants to the public utilities the right to use this area only for utility easements provided such improvements are maintained by said public utilities. No improvements shall be placed on the areas designated as Common Use Areas, other than improvements for those designated purposes, unless first approved by governmental agencies, if required, the Association and the Architectural Control Committee established pursuant to these Covenants and Restrictions and the Bylaws of the Association.

The filing of this Declaration of Covenants and Restrictions for record in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County shall be a valid and complete grant, delivery and dedication of the easements subject to the limitations herein set out.

The lands embraced in the Plat shall be forever known as Lots 1-50, Braemar Subdivision, Centerton, Benton County, Arkansas; and any and every deed of conveyance of any

lot in Braemar Subdivision describing the same by the number shown on said Plat shall always be deemed a sufficient description thereof.

NOW, THEREFORE, the Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements and charges and liens (sometimes referred to as "Covenants and Restrictions") herein set forth:

ARTICLE I DEFINITIONS

1.1. **ASSOCIATION.** The Braemar Subdivision Property Owners Association, Inc., described herein.

1.2. **ARCHITECTURAL CONTROL COMMITTEE.** The committee so designated and described in Article IV hereof. Unless and until an Architectural Control Committee has been established, Developer shall fulfill the duties for the same as specified herein.

1.3. **BOARD.** Board shall mean the Board of Directors of the Association.

1.4. **BUILDING.** Any structure having a roof, supported by columns or by walls or other means, or other structure intended or used for the shelter, housing, or enclosure of any person, animal, or chattel.

1.5. **BUILDING ACCESSORY.** A subordinate building or portion of a principal Building, the use of which is incidental to that of the principal Building on a Lot.

1.6. **BUILDING HEIGHT.** The vertical distance measured from the established ground level to the highest point of the underside of the ceiling beams, in the case of a flat roof; to the deck line of a mansard roof; to the mean level of the underside of rafters between the eaves and the ridge of a gable, hop, or gambrel roof; or to the mean level of any other vertical parts of any other structure. Chimneys and ordinary and customary ornamental architectural projections shall not be included in calculating Building Height.

1.7. **COMMON USE AREAS.** The paths, any clubhouse, swimming pool and related facilities, and other real property (and any personal property located thereon) within Braemar Subdivision reserved, donated, or dedicated by Declarant for the common use of all residents and owners of Lots in Braemar Subdivision, and the fixtures thereon and appurtenances thereof. The Common Use Areas include those areas identified on the Plat as Common Use Areas, including, without limitation, Lots 48 and 49 as identified on the Plat which shall include a clubhouse, swimming pool, and other recreational facilities and a landscaped greenspace, respectively. Any Improvements made on the Common Use Areas shall be owned by the Declarant but maintained by the Association.

1.8. **DECLARANT OR DEVELOPER.** Community Development of Arkansas, LLC, its successors and assigns.

1.9. **DWELLING.** A residential building which, as originally constructed, is integrated and designed for use exclusively as living quarters for one family.

1.10. FAMILY. One or more persons each related to the other by blood, marriage, or legal adoption, together with his or their domestic servants, maintaining a common household in a Dwelling.

1.11. LOT OR HOMESITE. A Lot in Braemar Subdivision, which may be purchased by any person or owned by the Developer. The words "Lot" or "Homesite" as used herein shall be synonymous and may be used interchangeably.

1.12. LOT AREA. The area of a horizontal plane, bounded by the vertical planes through Front, Side, and Rear Lot lines.

1.13. LOT LINE, FRONT. That boundary line of a Lot which is nearest to a roadway (access easement). In some instances (e.g., a corner Lot) a Lot may have more than one Front Lot Line.

1.14. LOT LINE, REAR. That linear boundary of a Lot which is most distant from the Front Lot line. If the Rear Lot Line is less than 10 feet in length, or if the Lot forms a point at the rear, the Rear Lot Line shall be deemed to be a line 10 feet in length within the Lot, parallel to and at the maximum distance from the Front Lot Line.

