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**MASTER
DECLARATION
OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
EDINBURGH SUBDIVISION**

Book 2010 Page 58839
Recorded in the Above
DEED Book & Page
11/17/2010

This Master Declaration of Covenants, Conditions & Restrictions (CCR's) for Edinburgh Subdivision is made by First Western Bank and Fidelity National Bank (together, the "Declarant"), on the date signed below.

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Declarant owns the real property described in Appendix A of this Declaration, together with the improvements thereon.

WHEREAS, Declarant desires to develop a Subdivision to be known as Edinburgh Subdivision. Declarant further desires to provide for the preservation and maintenance of portions of Edinburgh Subdivision, and to protect the value, desirability, and attractiveness of Edinburgh Subdivision. Declarant deems it advisable to create an Association to perform these functions and activities more fully described in this Declaration.

WHEREAS, as originally conceived by Declarant, the development is planned to include, but not be limited to a private, gated community enclosed with a perimeter fence with lots to be improved with detached single family homes and.

WHEREAS, Declarant hereby declares that the real property described in Appendix "A" is subject to this Declaration.

**ARTICLE I
DEFINITIONS**

DEFINITIONS. The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1 "ACC" means the Architectural Control Committee of the Association.

- 1.2 **"Assessment"** means any charge levied against a Lot on ~~Owned~~ by the Association, pursuant to the Documents.
- 1.3 **"Association"** means the Association of Owners of all Lots in the Property, initially organized as the Edinburgh Subdivision Property Owners Association, Inc. (ESPOA), a Arkansas nonprofit corporation, and serving as the "Property Owners' Association" defined in the Arkansas Code.
- 1.4 **"Board"** means the Board of Directors of the Association.
- 1.5 **"CCR's"** means Covenants, Conditions and Restrictions.
- 1.6 **"City"** means the City of Lowell, Benton County, Arkansas, in which the Property is located.
- 1.7 **"Common Areas"** means that portion of the Common Property shown or referenced on Plats or otherwise designated as parks, playgrounds, green space, etc. intended for the use and enjoyment of the Owners, Residents, their families and guests.
- 1.8 **"Common Property"** means and includes:
- a. All of the Property, save and except the Lots, including the privately maintained streets, entry-ways, parks, signs, privacy fences and other Common Property shown on or referenced on Plats.
 - b. Fixtures and improvements on or appurtenant to the private streets, entryways, parks, signs and other Common Property which are intended for the use, operation, or maintenance of the private streets, entryways, parks, signs, privacy fences and Other Common Property, even if the fixtures and improvements are located on lots.
 - c. Any modification, replacement, or addition to any of the above-described areas and improvements.
 - d. Personal property owned by the Association, such as books and records, office equipment, supplies, furniture, recreational and/or playground equipment.
- 1.9 **"Declarant"** means both First Western Bank and Fidelity National Bank, which are developing the Property, or the successors and assigns of First Western Bank and/or Fidelity National Bank, which acquire any portion of the Property for the purpose of development and which are designated a Successor Declarant by First Western Bank and/or Fidelity National Bank, or by any such successor and assign, in a recorded document.

- 1.10 **"Declarant Control Period"** means that period of time, beginning the date this Declaration is recorded, during which Declarant controls the operation of the Association, pursuant to Appendix B of this Declaration.
- 1.11 **"Declaration"** means this Document, as it may be amended from time to time.
- 1.12 **"Development Period"** means that period of time, beginning the date this Declaration is recorded, during which Declarant reserves certain rights for expansion of the Property, and the marketing and build-out of lots, pursuant to Appendix B of this Declaration.
- 1.13 **"Documents"** means, singly or collectively as the case may be, this Declaration, the Plat, the Bylaws, the Association's Articles of Incorporation, and the Rules of the Association, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is a part of that Document.
- 1.14 **"Dwelling"** means a single family home.
- 1.15 **"Easement"** means the right an Owner grants to others for ingress and/or egress or other use or uses of the Owner's property.
- 1.16 **"House Lot"** means a portion of the Property intended for independent ownership, as shown on the Plat, on which a single family home Dwelling has been or will be constructed.
- 1.17 **"Leader"** means an officer, director or committee member of the Board.
- 1.18 **"Lot"** means a portion of the Property intended for independent ownership, as shown on the Plat, on which a Dwelling has been or will be constructed. Where the context indicates or requires, "Lot" includes all improvements thereon.
- 1.19 **"Majority"** means more than half.
- 1.20 **"Member"** means a member of the Association, each Member being an Owner of a Lot, unless the context indicates that Member means a Member of the Board or a Member of a committee of the Association.
- 1.21 **"Owner"** means a holder of recorded fee simple title to a Lot. Contract sellers and mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through judicial or nonjudicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a member of the Association.

- 1.22 **"Plat"** means all Plats, singly and collectively, recorded or to be recorded in the real property records of Benton County, Arkansas pertaining to Edinburg Subdivision, a Subdivision within the City of Lowell, including all dedications, limitations, restrictions, easements, and reservations shown on the Plat, as it may be amended from time to time.
- 1.23 **"Property"** means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Edinburg Subdivision. The Property is located on land described in Appendix A to this Declaration, and includes every Lot thereon.
- 1.24 **"Resident"** means an occupant of a Dwelling, regardless of whether the person owns the Lot.
- 1.25 **"Rules"** means rules and regulations promulgated and adopted by the Board in accordance with the Documents.
- 1.26 **"Underwriting Lender"** means Federal Home Loan Mortgage Corporation ("Freddie Mac") or Federal National Mortgage Association ("Fannie Mae"), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options or as a representation that the Property is approved by any institution.

ARTICLE 2 PROPERTY SUBJECT TO DOCUMENTS

- 2.1 **PROPERTY.** The Property described in Appendix A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations in the attached Appendix B, which run with the Property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.
- 2.2 **ADDITIONAL PROPERTY.** Additional real property may be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association on approval of Owners representing at least sixty-seven (67) percent of the Lots in the Property, or, during the Development Period, by Declarant as permitted in Appendix B. Annexation of additional Property is accomplished by recording a Declaration of Annexation, including an amendment of Appendix A, in the Benton County real property records.

- 2.3 **STREETS WITHIN PROPERTY.** Streets within the Property are part of the Common Area owned by the Association. To the extent not prohibited by public law, the Association is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of the streets, including but not limited to:
- a. Identification of vehicles used by Owners and Residents, and their families and guests.
 - b. Designation of speed limits and parking and/or no parking areas,
 - c. Removal or prohibition of vehicles that violate applicable Rules.
 - d. Fines for violations of applicable Rules.
 - e. Programs for controlling access through the Property entrance(s).

