

Brenda DeShields-Circuit Clerk
Benton County, AR
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06/01/2007 4:15:39PM
Tran: 3542
Total Fees: \$89.00

Book 2007 Page 22257
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DEED Book & Page
06/01/2007

Recording Requested By:]
Cavern Springs Development, LLC]
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When Recorded, Mail To:]
]
Spectrum Management, LLC]
903 E. 104th Street, Suite 630]
Kansas City, MO 64131]
Attn: Amit Raizada]

(Above Space for Recorder's Use Only)

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR BRENTWOOD SUBDIVISION**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS FOR BRENTWOOD SUBDIVISION is made this 25th
day of May 2007, by Cavern Springs Development, LLC, an Arkansas limited liability company
(hereinafter "Developer"):

WITNESSETH:

WHEREAS, Developer owns certain real property described on Exhibit A attached
hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Developer intends to develop the Property as a private residential
subdivision to be known as the Brentwood Subdivision (the "Subdivision"), and desires to
provide for the orderly development of the Property by placing certain restrictions on the
Property which shall be for the use and benefit of Developer, its future grantees, successors and
assigns; and

WHEREAS, to provide for the preservation and enhancement of the Property's value
when and as the Property is developed, Developer subjected the Property to certain covenants
and restrictions as set forth in that certain Instrument entitled Declaration of Covenants,
Conditions and Restrictions for Brentwood Subdivision dated May 26, 2006 and recorded with
the Office of the Recorder of Deeds of Benton County, Arkansas on May 26, 2006 in Book 2006
at Page 26702, as amended by First Supplemental Declaration to Declaration of Covenants,
Conditions and Restrictions for Brentwood Subdivision dated November 28, 2006 recorded with
the Office of the Recorder of Deeds of Benton County, Arkansas on December 4, 2006 in Book
2006 at Page 57299 (the "Original Restrictions"); and

WHEREAS, Developer desires to amend and restate the Original Restrictions in their
entirety to subject the Property to the covenants and restrictions as set forth in this Amended and

Restated Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision, each and all of which are hereby declared to be for the benefit of the Subdivision and each and every Owner of any and all parts thereof; and

WHEREAS, Section 10.3(b) of the Original Restrictions permits Developer to amend the Original Restrictions at any time during the "Control Period" (as defined in the Original Restrictions), and the date of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision is within the Control Period; and

WHEREAS, Developer deems it desirable and for the efficient preservation of the value and amenities in the Subdivision, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering the Common Areas (as hereinafter defined), administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement; and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Arkansas, the Brentwood Property Owners' Association, an Arkansas nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter;

NOW, THEREFORE, in consideration of the foregoing recitals, Developer, for itself and for its successors and assigns, and for its future grantees, hereby amends and restates the Original Restrictions in its entirety to read as set forth in this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision, and in that regard agrees and declares that all of the Property, including all Lots and Common Areas as shown on the Plat (all, as hereinafter defined) shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth and shall be subject to the covenants, conditions, easements and charges set forth below, which shall run with the land and shall be binding on all present and future owners, and shall inure to the benefit of each owner of a Lot, Developer and the Association.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the following meanings:

1.1 "Architectural Control Committee" means (i) prior to the end of the Control Period, Developer (or its designees or assignees from time to time) and (ii) on and after the end of the Control Period, the Board (or its designees in accordance with the Bylaws).

1.2 "Association" means The Brentwood Property Owners' Association, an Arkansas not-for-profit corporation, its successors and assigns.

1.3 "Board" means the Board of Directors of the Association.

1.4 “Builder” means any builder, contractor, investor, or other Person who purchases a Lot for the purpose of constructing improvements thereon for immediate resale, excluding Developer.

1.5 “Certificate of Substantial Completion” means a certificate executed, acknowledged and recorded by Developer stating that all, or in Developer’s absolute discretion a substantial number, of the Lots in the Subdivision have been sold and the Single-Family Residences to be constructed thereon are substantially completed. The recording of a Certificate of Substantial Completion in the Recording Office shall constitute record notice that the Control Period has ended and Developer has turned control of the Subdivision over to the Association.

1.6 “City” means the City of Cave Springs, Benton County, Arkansas.