1.15. LOT LINE, SIDE. Any boundary of a Lot which is not a Front or Rear Lot Line.

1.16. LOT WIDTH. The length of a line perpendicular to a Side Lot Line and lying entirely within a Lot, which either commences at the intersection of a Front Lot Line and a Side Lot Line, or if the Front or Rear Lot Line is curved or irregular, which is the longest segment perpendicular to a line joining the mid-points (determined by measuring the length of the outermost edge of the Lot Line) of a Front Lot Line and a Rear Lot Line and lying wholly within the Lot, with one or more points coinciding with the Front Lot Line.

1.17. LOT DEPTH. The length of a line joining the mid-points of a Front Lot Line and a Rear Lot Line (determined by measuring the length of the outermost edge of the Lot Line).

1.18. MEMBER. Member shall mean and refer to any owner who by virtue of holding fee simple title to any Lot is a member of the Association. If any owner holds title to more than one Lot he shall be entitled to an additional membership for each additional Lot he owns.

1.19. OWNER. Owner shall mean and refer to the record owner, whether one or more persons or entities, of title to any Lot which is part of Braemar Subdivision, but excluding those having such interest merely as security for the performance of any obligation.

1.20. STORY. That portion of the interior of a Building included between the surface of the ground or any floor and the surface of existing or extended plane of the floor next above; or if there is no floor above, the space between the floor and the surface of existing or extended plane of the ceiling next above.

1.21. STORY, HALF. A space under a sloping roof which has the line of intersection of roof decking and exterior wall not more than 3 feet above the top floor level, and in which space not more than 60 percent of the floor area is improved for principal or accessory use.

1.22. **STRUCTURE.** Any stationary object erected, constructed or placed on the Property or attached to something having a permanent location on or in the ground. A sign or other advertising device, detached or projecting, shall be construed to be a separate Structure. Structures shall include but shall not be limited to sheds, towers, antennas and satellite disks.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.1. **EXISTING PROPERTY.** The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Centerton, the County of Benton, State of Arkansas, and is more particularly described on Exhibit "A", and shown on the Plat, described as Lots 1-50, Braemar Subdivision, Centerton, Benton County, Arkansas, all of which property shall be referred to as the "Property" or "Braemar Subdivision."

ARTICLE III GENERAL RESTRICTIONS

Except for those portions of Braemar Subdivision referred to herein as streets and Common Use Areas, each Lot shall be used as a residential site for one Dwelling only, and a private garage containing no fewer than two parking spaces for the sole use of the Owners or occupants of the Dwelling.

ARTICLE IV ARCHITECTURAL CONTROL COMMITTEE¹

4.1. **DESIGNATION OF COMMITTEE.** The Association shall have an Architectural Control Committee, consisting of at least three (3) and not more than five (5) members who shall be natural persons. Until all Lots now subject to these covenants and restrictions, plus Lots added pursuant to Article II hereof, are sold and have Dwellings constructed thereon, the members of the Architectural Control Committee, and all vacancies, shall be appointed by Developer. When all Lots described in this paragraph are sold and have Dwellings constructed thereon, the members of the Architectural Control Committee, and all vacancies, shall be appointed by the Board of Directors of the Association.

4.2. **FUNCTION OF ARCHITECTURAL CONTROL COMMITTEE.** Prior to the commencement of any construction on any Lot and before any Dwelling, Building, Structure or other Improvement shall be constructed or maintained upon any Lot and prior to any alteration or repainting to the exterior of a Dwelling, Building, Improvement or Structure and before any landscaping is commenced, complete plans, specifications, and site plans showing the exterior design, height, building material and color scheme, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing walls and windbreaks, sewage systems and the grading plan shall have been submitted in writing to and approved in writing by the Architectural Control Committee. A copy of the plans, specifications, and Lot plans as finally approved shall be deposited with the Architectural Control Committee. The copy of such plans, specifications, and Lot plans as approved by the

¹ If an Architectural Control Committee has not been established, the Developer shall assume the role of the Architectural Control Committee as herein set forth.

Architectural Control Committee and retained by the Owner shall bear a certification by the Architectural Control Committee indicating that such plans, specifications, and Lot plans have been approved by the Architectural Control Committee. The Architectural Control Committee shall have the power to employ professional consultants to assist it in discharging its duties. The decisions of the Architectural Control Committee shall be final, conclusive and binding upon the applicant.