**ARTICLE 3
PROPERTY EASEMENTS AND RIGHTS**

- 3.1 **GENERAL.** In addition to other Easements and rights established by the Documents, the Property is subject to the Easements and rights contained in this Article.
- 3.2 **OWNER'S EASEMENT OF ENJOYMENT.** Every Owner is granted a right and Easement of enjoyment over the Common Areas and to use of improvements therein, subject to other rights and Easements contained in the Documents.
- 3.3 **OWNER'S MAINTENANCE EASEMENT.** Every Owner is granted an access Easement over adjoining Lots and Common Areas for the maintenance or reconstruction of his Dwelling and other improvements on his Lot, provided exercise of the Easement does not damage or materially interfere with the use of the adjoining Lot or Common Area. Requests for entry to an adjoining Lot or Common Area must be made to the Owner of the adjoining Lot, or the Association in the case of Common Areas, in advance, for a time reasonably convenient for the adjoining Owner, who may not unreasonably withhold consent. If an Owner damages an adjoining Lot or Common Area in exercising this Easement, the Owner is obligated to restore the damaged property to its original condition, at his expense, within a reasonable period of time.
- 3.4 **OWNER'S INGRESS/EGRESS EASEMENT.** Every Owner is granted a perpetual Easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his Lot.
- 3.5 **ASSOCIATION'S ACCESS EASEMENT.** The Association is granted an Easement of access and entry to every Lot and Common Area to perform maintenance, to enforce

architectural and use restrictions, to respond to emergencies, and to perform any other duties required by the Documents.

- 3.6 **UTILITY EASEMENT.** The Association may grant permits, licenses, and Easements over Common Areas for utilities, roads, and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property, is granted an Easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this Easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.
- 3.7 **SECURITY.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and its directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and Resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and its directors, officers, committees agents, and employees have made no representations or warranties, nor has the Owner or Resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and its directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.
- 3.8 **RISK.** Each Owner and Resident uses all Common Area amenities at his own risk. All Common Area amenities are unattended and unsupervised. Each Owner and Resident is solely responsible for his own safety and that of his guests. The Association disclaims any and all liability or responsibility for injury or death occurring from use of the Common Area amenities.

ARTICLE 4
ARCHITECTURAL COVENANTS AND CONTROL

- 4.1 **PURPOSE.** Because the Lots are part of a single, unified Property, the Association has the right, acting through the ACC to regulate the design, use, and appearance of the Lots and Common Areas in order to preserve and enhance the Property's value and architectural harmony. The purpose of this Article is to ensure that all Dwellings and associated structures constructed shall utilize good quality materials and workmanship and shall promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained.
- 4.2 **ARCHITECTURAL CONTROL COMMITTEE (ACC).** The ACC consists of the Declarant and two (2) persons appointed by the Declarant during the Development Period. After the Development Period, the ACC shall consist of three (3) persons appointed by the Board or, at the Board's option, the Board may act as the ACC. If the Board acts as the ACC, all references in the Documents to the ACC are construed to mean the Board. Members of the ACC need not be Owners or Residents.
- 4.3 **PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENT.** Without the ACC's prior written approval, a person may not construct a Dwelling or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property, if it will be visible from a street, another Dwelling, or a Common Area. This prohibition includes, without limitation, a change in the color of any material on the exterior of a Dwelling or other structure. The ACC has the right but not the duty to evaluate every aspect of construction, landscaping, and Property use that may adversely affect the general value or appearance of the Property.
- 4.4 **ACC GUIDELINES and LIMITATIONS.** The Association, acting through the ACC, shall establish architectural restrictions, guidelines, and standards, subject to revision from time to time, including revisions to reflect changes in technology, style, and taste. The Association, acting through the ACC, has the right to establish and enforce architectural restrictions, guidelines, and standards relating to every aspect of proposed or existing improvements on a Lot, including but not limited to Dwellings, fences, and landscaping, and further including replacements or modifications of original construction or installation.
- 4.5 **ACC APPROVAL REQUIREMENTS.** To request ACC approval, an Owner should review the ACC Guidelines and Limitations and must make written application and submit two (2) identical sets of plans and specifications for the structure showing the nature, kind, shape, colors, size and materials to be used and the location of the structure on the Lot with the finished floor elevation (FFE) relative to top of the street curb. If the FFE is not at least one (1) foot higher than the top of the street curb, the plans shall include a drainage plan. The application must clearly identify any requirement of this Declaration for which a variance is sought. The ACC will return one set of plans and specifications to the applicant marked with the ACC's response, such as

"Approved" or "Denied." The ACC will retain the other set of plans and specifications, together with the application, for the Association's files. Verbal approval by a director, officer, member of the ACC, or the Association's manager does not constitute ACC approval, which must be in writing. ACC approval of plans and specifications is for the mutual benefit of all Owners and is not intended to be, and shall not be construed as, an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural standpoint. Each Owner shall be individually responsible for the technical aspect of the plans and specifications.

4.5.1 **Deemed Approval.** If the ACC fails to respond in writing -- negatively, affirmatively, or requesting information -- within thirty (30) days after the ACC's actual receipt of the Owner's application, the Owner may submit a second request for processing of its original application. If the Board fails to respond within fifteen (15) days after the Board's actual receipt of the Owner's second request, the Owner's application is deemed approved. In exercising Deemed Approval, the burden is on the Owner to document the Board's actual receipt of the Owner's initial application and second request.

4.5.2 **Building Permit.** If the application is for work that requires a building permit from the City, the ACC's approval is conditioned on the City's issuance of the appropriate permit. The ACC's approval of plans and specifications does not mean that they comply with the City's requirements. Alternatively, approval by the City does not ensure ACC approval.

ARTICLE 5 CONSTRUCTION AND USE RESTRICTIONS

5.1 **CONSTRUCTION RESTRICTIONS.** Improvements constructed on every Lot must comply with the architectural restrictions, guidelines and standards established by the ACC including but not limited to the following:

5.1.1 **Use.** All Lots shall be governed by the applicable City of Lowell codes and regulations governing residential Dwellings as they exist on the date of construction. Any conflict between such ordinances and this Declaration shall be resolved in favor of the more restrictive provisions.

5.1.2 **Size.** No Dwelling structure shall be constructed with less than One Thousand, Seven Hundred (1,700) square feet of heated and cooled living space.

5.1.3 **Setbacks.** No building shall be constructed on any Lot outside of the building area shown on the plat reflecting said Lot. For this purpose, driveways, eaves, patios and steps shall not be considered as part of the building, however, this shall not be construed to permit any portion of any building on a Lot to encroach

upon another Lot. At the time of the final Plat, no building shall be erected on any lot in the development nearer than: (1) Twenty (20) feet to the front line (Thirty (30) feet in the case of garages); (2) Twenty-five (25) feet to the rear lot line; (3) Seven (7) feet to the interior side lot line; (4) Twenty (20) feet to the exterior side lot line. However should any building setback line shown upon the final Plat vary from the requirements herein, the Plat shall control and take precedence over those stated herein.

- 5.1.4 **Building Exteriors.** All building exteriors must be at least Eighty-Five Percent (85%) brick, stone, stucco or other material specifically approved by the ACC (to the first floor plate line) excluding windows, porches, patios and dormers.
- 5.1.5 **Roofs.** The main body of all roofs must have a pitch of at least 8/12 with architectural roofing shingles other roofing material and color specifically approved by the ACC.
- 5.1.6 **Garages.** All Dwellings shall have a primary garage, attached and/or detached, for not less than two (2) cars with a total space of not less than 400 square feet.
- 5.1.7 **Driveways.** All Dwellings shall have a driveway at least sixteen (16) feet wide and shall be constructed of concrete or other material specifically approved by the ACC.
- 5.1.8 **Yards.** All Lots must be fully sodded and landscaped.
- 5.1.9 **Retaining Walls and/or Privacy Fences – Lots Not Designated As Scenic Lots.** Retaining Walls and/or Privacy Fences six (6) feet in height above the finished grade shall be permitted on all Lots to enclose the rear yards and fifteen (15) feet of the side yards measured from the rear of the house. Fencing on corner Lots shall not be placed closer to the street than the front yard setbacks of adjoining lots. Fencing of front yards is prohibited. All fencing shall be shadow box wood fence design. All retaining walls and/or privacy fences shall be constructed using materials, design and a layout specifically approved by the ACC. Galvanized chain link and other forms of wire fencing are expressly prohibited.
- 5.1.10 **Swimming Pools, Cabanas and Gazebos.** In-ground swimming pools, cabanas and gazebos may be built within the building area of any Lot subject to a limitation of one (1) each per Lot and the approval of the ACC. Any Lot with a swimming pool shall be enclosed with a privacy fence. The approval requirements outlined in subsections 4.1 – 4.5.2 shall apply to these structures. Permanent and semi-permanent above ground swimming pools must receive prior written approval by the ACC.

5.1.11 **Accessory Buildings**. Accessory buildings such as studios or storage buildings may be built within the building area of any Lot subject to a limitation of one (1) each per Lot and the approval of the ACC. The approval requirements outlined in subsections 4.1 – 4.5.2 shall apply to these structures. Accessory Buildings shall not be larger than twenty (20) feet by fourteen (14) feet and shall be harmonious with the existing dwelling. The interior area of Accessory Buildings shall not be included in the determination of minimum dwelling sizes.

5.2 **ASSOCIATION'S RIGHT TO PROMULGATE RULES**. The Association, acting through its Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. In addition to the restrictions contained in this Article, each Lot is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing but not limited to the following:

- a. Use of Common Areas.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of portions of Dwellings such as roofs, windows, doors, porches, etc. that are visible from the street, Common Areas, or other Dwellings.
- f. Landscaping and maintenance of yards.
- g. The Ownership of Lots.
- h. The occupancy and leasing of Dwellings.
- i. The types, sizes, numbers, locations, and behavior of animals at the Property.
- j. The types, sizes, numbers, conditions, uses, appearances, and locations of motorized and recreational vehicles on the Property.
- k. Disposition of trash and control of vermin, termites, and pests.
- l. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Owners

or Residents.

- 5.3 **ANIMALS.** No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for a commercial purpose or for food. Customary domesticated household pets may be kept subject to the Rules. Unless the Rules provide otherwise:
- 5.3.1 **Number.** No more than a combination of three (3) dogs and cats may be maintained in each dwelling. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board.
- 5.3.2 **Disturbance.** Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other lots. No pet may be permitted to bark, howl, whine, screech, or make other loud noises for extended or repeated periods of time.
- 5.3.3 **Indoors/Outdoors.** Subject to the limited yard privilege below, a permitted pet must be maintained inside the dwelling, and may not be kept within a courtyard or a fenced yard. No pet is allowed on the Common Areas unless carried or leashed.
- 5.3.4 **Limited Yard Privilege.** Dogs and cats may be kept within a fenced yard only if they do not disturb or annoy people on the Property. The Board is the sole arbiter of what constitutes a disturbance or annoyance. If the Board determines that a dog or cat disturbs people, the Board may permanently revoke the privilege of keeping the dog or cat on a patio or in a fenced yard. Thereafter, the dog or cat must be maintained inside the Dwelling.
- 5.3.5 **Pooper Scooper.** Owners and Residents are responsible for the removal of his pet's wastes from the Property Unless the Rules provide otherwise, Owners and Residents must prevent his pet from relieving itself on Common Property or the Lot of another Owner.
- 5.3.6 **Liability.** An Owner is responsible for any property damage, injury, or disturbance caused or inflicted by an animal kept on the Lot. The Owner must compensate any person injured by the animal. The Owner of a Lot on which an animal is kept is deemed to indemnify and to hold harmless the Board, the Association, and other Owners and Residents, from any loss, claim, or liability resulting from any action of the animal or arising by reason of keeping the animal on the Property.
- 5.4 **ANNOYANCE.** No Lot or Common Area may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the

desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of other Owners or Residents or theft guests; (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The Board has the sole authority to determine what constitutes an annoyance.

- 5.5 **APPEARANCE**. Both the Lot and the Dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring lots. The ACC is the sole arbiter of acceptable appearance standards.
- 5.6 **CHRISTMAS DECORATIONS**. Christmas decorations shall not be allowed prior to November 15th or after January 31st.
- 5.7 **DRAINAGE**. No person may interfere with the established drainage pattern over any part of the Property without the Board's prior written approval of an adequate alternative provision for proper drainage.
- 5.8 **DRIVEWAYS**. The driveway portion of a Lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the board's prior approval, a driveway may not be used: (1) for storage purposes, including storage of boats, recreational vehicles, trailers, and inoperable vehicles; or (2) for repair or restoration of vehicles.
- 5.9 **FIRES**. Except for outdoor fireplaces and barbecue fires, no exterior fires on the Property are permitted.
- 5.10 **GARAGES**. Without the Boards prior written approval, the original garage area of a Lot may not be enclosed or used for any purpose that prohibits the parking of at least two (2) operable vehicles therein.
- 5.11 **LANDSCAPING**. No person may perform landscaping, planting, or gardening on Common Property without the Board's prior written authorization.
- 5.12 **LEASING OF DWELLINGS**. An Owner may lease the Dwelling on his Lot provided the lease period is at least one (1) year. Whether or not it is so stated in a lease, every lease is subject to the Documents. An Owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto. Failure by the tenant or his invitees to comply with the Documents, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of

the tenant. The Owner of a leased Dwelling is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