4.3. CONTENT OF PLANS AND SPECIFICATIONS. The plans and specifications to be submitted and approved shall include the following unless otherwise agreed to by the Architectural Control Committee:

(a) If requested by the Architectural Control Committee in writing, a topographical survey showing existing contour grades intervals and showing the location of the Dwelling and all Improvements, Structures, swimming pools, walks, driveways, fences and walls in a manner acceptable to the Architectural Control Committee. Existing and finished grades shall be shown at Lot corners and at corners of proposed Improvements. Lot drainage provisions shall be indicated as well as cut and fill details if any applicable change in the Lot contours is contemplated.

(b) Exterior elevations.

(c) Exterior materials, colors, textures and shapes and manufacturers thereof.

(d) Structural design.

(e) Foundation plans.

(f) Wall sections with ceiling heights.

(g) Landscaping plan, including pre-approved mailboxes, walkways, fences and walls, elevation changes, watering systems, shrub beds, plant size and quantity, existing vegetation and ground cover.

(h) Parking area and driveway plan.

(i) Screening, including site, location and method.

(j) Utility connections.

(k) Exterior illumination, including location and method.

(l) Fire protection system.

(m) Signs, including size, shape, color, location and materials.

(n) Sanitary sewage systems, reflecting locations and types.

Residential landscaping must be fully installed, including solid sod in the front, side and back yards of the lot, within thirty (30) days of the occupancy of the residence.

4.4. DEFINITION OF "IMPROVEMENT". Improvement shall mean and include all residences, buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, poles, towers, antennas, driveways, swimming pools, tennis courts, gazebos, signs, changes in any exterior color or shape, glazing or reglazing of exterior windows with mirrored or reflective glass, and any other new exterior construction or exterior improvement which materially alters the appearance of any Lot and which may not be included in any of the foregoing. The definition does not include garden shrub or tree replacements or any other replacement or repair of any magnitude which does not materially change exterior colors or exterior appearances.

4.5. BUILDING HEIGHT. No Dwelling shall be erected, altered, or placed on a Lot which shall contain more than two (2) stories, nor shall any such Dwelling have a Building Height in excess of fifty (50) feet. No Accessory Building or Structure shall have a Building Height in excess of thirty-six (36) feet unless a greater height is approved in writing by the Architectural Control Committee.

4.6. DWELLING QUALITY AND SIZE. All Buildings, Dwellings, Structures and Improvements erected upon a Lot shall be constructed in accordance with the applicable governmental building and zoning codes and with such additional standards that may be required by the Covenants and Restrictions and the Architectural Control Committee; and no Dwelling shall be constructed or permitted to remain on any Lot in Braemar Subdivision unless the finished heated living area, exclusive of porches, patios, garages, breezeways, exterior stairways, porte cocheres, storage areas and outbuildings, shall equal or exceed two thousand five hundred (2,500) square feet. To the extent any Dwelling containing two (2) stories shall be erected on a Lot, the ground floor of such Dwelling shall equal or exceed one thousand nine hundred (1,900) square feet.

4.7. LOCATION ON LOT. No Dwelling, Building, Structure or Improvement shall be located on a Lot nearer to the Front Lot Line, Side Lot Line or Rear Lot Line established for each Lot by the Architectural Control Committee. Tennis courts and swimming pools shall be screened from the street or streets by a wall, solid fence, evergreen hedge or other visual barrier as approved in writing by the Architectural Control Committee. No tennis court or swimming pool shall be located on a Lot nearer to the Front Lot Line, or a Side Lot Line adjoining a street, than the minimum setback established for each Lot by the Architectural Control Committee. Subject to changes being made by the Architectural Control Committee for an individual Lot, the following setback lines shall be deemed applicable:

- | | |
|-----------------------|-----------------------------------------------------------------------|
| Minimum Front Setback | 25 feet from the front property line as shown on the Plat; |
| Minimum Side Setback | 7 feet from the interior side property line as shown on the Plat; and |
| Minimum Rear Setback | 25 feet from the rear property line as shown on the Plat; |

provided that the Architectural Control Committee may authorize variations in its discretion. Where two (2) or more Lots are acquired as a single building site, the side building lines shall refer only to those bordering the adjoining property owner.