- 5.13 **NOISE & ODOR.** A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Lots. The Rules may prohibit the use of noise-producing security devices and wind chimes.
- 5.14 **OCCUPANCY.** Other than the completed principle Dwelling, no thing or structure on a Lot (including the garage) may be occupied as a residence at any time by any person.
- 5.15 **RESIDENTIAL USE.** The use of a Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a resident from using a Dwelling for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the Dwelling as a residence; (2) the uses conform to all applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the Lot by employees or the public in quantities that materially increase the number of vehicles parked on the street; and (5) the uses do not interfere with Residents' use and enjoyment of neighboring Lots.
- 5.16 **SCREENING.** The Owner of a Lot must screen the following items from the view of the public and neighboring Lots and Dwellings in a manner acceptable to and approved in writing by the ACC:
- a. Yard maintenance equipment.
 - b. Wood piles and compost piles.
 - c. Vehicles, boats, recreational vehicles and trailers.
 - d. Garbage cans and refuse containers.
 - e. Anything determined by the board to be unsightly or inappropriate for the Property
- 5.18 **SIGNS.** No signs advertising Dwellings for sale or lease, other advertising signs, or unsightly objects may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Dwelling without the Boards prior written approval. The Board's approval may specify the location, nature, appearance, dimensions,

number, and time period of any advertising sign. The Association may effect the removal of any sign that violates this section without liability for trespass or any other liability connected with the removal. Notwithstanding the foregoing, and subject to the Board's disapproval, an Owner may erect one professionally made sign per Lot of not more than six (6) square feet advertising a Dwelling for sale or lease.

- 5.19 **TELEVISION**. Each resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Without the prior written consent of the ACC, no person may install the following equipment on a Lot if it would be visible from a street: an antenna, microwave or satellite dish, receiving or transmitting tower; provided, however, that direct broadcast satellites (DBS) and multipoint distribution service (MDS) antennas that are eighteen (18) inches or less in diameter may be installed, subject to the right of the Association to adopt reasonable Rules for the location, appearance, camouflaging, installation, maintenance, and use of the antennas, masts, and dishes to the extent permitted by public law.
- 5.20 **TEMPORARY STRUCTURES**. Improvements or structures of a temporary or mobile nature, such as trailers, tents, shacks, barns or other outbuildings shall not be used for human habitation. However, the ACC may authorize an Owner's contractor to maintain a temporary structure (such as a portable toilet or construction trailer) on the Lot during approved construction. Further, the Owner may place recreational vehicles or equipment on a Lot provided it is in accordance with the Rules.
- 5.21 **VEHICLES**. All vehicles on the Property, whether owned or operated by the Residents or their guests, are subject to this Section and Rules adopted by the Board. No truck larger than 3-quarters of a ton, vehicle with advertising signage, motor home, camper, bus, trailer, boat, aircraft, inoperable vehicle, or any other similar vehicle or any vehicular equipment, mobile or otherwise, which the Board deems to be a nuisance, unsightly, or inappropriate may be kept, parked, or stored on Common Areas or an Owner's driveway without prior Board approval. The foregoing restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a Dwelling. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. Provided, however that recreational vehicles and equipment may be parked in the backyards of property if screened from public view as described herein. All vehicles on the Property, whether owned or operated by the Residents or their guests must be parked only in the Owner's driveway or garage. No vehicle shall be left inoperative on any Lot for a period of more than three (3) days. The Association may effect the removal of any vehicle in violation of this section or the Rules without liability to the Owner or operator of the vehicle.
- 5.22 **LAUNDRY**. The hanging of laundry from any area of a Lot which placed the laundry within public view is prohibited.

- 5.23 **BUILDING MATERIALS.** No building materials of any kind or character shall be placed or stored upon any lot until the owner is ready to commence construction of the improvements requiring such materials. Building materials shall not be placed or stored in the street or between the curb and property lines. Upon completion of the improvements requiring such materials, all remaining building materials and refuse shall be removed from the subdivision.

**ARTICLE 6
ASSOCIATION AND MEMBERSHIP RIGHTS**

- 6.1 **THE ASSOCIATION.** The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a Property Owners Association and a nonprofit corporation organized under the laws of the State of Arkansas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Documents, The Association comes into existence on the earlier of (1) issuance of its corporate charter or (2) the initial levy of Assessments against the Lots and Owners. The Association will continue to exist at least as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.
- 6.2 **GOVERNANCE.** The Association will be governed by a Board of Directors initially appointed by the Declarant and after the Declarant Control Period, elected by the members. Unless the Association's Bylaws or Articles of Incorporation provide otherwise, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the Bylaws. Unless the Documents provide otherwise, any action requiring approval of the members may be approved in writing by Owners of at least a majority of the lots, or at a meeting of the Association by Owners representing at least a majority of the votes that are represented at the meeting.
- 6.3 **MEMBERSHIP.** Each Owner is a member of the Association, Ownership of a Lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from Ownership of the Lot, The board may require satisfactory evidence of transfer of Ownership before a purported owner is entitled to vote at meetings of the Association. If a Lot is owned by more than one person or entity, each co-owner is a member of the Association and may exercise the membership rights appurtenant to the Lot. A member who sells his Lot under a contract for deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, the contract seller remains liable for all Assessments attributable to his Lot until fee title to the Lot is transferred.

- 6.4 **VOTING.** Each Lot has one (1) vote. The vote or votes appurtenant to each Lot may not be divided and must be cast in unison. Cumulative voting is not allowed. Votes may be cast by written proxy, according to the requirements of the Association's Bylaws. Appendix B contains an exception to the number of votes during the Development Period.
- 6.5 **BOOKS & RECORDS.** The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying within ten (10) days of a Member's written request to review the same, at the Member's expense.
- 6.6 **INDEMNIFICATION.** The Association indemnifies every officer, director, and committee member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a common expense, the Association will maintain adequate general liability and directors and officers' liability insurance to fund this obligation, if it is reasonably available.
- 6.7 **OBLIGATIONS OF OWNERS.** Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:
- 6.7.1 **Information.** Within thirty (30) days after acquiring an interest in a Lot, within thirty (30) days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information (1) a copy of the recorded deed by which Owner has title to the lot; (2) the Owners mailing address, phone number(s) and email address, and vehicle(s) license number(s); (3) any mortgagee's name, address, and loan number; (4) the name, phone number(s) of any resident other than the Owner; (5) the name, mailing address, phone number(s) and email address of Owner's managing agent, if any.
- 6.7.2 **Pay Assessments.** Each owner will pay Assessments properly levied by the Association against the Owner or his Lot, and will pay regular Assessments without demand by the Association.
- 6.7.3 **Comply.** Each Owner will comply with the Documents as amended from time to time.