4.8. **COMMERCIAL STRUCTURES.** No Building, Structure or Improvement of any type may ever be placed, erected or used for business, professional, trade or commercial purposes on any portion of any Lot. This prohibition shall not apply to any business or Structure that may be placed on any Lot or portion of a Lot that is used exclusively by a public utility company in connection with the furnishing of public utility services to Braemar Subdivision.

4.9. **OUTBUILDINGS PROHIBITED.** No outbuildings or other detached structure appurtenant to the residence may be erected on any of the Lots hereby restricted without the consent in writing of the Architectural Control Committee.

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

4.11. **OIL AND MINERAL OPERATIONS.** No oil drilling, oil development operating, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

4.12. **EXISTING STRUCTURE.** No existing, erected building or structure of any sort may be moved onto or placed on any of the Lots.

4.13. **TEMPORARY STRUCTURE.** No trailer, basement, tent, shack, garage or other outbuilding erected on a Lot covered by these covenants and restrictions shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

4.14. **THE BASIS OF APPROVAL.** Approval of plans and specifications shall be based on, among other things, adequacy of site dimensions, structural design, conformity and harmony of external design and of location with neighboring structures and sites, relation of finished grades and elevations to neighboring sites, and conformity to both the specific and general intent of the protective covenants. The roof pitch on all single family residences shall be a 10' x 12' pitch and the exterior of the single family residence shall conform to the following: (a) a brick or stone product shall be used on each side of each residence; provided, however, that hardy plank may be used if prior written approval has been obtained from the Architectural Control Committee and (b) hardy plank may be used on any rear dormers. Further, each residence shall have at least one (1) four (4) inch caliper tree installed in the front yard of such residence. The Architectural Control Committee shall approve, in its reasonable discretion, all plans and specifications.

4.15. **MAJORITY VOTE.** A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed improvements.

4.16. **FAILURE OF COMMITTEE TO ACT.** If the Architectural Control Committee fails to approve, disapprove, or reject as inadequate proposed plans and specifications within

thirty (30) days after proper written submittal, they shall be deemed approved. If plans and specifications are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them entirely, or partially or conditionally approve the plans and specifications.

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

4.18. **REASONABLE FEE.** The Architectural Control Committee may charge any Owner a reasonable fee for its services in reviewing that Owner's proposed plans and specifications.

4.19. **LOT AREA AND WIDTH.** None of the Homesites shall at any time be subdivided into two or more ownerships or Lots.

4.20. **DRIVEWAYS.** Unless otherwise approved by Declarant, access driveways and other paved areas for vehicular use on a Lot shall have a base of compacted gravel, crushed stone or other approved base material and shall be surfaced with concrete. Plans and specifications for driveways, culverts, pavement edging or markers shall be as approved in writing by the Architectural Control Committee and must meet any and all specifications and/or requirements of the City of Centerton. Driveways may access the adjacent street at one location only, unless otherwise approved by the Architectural Control Committee.

ARTICLE V EASEMENTS

5.1. **EASEMENTS.** Declarant hereby declares, grants and reserves the following easements in Braemar Subdivision for the benefit of each and all of the Lots, parcels, tracts and lands located in Braemar Subdivision, as well as for those entities hereinafter named.

(a) Declarant hereby grants the easements described on the Plat hereto as utility easements to and for the use of public utilities, the same being without limiting the generality of the foregoing, electric power, gas, telephone, water and cable television with the right thereby granted to the persons, firms or corporations engaged in the supplying of such utilities to use and occupy such easements, and to have free ingress and egress therefrom for the installation, maintenance, repair and replacement of such utility services. No trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be grown, built or maintained within the area of such utility easement. In the event any trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be grown, built or maintained within the area of such easement, no person, firm or corporation engaged in supplying public utility services shall be liable for the destruction of same in the installation, maintenance, repair or replacement of any utility service located within the area of such easement.

(b) Declarant hereby grants perpetual easements described on the Plat as Access, Landscape and Drainage Easements to the Association to construct, maintain, install and replace landscaping, streets, gatehouses, fences, drainage facilities, and related improvements upon the property upon which the easement is granted. No trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be built or maintained by the Owner of any Lot within the area of such easements without prior written consent of the Association.

The Owner of a Lot is solely responsible for the existing drainage course across his Lot. The Association is only responsible for maintenance and replacement of drainage equipment and facilities existing within the easement granted herein and described on the Plat and has no responsibility for the maintenance and repair of any drainage course or equipment located upon those areas of the Lot outside the easement.

(c) A perpetual joint easement is hereby reserved in Declarant and granted to the Association, as joint owners, to construct, maintain and replace within Braemar Subdivision perimeter walls and fences at the intersections accessed thereto as reflected on the Plat such perimeter walls and fences and for the purpose of constructing and maintaining the same and a perpetual joint easement to construct, maintain and replace within Braemar Subdivision an entry sign and appropriate landscape.

Declarant reserves the right to: (a) execute and record documentation confirming and defining the rights of any third person maintaining facilities in easement areas, and (b) to assign its rights hereunder, all of which acts shall be binding upon each Lot in Braemar Subdivision.

ARTICLE VI ROADWAYS

All roadways within Braemar Subdivision are public roads.

ARTICLE VII PROHIBITIONS

7.1. Except for (1) the development and sales activities of Developer and its contractors, employees and agents, and (2) construction activities authorized by the Architectural Control Committee, the following prohibitions shall be applicable to all Lots, Buildings, Structures and Improvements in Braemar Subdivision:

(a) No gainful occupation or profession, or other non-residential use, shall be conducted.

(b) No noxious or offensive activity shall be carried on, in or upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or any adjoining Lot or Common Use Area.

(c) No livestock or poultry shall be kept or maintained. No swine, sheep, goats, cattle, or other objectionable animals shall be kept, and no animals may be raised for commercial purposes. Buildings, Dwellings, Structures and Improvements will be serviced by underground utilities.

(d) No burning of refuse or leaves shall be permitted.

(e) Chain link or similar fences are in all events strictly prohibited and shall not be used under any circumstances. All fences must be approved by the Architectural Control Committee and shall (i) be constructed only with cedar, except as provided in (iv) below, (ii) be six (6) feet in height, (iii) include caps and rails in all appropriate places along such fence, (iv) use a metal or metal-like material for all fence posts, and (v) if a Lot is a corner Lot, any such fence shall be approved by the City of Centerton and comply with all requirements of the same. Further, any fences surrounding a swimming pool must have fencing that complies with the 2003 International Property Maintenance Code, Section 303.2, as adopted by the City of Centerton.

(f) No garage, carport, driveway, or parking area which may be in front or adjacent to or part of any Lot may be used as a habitual parking place for commercial vehicles. The parkway located between the pavement and the Front Lot Line of each Lot shall not be used for the parking of commercial vehicles, boats, vans, mobile homes, trailers, nor any vehicle other than private passenger automobiles. The term "commercial vehicles" shall include all trucks and all automobiles, station wagons, and vehicular equipment which shall bear signs or have printed on the side of same, reference to any commercial undertaking or enterprise. (The habitual violation of the parking regulations set forth in this paragraph shall be deemed a nuisance and violation of Article IV, Section 10, except that boats and vans may be stored at locations and in a manner acceptable to the Architectural Control Committee.)

(g) No temporary buildings, quonset huts, trailers, tents, shacks, or privies shall be constructed, erected or parked upon any Lot. It is understood that the word "trailer" shall refer to a house or camping trailer which could be temporarily occupied for living purposes, and this restriction shall refer also to truck-mounted campers and travel buses, unless such trailer, erected camper, truck-mounted camper or travel bus is enclosed in a garage. Temporary Buildings, Improvements or Structures used during the construction of a Dwelling shall be on the same Lot as the Dwelling, and such Buildings, Improvements and Structures shall be removed upon completion of construction of the Dwelling.

(h) No garage, building, Structure or other outbuilding approved by the Architectural Control Committee shall be constructed or erected upon said premises prior to construction and occupancy of the Dwelling.

(i) No undomesticated animal nor any other animal having unusually vicious propensities shall be kept or maintained either inside or outside any Building, Structure, Improvement or Dwelling. No commercial breeding of any animal is allowed within Braemar Subdivision. No more than one kennel, for occupancy by no more than two (2) dogs may be allowed on any one Lot in Braemar Subdivision.

(j) No plants, seeds, or other materials which harbor or are a source of breeding infectious plant diseases or noxious insects shall be introduced or maintained.