6.7.4 **Reimburse**. Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a Resident of the Owner's lot, or the Owner or Resident's family, guests, employees, contractors, agents, or invitees.

6.7.5 **Liability**. Each Owner is liable to the Association for violations of the Documents by the Owner, a resident of the Owner's lot, or the Owner or Resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

ARTICLE 7 COVENANT FOR ASSESSMENTS

7.1 **PURPOSE OF ASSESSMENTS**. The Association will use Assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

7.2 **PERSONAL OBLIGATION**. An Owner is obligated to pay Assessments levied by the Board against the Owner or his Lot. An Owner makes payment to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt himself from his Assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

7.3 **TYPES OF ASSESSMENTS**. There are three (3) types of assessments: Regular, Special and Individual.

7.3.1 **Regular Assessments**. Each Lot is liable for its proportionate share of the Association's annual budget. If the board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined. Regular Assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- a. Maintenance, repair, and replacement, as necessary, of the Common Area.

- b. Utilities billed to the Association for the Common Areas.
- c. Services billed to the Association and serving all Lots.
- d. Taxes on property owned by the Association.
- e. Management, legal, accounting, auditing, and professional fees for services to the Association.
- f. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- g. Premiums and deductibles on insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including fidelity bonds and directors and officers liability insurance.
- h. Contributions to the reserve funds.
- i. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

7.3.2 **Special Assessments.** In addition to Regular Assessments, and subject to the Owners control for Assessment increases, the Board may levy one or more Special Assessments against all Lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special assessments do not require the approval of the Owners, except that Special Assessments for the following purposes must be approved by Owners representing at least a majority of the votes in the Association:

- a. Acquisition of real property, other than the purchase of a Lot at the sale foreclosing the Association's lien against the Lot.
- b. Construction of additional improvements within the Property, but not replacement of original improvements.
- c. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

7.3.3 **Individual Assessments.** In addition to Regular and Special Assessments, the Board may levy an Individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to: vacant lot maintenance expense, interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an Owner or his Lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; transfer fees and resale certificate fees; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefit received.

7.4 **RATES OF ASSESSMENTS.**

7.4.1 **Regular and Special Assessments.** The Owners' share of Regular and Special Assessments is the same for all Lots, whether vacant or improved.

7.4.2 **Declarant and Builder Lots.** Notwithstanding the preceding subsections, a Lot that is owned by Declarant or Builders during the Development Period is eligible for the assessment exemption in Appendix B.

7.5 **ANNUAL BUDGET.** The Board will prepare and approve an estimated Annual Budget for each fiscal year. The Annual Budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the Annual Budget available to an Owner of each Lot, although failure to receive an Annual Budget does not affect an Owner's liability for Assessments.

7.6 **DUE DATE.** Regular Assessments are due annually on the date designated by the Board, Special and Individual Assessments are due on the date stated in the Notice of Assessment or, if no date is stated, within ten (10) days after notice of the Assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

7.7 **CONTROL FOR ASSESSMENT INCREASES.** This Section of the Declaration may not be amended without the approval of Owners of at least sixty-seven (67) percent of the Lots. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget:

7.7.1 **Veto Increased Dues.** At least thirty (30) days prior to the effective date of an increase in Regular Assessments, the Board will notify the Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the increase. The

increase will automatically become effective unless Owners representing at least a majority of the votes in the Association disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

7.7.2 **Veto Special Assessment.** At least thirty (30) days prior to the effective date of a Special Assessment, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the Special Assessment. The Special Assessment will automatically become effective unless Owners representing at least a majority of the votes in the Association disapprove the special Assessment by petition or at a meeting of the Association.

7.8 **RESERVE FUNDS.** The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association will budget for reserves and use its best efforts to fund reserves out of regular contributions.

7.8.1 **Operations Reserves.** The Association will maintain Operations Reserves at a level sufficient to cover the cost of operational or maintenance emergencies or contingencies, including the full amount of deductibles on insurance policies maintained by the Association.

7.8.2 **Common Area Reserves.** The Association will maintain Replacement and Repair Reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Areas.

7.9 **ASSOCIATION'S RIGHT TO BORROW MONEY.** With the exception of the rights reserved by Declarant in the Declarant Control Period described in Exhibit "B," the Association is granted the right to borrow money only upon the consent of Owners representing at least a majority of the votes in the Association and the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

7.10 **ASSESSMENT LIEN.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for Assessments attributable to a period prior to the date he purchased his Lot.

- 7.10.1 **Superiority of Assessment Lien.** The Assessment Lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities; (2) a recorded deed of trust lien or mortgage securing a loan for construction of the original Dwelling; and (3) a first or senior purchase money mortgage or deed of trust lien recorded before the date on which the delinquent Assessment became due.
- 7.10.2 **Effect of Foreclosure.** If foreclosure of a superior lien extinguishes the Association's claim against the Lot for unpaid Assessments that became due before the sale, it does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale is liable for Assessments coming due from and after the date of the sale. If an owner fails to pay Assessments due to the Association, the Owner may lose title to the Lot if the Association forecloses its Assessment lien against the Lot.
- 7.10.3 **Perfection of Lien.** The Association's lien for Assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Benton County real property records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner.
- 7.10.4 **Power of Sale.** By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of non-judicial sale in connection with the Association's assessment lien. The board may appoint, from time to time, an officer, agent, trustee, substitute trustee, or attorney to exercise the power of sale on behalf of the Association. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a board meeting.
- 7.10.5 **Foreclosure of Lien.** The assessment lien may be enforced by judicial or non-judicial foreclosure. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in the Arkansas Code, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey the same.

ARTICLE 8
EFFECT OF NONPAYMENT OF ASSESSMENTS AND
VIOLATION OF THE DOCUMENTS

- 8.1 **COLLECTING DELINQUENT ASSESSMENTS.** Owners who honor their obligations to the Association should not be burdened by Owners who default. The Board is responsible for taking action to collect delinquent Assessments. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.
- 8.1.1 **Delinquency.** An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date.
- 8.1.2 **Notice to Mortgagee.** The Board may notify and communicate with the holder of any lien against a Lot regarding the Owner's default in payment of Assessments.
- 8.1.3 **Interest.** Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the maximum permitted by law. Interest is an Individual Assessment.
- 8.1.4 **Late Fees.** Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time. Late fees are an Individual Assessment.
- 8.1.5 **Costs of Collection.** The Owner of a Lot against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorney's fees and processing fees charged by the manager. Collection costs are an Individual Assessment.
- 8.1.6 **Acceleration.** If an Owner defaults in paying an Assessment that is payable in installments, the Board may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.
- 8.1.7 **Suspension of Use and Vote.** If an Owner's account has been delinquent for at least thirty (30) days, the Board may suspend the right of Owners and Residents to use Common Areas and common services during the period of delinquency. The Board may not suspend an Owner or Resident's right of access to the Lot. The Board may also suspend the right to vote appurtenant to the Lot. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments.
- 8.1.8 **Money Judgment.** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association's lien for Assessments.

8.1.9 **Foreclosure of Assessment Lien.** As provided by this Declaration, the Association may foreclose its lien against the Lot by judicial or non-judicial means.

8.1.10 **Application of Payments.** The Board may adopt and amend policies regarding the application of payments. The Board may refuse to accept partial payment, i.e., less than the full amount due and payable. The Board may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Board's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Lot's account.

8.2 **ENFORCING THE DOCUMENTS.** The remedies provided in this Section for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following right to enforce the Documents:

8.2.1 **Nuisance.** The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

8.2.2 **Fine.** The Association may levy reasonable charges, as an Individual Assessment, against an Owner and his Lot if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and do not constitute a waiver or discharge of the Owners obligations under the Documents.

8.2.3 **Suspension.** The Association may suspend the right of Owners and Residents to use Common Areas for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

8.2.4 **Self-Help.** The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the

violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not demolish an item of substantial construction on a Lot without judicial proceedings.

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

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

8.3 **NOTICE AND HEARING.** Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard before the Board. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional procedures and requirements for notices and hearing.

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

ARTICLE 9 MAINTENANCE AND REPAIR OBLIGATIONS

9.1 **OVERVIEW.** Generally, the Association maintains the Common Areas, and the Owner maintains his Lot and Dwelling. If an Owner fails to maintain his Lot, the Association may perform the work at the Owner's expense.

- 9.2 **ASSOCIATION MAINTENANCE.** The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs, and replaces, as a Common Expense, the portions of the Property listed below, regardless of whether the portions are on Lots or Common Areas.
- a. All Common Areas.
 - b. Real and personal property owned by the Association but which is not a Common Area, such as a Lot owned by the Association.
- 9.3 **OWNER'S RESPONSIBILITY.** Every owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:
- 9.3.1 **Lot Maintenance.** Each Owner, at the Owner's expense, must maintain his Lot and all improvements on the Lot, including but not limited to the Dwelling, fences, gates, yards, sidewalks, and driveways. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each Owner is expected to maintain his Lot at a level, to a standard, and with an appearance that is commensurate with the Property. Each Owner will comply with any standards established by the Association for the frequency and duration of watering the yards.
 - 9.3.2 **Avoid Damage.** An Owner may not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.
 - 9.3.3 **Responsible for Damage.** An Owner is responsible for his own willful or negligent acts and those of his or the Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the Common Areas or the property of another Owner.
- 9.4 **OWNER'S DEFAULT IN MAINTENANCE.** If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and his Lot. In case of an emergency, however, the Board's responsibility to give the Owner written notice may

be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

ARTICLE 10 INSURANCE

- 10.1 **GENERAL PROVISIONS.** All insurance affecting the Property is governed by the provisions of this Article, with which the Board will make every reasonable effort to comply. The cost of insurance coverage's and bonds maintained by the Association is an expense of the Association, Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Arkansas. The Association must be the named insured on all policies obtained by the Association. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally;
- 10.1.1 **Notice of Cancellation or Modification.** Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least ten (10) days' prior written notice to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.
- 10.1.2 **Deductibles.** An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an Owner or Resident or their invitees, the Owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.
- 10.2 **PROPERTY.** To the extent it is reasonably available, the Association will obtain blanket all-risk insurance for insurable Common Area improvements. If blanket all-risk insurance is not reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any Lot owned by the Association.
- 10.3 **GENERAL LIABILITY.** The Association will maintain a commercial general liability insurance policy over the Common Areas--expressly excluding the liability of each Owner and Resident within his Lot -- for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insured's denial of an Owner's claim because of negligent acts of the Association or other Owners.

- 10.4 **DIRECTORS & OFFICERS LIABILITY.** To the extent it is reasonably available, the Association will maintain directors and officers' liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.
- 10.5 **OTHER COVERAGES.** The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by an Underwriting Lender for the Property as long as an Underwriting Lender is a Mortgagee or an Owner.

ARTICLE 11 MORTGAGEE PROTECTION

- 11.1 **INTRODUCTION.** This Article establishes certain standards for the benefit of Mortgagees, and is written to comply with Fannie Mae's Selling Guide in effect at the time of drafting. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the Board, without approval of Owners or Mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls.
- 11.2 **MORTGAGEE RIGHTS.**
- 11.2.1 **Termination.** An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least fifty-one (51) percent of Mortgagees, in addition to the required consents of Owners. The approval of a Mortgagee is implied when the Mortgagee fails to respond within thirty (30) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.
- 11.2.2 **Right of First Refusal.** Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Lot does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.
- 11.3 **INSURANCE POLICIES.** If an Underwriting Lender is a Mortgagee or an owner, at the request of the Underwriting Lender the Association will comply with the Underwriting

Lender's insurance requirements to the extent the requirements are reasonable and available, and do not conflict with other insurance requirements of this Declaration.

ARTICLE 12 AMENDMENTS

- 12.1 **CONSENTS REQUIRED.** As permitted by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by the Board alone. Otherwise, amendments to this Declaration must be approved by Owners of at least a Majority of the Lots.
- 12.2 **METHOD OF AMENDMENT.** For an amendment that requires the approval of Owners, this Declaration may be amended by seventy-five (75) percent or more of the Lots, provided the Owner of each Lot is given the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.
- 12.3 **EFFECTIVE.** To be effective, an amendment must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if required, Eligible Mortgagees; and (3) recorded in the real property records of Benton County, Arkansas.
- 12.4 **DECLARANT PROVISIONS.** No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent
- 12.5 **MERGER.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners of at least a Majority of the Lots. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established upon any other property under its jurisdiction. No merger or consolidation, however, will affect a revocation, change, or addition to the covenants established by this Declaration within the Property.
- 12.6 **TERMINATION.** Termination of this Declaration is according to the following provisions: In the event of substantially total damage, destruction, or public

condemnation of the Property, an amendment to terminate must be approved by owners of at least sixty-seven (67) percent of the Lots. In the event of public condemnation of the entire Property, an Amendment to Terminate may be executed by the Board without a vote of Owners. In all other circumstances an Amendment to Terminate must be approved by Owners of at least eighty (80) percent of the Lots.