(k) No advertising sign, or billboard, including "For Rent" advertising signs, and no submerged, underground or visible oil or gas tank for fuel or other purpose, shall be erected or maintained on any Lot; except, however, a sign, not exceeding 12 square feet in area,

may be erected during the construction of the house, displaying the name of the general contractor and/or architect, and "For Sale" signs not larger than 24 inches by 30 inches may be erected at any time.

- (l) No firearm shall be discharged within Braemar Subdivision.
- (m) No hunting shall be allowed within Braemar Subdivision.
- (n) No clearing or harvesting of trees may occur within the Property comprising Braemar Subdivision without approval of the Architectural Control Committee.
- (o) No animal waste may be spread on any Lot, except for fertilization purposes.
- (p) No garbage, refuse, rubbish, tree limbs, pine straw, leaves or cuttings shall be deposited on any street, road, or Common Use Area, nor on any Lot unless placed in a container suitable for garbage pickup.
- (q) No building material of any kind or character shall be placed upon any Lot except in connection with construction approved by the Architectural Control Committee. Construction shall be promptly commenced and diligently prosecuted.
- (r) No clothes lines, drying yards, service yards, wood piles or storage areas shall be so located as to be visible from a street, road, adjacent Lot, or Common Use Area.
- (s) Any exterior lighting must be approved by the Architectural Control Committee and installed in a manner that shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the adjacent Lot.
- (t) No immoral, improper, offensive or unlawful use shall be made of Braemar Subdivision or any part thereof, and all valid laws, zoning, by-laws and regulations of all governmental bodies having jurisdiction shall be observed.
- (u) No portion of a Lot (other than the entire Lot) may be rented, and no transient may be accommodated therein unless by consent of the Association.
- (v) No used or previously erected or temporary house, structure, house trailer or non-permanent outbuilding shall ever be placed, erected or allowed to remain on any Lot or Common Use Area.

**ARTICLE VIII
NAMEPLATES AND HOSPITALITY LIGHT
STANDARDS, TELEVISION OR RADIO ANTENNAE
AND TOWERS, LAUNDRY DRYING FACILITIES OR FLAG POLES**

There shall be not more than one nameplate on each Lot. A nameplate shall not be more than 115 square inches in area unless otherwise approved by Declarant, and contain the name of the occupant and/or address of the Dwelling. It may be located on the door of the Dwelling or

the wall adjacent thereto, or upon the wall of an Accessory Building or Structure, or free-standing. No laundry-drying equipment or facilities shall be erected or used outdoors, whether attached to a Building or Structure, or otherwise. Flag poles are permitted provided the pole is not more than 25 feet in height, unless otherwise approved by the Architectural Control Committee. No antenna or other high power electronic equipment shall be permitted without the prior written consent of the Architectural Control Committee. Satellite dishes pre-approved by the Architectural Control Committee may be permitted on a Lot at a location approved by the Architectural Control Committee.

ARTICLE IX COMMON USE AREAS AND PATHS

9.1. COMMON USE AREAS AND PATHS. To the extent applicable, any Common Use Area within Braemar Subdivision may be used by all residents of Braemar Subdivision and their guests for recreational purposes, including, without limitation, Lots 48 and 49 as identified on the Plat and which such Lots are intended to be used for a clubhouse, swimming pool, and other recreational facilities and a landscaped greenspace, respectively. All Common Use Areas and all easements, fences, and street lights located therein or thereon shall be maintained by the Association, to the extent not maintained by another entity. Further, the Association shall maintain any detention basins, specifically that certain detention basin located on Lot 50 as shown on the Plat, any other areas located in Braemar Subdivision that are not owned by any Member or resident individually, and any associated landscaping or improvements located thereon.