- 12.7 **CONDEMNATION.** In any proceeding, negotiation, settlement, or agreement concerning condemnation of a Common Area, the Association will be the exclusive representative of the Owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of a Common Area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

ARTICLE 13 GENERAL PROVISIONS

- 13.1 **COMPLIANCE.** The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and all applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.
- 13.2 **NOTICE.** All demands or other notices required to be sent to an Owner or Resident by the terms of this Declaration may be sent by ordinary or certified mail, postage prepaid, to the party's last known address as it appears on the records of the Association at the time of mailing. If an Owner fails to give the Association an address for mailing notices, all notices may be sent to the Owners Lot, and the Owner is deemed to have been given notice whether or not he actually receives it.
- 13.3 **SEVERABILITY.** Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.
- 13.4 **CAPTIONS.** In all Documents, the captions of Articles and Sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer.
- 13.5 **APPENDIXES.** The appendixes listed below are attached to this Declaration and incorporated herein by reference. Because Appendix B of this Declaration is destined to become obsolete, beginning twenty (20) years after the date this Declaration is first recorded, the Board may restate, re-record, or re-publish this Declaration without

Appendix B, provided the other appendixes are not re-lettered. The automatic expiration and subsequent deletion of Appendix B does not constitute an amendment of this Declaration. The Appendixes to this Declaration include:

A - Description of Subject Land

B - Declarant's Representations and Reservations

- 13.6 **INTERPRETATION**. Whenever used in the Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.
- 13.7 **DURATION**. Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

SIGNED AND ACKNOWLEDGED

SIGNED on this 9th day of November, 2010.

FIRST WESTERN BANK

By: Stephen Hardie

Stephen Hardie, Vice President
Printed Name Title

FIDELITY NATIONAL BANK

By: [Signature]

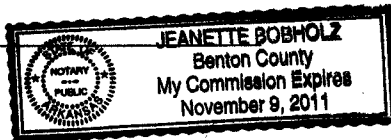
PHILIP BRICK, EVP
Printed Name Title

STATE OF ARKANSAS)
)
COUNTY OF BENTON)

On this 7th day of November 2010 came before the undersigned, a Notary Public within and for the State and County aforesaid, duly commissioned and acting, Stephen Hardin to me well known as the Vice President of FIRST WESTERN BANK and executed the above and foregoing Declaration of Covenants, Conditions and Restrictions for Edinburgh Subdivision on behalf of FIRST WESTERN BANK.

WITNESS my hand, at office, this day of 9th Nov, 2010.

Jeanette Bobholz
Notary Public
My Commission Expires _____

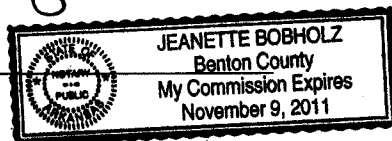


STATE OF ARKANSAS)
)
COUNTY OF Benton)

On this 9th day of November 2009 came before the undersigned, a Notary Public within and for the State and County aforesaid, duly commissioned and acting, Phillip Brunel to me well known as the EVP of FIDELITY NATIONAL BANK and executed the above and foregoing Declaration of Covenants, Conditions and Restrictions for Edinburgh Subdivision on behalf of FIDELITY NATIONAL BANK

WITNESS my hand, at office, this day of 9th Nov, 2010.

Jeanette Bobholz
Notary Public
My Commission Expires _____



APPENDIX A

DESCRIPTION OF SUBJECT LAND

Lots 1 - 90, and all common areas, of the Edinburgh Subdivision, as shown in Plat recorded in Plat Book 2009, at page 236.

Which Property has also been described as:

Tract A:

A part of the South 1/2 of the NE 1/4 of the SE 1/4 of Section 35, Township 19 North, Range 30 West, Benton County, Arkansas, described as beginning at a point 330.00 feet North from the SW Corner of the South 1/2 of the NE 1/4 of the SE 1/4 of said Section 35; run thence East 1320.00 feet; thence North 130.00 feet; thence North 67 degrees 42 minutes West 430.19 feet (Deed N 67° 30' W 436.0 feet), thence North 77 degrees 30 minutes West 170.00 feet; thence West 756.00 feet to the center of Concord Drive; thence South 330.00 feet to the Point of Beginning, containing 8.85 acres, more or less. Subject to Concord Drive on the West, a Water Line Easement described in Deed Record Book 633 at page 634 and all other covenants and easements of record.

Tract B:

A part of the NE 1/4 of the SE 1/4 of Section 35, Township 19 North, Range 30 West of the Fifth Principal Meridian, Benton County, Arkansas, and being more described as follows: Commencing at the NE corner of the NE 1/4 of the SE 1/4 of Section 35, Township 19 North, Range 30 West, said point being a found iron pin; thence South 00 degrees 21 minutes 41 seconds West 22.00 feet to a set iron pin, said iron pin being the True Point of Beginning; thence South 00 degrees 21 minutes 41 seconds West 806.36 feet to a set iron pin; thence North 67 degrees 20 minutes 15 seconds West 430.19 feet to a set iron pin; thence North 77 degrees 08 minutes 15 seconds West 170.00 feet to a set iron pin; thence South 89 degrees 22 minutes 02 seconds West 759.48 feet to a found iron pin in the Roadway of Concord Road; thence along said Roadway, North 00 degrees 16 minutes 57 seconds East 641.94 feet to a set iron pin; thence leaving said Roadway, South 88 degrees 40 minutes 03 seconds East 1324.42 feet to the True Point of Beginning, being subject to the Right of Way of Concord Road along the West side and to all other easements and right of ways of record.

Tract C:

A part of the South 1/2 of the NE 1/4 of the SE 1/4 of Section 35, Township 19 North, Range 30 West, Benton County, Arkansas, described as beginning at a point which is North 162.26 feet from the SW Corner of said 20.00 acre tract and running thence North 89 degrees 20 minutes 14 seconds East 1321.53 feet to a found iron pin; thence North 00 degrees 34 minutes 57 seconds East 165.00 feet; thence South 89 degrees 20 minutes 14 seconds West 1323.18 feet; thence South 167.74 feet to the point of beginning. Subject to Concord Drive on the West side thereof. Subject to a right of way easement 15.00 feet of equal and uniform width along the South side thereof.

APPENDIX B

DECLARANT REPRESENTATIONS & RESERVATIONS

B.1. GENERAL PROVISIONS.

- B.1.1. **Introduction.** Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then obsolete terms, Declarant is compiling the Declarant related provisions in this Appendix.
- B.1.2. **General Reservation & Construction.** Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any Mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between

this Appendix and any other Document, this Appendix controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

B.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of the Property, which is ultimately for the benefit and protection of Owners and Mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause and upon ninety (90) days' notice.

B.1.4. Definitions. As used in this Appendix and elsewhere in the Documents, the following words and phrases, when capitalized, have the following specified meanings:

- a. **"Builder"** means a person or entity which purchases, or contracts to purchase, a Lot from Declarant for the purpose of constructing a Dwelling for resale or under contract to an Owner other than Declarant.
- b. **"Declarant Control Period"** means that period of time during which Declarant controls the operation of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earliest of:
 - (1) Ten (10) years from date this Declaration is recorded.
 - (2) Four (4) months after title to one hundred (100) percent of the Lots that maybe created has been conveyed to Owners other than Builders.
 - (3) Two (2) years after Declarant ceases developing, constructing, or marketing the Property and the Lots.
 - (4) When, in Declarant's sole opinion, the Association is viable, self-supporting, and operational.
- c. **"Development Period"** means that period of time during which the Property is being developed, constructed, or marketed, and extends from the dale this Declaration is recorded until title to all of the Lots that may

be created have been conveyed to Owners other than Builders. The Development Period may not exceed twenty (20) years.

- B.2. **DECLARANT CONTROL PERIOD RESERVATIONS.** Declarant reserves the following powers, rights, and duties during the Declarant Control Period:
- B.2.1. **Officers & Directors.** During the Declarant Control Period, the number of directors-is three (3) and Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or Owners.
- B.2.2. **Budget Funding.** During the Declarant Control Period only, Declarant is responsible for the difference between the Association's operating expenses and the Regular Assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant will cease being responsible for the difference between the Association's operating expenses and the Assessments received from Owners other than Declarant.
- B.2.3. **Expenses of Declarant.** Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.
- B.2.4. **Budget Control.** During the Declarant Control Period, the right of Owners to veto Assessment increases or Special Assessments is not effective and may not be exercised.
- B.2.5. **Organizational Meeting.** At the first annual meeting of the ESPOA after the Development Period, or sooner at the Declarant's option, Declarant will call an organizational meeting of the members of the Association for the purpose of electing, by vote of the Owners, directors to the Board. Written notice of the organizational meeting must be given to an Owner of each Lot at least ten (10) days before the meeting. For the organizational meeting, Owners of twenty-five (25) percent of the Lots constitute a quorum.
- B.2.6. **Common Area.** At or prior to termination of the Declarant Control Period, Declarant will convey title to the real estate parcels of the Common Area to the Association by deed, with or without warranty. At the time of conveyance, the Common Areas will be free of encumbrance except for the property taxes accruing for the year of conveyance. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners.
- B.2.7. **Borrowing Money.** The Declarant is granted the right to borrow money during the Declarant Control Period on behalf of the Association. To assist its ability to

borrow, the Declarant is granted the right to encumber, mortgage, pledge, or deed in trust any of the Association's real or personal property, and the right to assign the Association's right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

B.3. Development Period Reservations. Declarant reserves the following Easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

B.3.1 Phasing. The Property is subject to expansion by phasing. During the Development Period, Declarant may annex additional land to the Property and subject it to the Declaration and the jurisdiction of the Association by recording an amendment of this Declaration, executed by Declarant, in the Real Property Records of Benton County, Arkansas. The amendment of annexation must include a legal description of the additional real property or a reference to the recorded Plat that describes the additional real property.

B.3.2. Weighted Votes. During the Development Period, each Lot owned by Declarant has twenty (20) votes. On termination of the Development Period and thereafter, each Lot owned by Declarant has the number of votes allocated to the type of Lot by this Declaration.

B.3.3. ACC. During the Development Period, Declarant has the absolute right to appoint the Architectural Control Committee, consisting of any number of persons who serve at the pleasure of Declarant, and who may be removed and replaced by Declarant. Notwithstanding the foregoing, during the Development Period -- after termination of Declarant Control, or earlier if Declarant permits -- the Board may appoint or serve as a "Modifications Committee" to respond exclusively to modifications of completed Dwellings that are owned by persons other than Declarant or Builders. A Modifications Committee may not involve itself with the approval of new on vacant Lots.

B.3.4. Deemed ACC Approval. During the Development Period, applications by Builders are deemed approved by the ACC if the ACC fails to respond in writing, whether negatively, affirmatively, or requesting information, within fifteen (15) days after the ACC's actual receipt of the Builder's application. In exercising Deemed Approval, the burden is on the Builder to document the ACC's actual receipt of the Builder's application. As it applies to Builders, this Subsection is a substitute for Section 4.5.1 of this Declaration.

B.3.5. **Amendment**. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any Mortgagee, for the following limited purposes:

- a. To add real property to the Property.
- b. To create Lots, Easements, and Common Areas within the Property, whether by purchase, acceptance of a gift or otherwise.
- c. To subdivide, combine, or reconfigure Lots owned by the Declarant or the Association.
- d. To change the designation of Lots.
- e. To convert Lots into Common Areas.
- f. To merge the Association with another Property Owners Association.
- g. To comply with requirements of an Underwriting Lender.
- h. To resolve conflicts, clarify ambiguities, and to correct inadvertent misstatements, errors, or omissions in the Documents.

B.3.6. **Completion**. During the Development Period, Declarant has: (1) the right to complete or make improvements indicated on the Plat; (2) the right to sell, dedicate, gift or lease any Lot owned by Declarant; and (3) an Easement and right to erect, construct, and maintain on and in the Common Area and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property.

B.3.7. **Promotion**. During the Development Period, for purposes of promoting, identifying, and marketing the Property, Declarant reserves (1) an easement and right to place and relocate signs, banners, flags, display Lighting, and seasonal landscaping on the Property; (2) the right to permit Builders to construct and use model homes on the Property; (3) the right to permit Builders to place signs and promotional materials on the Property; and (4) the right to exempt Builders from the sign restriction in this Declaration.

B.3.8. **Access**. During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for construction workers and suppliers and the home buying public in connection with the construction and active marketing of Lots and Dwellings by Declarant or Builders.

B.3.9. **Easements**. During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for drainage, landscaping, roads, trash removal, utilities and other purposes

necessary for the proper development and operation of the Property. Utilities may include, but are not limited to, water, sewer, electricity, gas, internet access, telephone, television and security.

B.3.10. **Assessments.** During the Development Period, Lots owned by Declarant and Builders are not subject to Assessment until the first full month after the date title to a Lot transfers to an Owner other than a Builder. After the Development Period, Declarant and Builders are liable for Assessments on each Lot owned in the same manner as any Owner.

B.4. **Successor Declarant.** Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Real Property Records of Benton County, Arkansas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

Book 2010 Page 58877
Recorded in the Above
DEED Book & Page
11/17/2010

Benton County, AR
I certify this instrument was filed on
11/17/2010 11:43:53AM
and recorded in DEED Book
2010 at pages 58839 - 58877
Brenda DeShields-Circuit Clerk