9.2. EXTENT OF EASEMENTS. The rights and easements created herein shall be subject to the following:

- (a) The right of the Association to prescribe rules and regulations for the use, enjoyment, and maintenance of the Common Use Areas;
- (b) The right of the Association to borrow money for the purpose of improving all or any part of the Common Use Areas, and to mortgage all or any part of the Common Use Areas;
- (c) The right of the association to take reasonably necessary steps to protect all or any part of the Common Use Areas, against foreclosure; and
- (d) The right of the association to suspend the easements of any Member of the Association during the time any assessment levied under Articles XI or XIV remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

ARTICLE X GRASSING

10.1. GRASSING. After Lots have been sold by the Developer, the owners of Lots in Braemar Subdivision shall be responsible for the maintenance of the area located between their Lot Line and edges of street pavements which abut said Lots whether the streets are private or

have been dedicated to the public. In the event an owner is authorized by the Architectural Control Committee to clear a portion of his Homesite, he shall plant grass on the cleared area. Said owner shall maintain and keep his Homesite in good appearance by cutting all weeds and under brush and by cutting and maintaining all lawns to a height of not more than four (4) inches.

At any time and from time to time, the Association, or the Declarant may, at their option, enter the Homesite and plant grass or clear the weeds and underbrush and thereafter maintain the Homesite in good appearance. No such entry shall be deemed a trespass. If the Association or Declarant chooses to exercise this option, any planting, underbrush clearing or grass cutting by the Association or Declarant shall cause a lien to arise and be created in favor of the Association or Declarant against any such Homesite for the full amount expended or otherwise chargeable therefor, including the cost of supervision, contracting fees and office overhead. The full amount chargeable to such Homesite shall be due and payable within thirty (30) days after the owner has been billed therefor, and the lien shall be enforceable in the same manner as liens created pursuant to Article XIV hereof.

ARTICLE XI MAINTENANCE AND LICENSES AND PERMITS

11.1. DUTY OF MAINTENANCE. Owners and occupants (including lessees of any part of the Property and builders or contractors during construction of any residence) shall jointly and severally have the duty and responsibility, at their sole cost and expense to keep that part of the Property so owned or occupied, including Dwellings, Structures, Buildings, Improvements and grounds in a well-maintained, safe, clean and attractive condition at all times, including, without limitation, before, during, and after construction of any Improvements on the Property. Maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse, and waste, including, during construction of any Improvements, any and all debris relating to or arising from the construction of the same;
- (b) lawn mowing;
- (c) tree and shrub pruning;
- (d) watering;
- (e) keeping exterior lighting and mechanical facilities in working order;
- (f) keeping lawn and garden areas alive, free of weeds, and attractive;
- (g) keeping parking areas, driveways, and roads in good repair;
- (h) complying with all governmental health and police requirements;
- (i) complying with all environmental-related laws, policies, and regulations, including, without limitation, all laws, policies, and regulations of the Arkansas Department of

Environmental Quality, the Environmental Protection Agency, and any other laws, policies, and regulations of the City of Centerton or any applicable governmental or municipal authority, whether such laws, policies, and regulations now exist or are hereafter implemented;

- (j) taking all necessary actions and /or precautions to prevent stormwater drainage or runoff;
- (k) repainting of improvements;
- (l) repair of exterior damages to improvements;
- (m) repair of all damage to fences; and
- (n) Prompt disposal of all animal waste in a manner that complies with all local, state and federal regulations.

11.2. ENFORCEMENT. If, in the opinion of the Association any Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may provide written notice of that failure, giving the Owner or occupant ten (10) days from receipt to perform the care and maintenance required. Should any person fail to fulfill this duty and responsibility within the ten-day period, then the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform needed care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and occupants (including lessees) of any part of the Property on which work is performed shall jointly and severally be liable for the cost of the work and shall promptly reimburse the Association for all costs. If the Association has not been reimbursed within thirty (30) days after invoicing, the indebtedness shall be a debt of all of the Owners and occupants jointly and severally, and shall constitute a lien against that portion of the Lot on which work was performed. This lien shall have the same attributes as the lien for assessments and special assessments set forth in Article XIV, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

11.3. LICENSES AND PERMITS. Each Owner shall take all steps necessary to obtain all required permits and licenses necessary to construct any Improvements or Dwellings, Buildings, or Structures on a Lot prior to the commencement of construction of the same, including, without limitation, any and all permits or licenses relating to stormwater regulations.

ARTICLE XII THE ASSOCIATION

Every person, persons or entity who owns any Lot, including a builder or general contractor, shall be a Member of the Association, and shall abide by its Articles of Incorporation and Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The Association shall be governed by its Articles of Incorporation and Bylaws.

ARTICLE XIII COVENANT FOR MAINTENANCE ASSESSMENTS

13.1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS AND SPECIAL ASSESSMENTS. Each Owner, other than Declarant, of any Lot by acceptance of a deed shall be deemed to covenant and agree, to pay to the Association annual assessments or charges and special assessments, together with interest and costs of collection, if any, which amounts shall be a charge on the land and shall be a continuing lien upon the Lot. Each assessment, together with interest, cost of collection and reasonable attorneys' fees, if any, shall also be the personal obligation of the Owner, other than Declarant, of the Lot at the time when the assessment or special assessment fell due. The personal obligation for delinquent assessment or special assessment shall not pass to an Owner's successors in title unless expressly assumed by them.

The lien for assessments and special assessments shall be subject to and subordinate to the lien of any recorded first mortgage or deed of trust.

Assessments shall be fixed by the Association in accordance with the Articles of Incorporation and Bylaws of the Association.

In lieu of assessments being imposed upon such Lots owned by the Declarant, the Declarant may underwrite all reasonable costs for the operation of the Association not covered by assessments paid by owners of Lots other than Declarant until all Lots are owned by persons or entities other than Declarant.

13.2. EXEMPT PROPERTY. Common Use Areas as defined in Article I, all Common Use Areas subsequently added to the Property and any areas which are designated for the common use of a particular Lot, and all portions of the Property owned or otherwise dedicated to any political subdivision shall be exempt from the assessments and liens of the Association.

ARTICLE XIV GENERAL PROVISIONS

14.1. DURATION. The Covenants and Restrictions of this Declaration shall run with and bind the land, shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument terminating these Covenants and Restrictions signed by the then Owners of seventy-five percent (75%) of the Property has been recorded prior to the commencement of any ten-year period.

14.2. AMENDMENTS. The Declarant shall be entitled to five (5) votes for each Lot, whether built upon or not, in which Declarant holds title, for the purpose of amending these covenants and restrictions. All other Owners of a lot shall be entitled to one vote for each Lot in which he holds an ownership interest. Lot Owner, other than the Declarant, as herein defined, may be one or more and all such persons or entities constituting one person or member shall vote as they, among themselves, determine but in no event shall more than one vote per Lot owned by others than the Declarant be voted.

These Covenants and Restrictions may be amended during the first twenty (20) years from the date of recording of the Declaration, by an affirmative vote of seventy-five percent (75%) of eligible votes, and thereafter by an affirmative vote of seventy percent (70%) of the eligible votes. Any amendment must be properly recorded and signed by not less than Owners holding seventy-five percent (75%) of the eligible Votes within the first twenty (20) years and seventy percent (70%) of the eligible votes thereafter.

14.3. If Developer desires to amend these covenants, conditions, and restrictions to reduce the minimum building size square footage as set forth in Article 4.6 herein, Developer shall first obtain approval of the City of Centerton, Arkansas. No such waiver, termination and/or modification shall be effective until the proper instrument, in writing, shall be executed and recorded in the office of the Ex-Officio Recorder for Benton County, Arkansas.

14.4. NOTICES. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the association at the time of mailing. Each purchaser of a Lot shall forward a copy of his recorded warranty deed to the Association or its officers.

14.5. ENFORCEMENT. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or person violating or attempting to violate any Covenant or Restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these Covenants and Restrictions. Failure by the Association or any Owner to enforce any Covenant or Restriction shall in no event be deemed a waiver of the right to do so thereafter.

14.6. SEVERABILITY. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

14.7. ATTORNEY FEE. In any legal or equitable proceeding for the enforcement or to restrain the violation of this instrument or any provision thereof, by reference or otherwise, the prevailing party or parties shall be entitled to attorney fees in such amount as the court finds reasonable. All remedies provided for herein, or at law or equity, shall be cumulative and not exclusive.

14.8. DISSOLUTION. The Association may be dissolved with consent given in writing and signed by not less than three-fourths of each class of Members as defined in the Bylaws of the Association. Upon dissolution of the Association other than incident to a merger or consolidation, the assets of the Association shall be conveyed and granted and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to same or similar purposes.

[Remainder of page intentionally left blank; Signatures to follow.]