1.7 “Common Areas” mean (i) private street right-of-ways, (ii) private streets and street islands, (iii) gateways, entrances, monuments and other ornamental areas and related utilities, street lights, sprinkler systems and landscaping constructed or installed by or for Developer at or near the entrance of any street or along any street shown on the Plat, and, any easements related thereto, (iv) any and all storm water drainage or detention areas as shown on the Plat, and (v) all other property, including any and all green space, parks, improvements, pools, fences or other structures within the designated Common Areas, which are intended for the use and benefit of all of the Owners, as may be designated or shown on the Plat or any amendment thereto.

1.8 “Control Period” means that period of time during which Developer controls issues related to the Subdivision, including, without limitation the Architectural Control Committee and the operation of the Association. The duration of the Control Period will be from the date the Original Declaration was recorded for a maximum period not to exceed the earliest of:

- (a) Ten (10) years from the date this Declaration is recorded;
- (b) One (1) month after title to all of the Lots (including any additional Lots created pursuant to Section 2.2) have been conveyed to Owners other than Builders;
- (c) Three (3) years after Developer ceases developing, constructing or marketing the Lots; or
- (d) The date Developer records a Certificate of Substantial Completion in the Recording Office.

The rights reserved to Developer during the Control Period are intended to preserve the orderly build out and sellout of the Lots, which is ultimately for the benefit of the Owners.

1.9 “Corner Lot” means any Lot which abuts or adjoins more than one street within the Subdivision other than at its rear boundary line.

1.10 “County” means the County of Benton, Arkansas.

1.11 “Declaration” means this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision as the same may be amended and/or restated from time to time, together with any and all Supplemental Declarations which may be recorded by Developer from time to time.

1.12 “Developer” means Cavern Springs Development, LLC, an Arkansas limited liability company, and includes its successors and assigns.

1.13 “Exterior Structure” means any structure or other improvement erected or maintained on a Lot other than the main residential structure, and shall include, without limitation, any deck, gazebo, greenhouse, doghouse or other animal shelter or run, outbuilding, fence, patio wall, privacy screen, boundary or retaining wall, bridge, patio enclosure, tennis court, basketball court, swimming pool, hot tub, basketball goal, swing set, trampoline, sand box, playhouse, tree house or other recreational or play structure.

1.14 “Lot” means any parcel or portion of the Property designated as a lot on the recorded Plat of the Subdivision, or any additions thereto, with the exception of the Common Areas.

1.15 “Mortgage” means a security interest, deed of trust, or lien granted by an Owner in and to, or against, a Lot and improvements thereon to secure the repayment of a loan, and duly filed for record in the Recording Office.

1.16 “Mortgagee” means the Person who holds a Mortgage as security for repayment of a debt.

1.17 “Owner” means the record owner in fee of any Lot, whether one or more Persons, including Developer, and for purposes of all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees. The foregoing does not include any Person who holds an interest in a Lot merely as security for the performance of an obligation.

1.18 “Person” means a natural individual or any partnership, joint venture, trust, limited liability company, unincorporated organization, association, corporation, institution, or other legal entity.

1.19 “Plans and Specifications” means any and all documents designed to guide or control the construction or installation of any improvement on any Lot, or other proposal for the same, including but not limited to those indicating size, shape, location, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

1.20 “Plat” means, collectively, each plat of the Property filed of record in the Recording Office covering and describing any or all of the Subdivision and any additions thereto.

1.21 “Project” means the Property and any additional real estate submitted or subjected to this Declaration and any improvements now or hereafter constructed thereon.

1.22 “Property” means the real property more fully described on Exhibit A attached hereto and incorporated herein by this reference, and any additional real property which may be made subject to this Declaration. References herein to “Property” shall also include any portion thereof as the context may require.

1.23 “Public Purchaser” means the Person who initially becomes an Owner of any Lot other than Developer or a Builder.

1.24 “Recording Office” means the Office of the Recorder of Deeds of Benton County, Arkansas.

1.25 “Rules” means those rules and regulations as passed and promulgated by the Association, or the Board acting on behalf thereof, under the authority granted by this Declaration, a Supplemental Declaration, the Articles of Incorporation or the Bylaws of the Association.

1.26 “Single-Family Residence” means a structure containing one (1) dwelling unit only and occupied by not more than one (1) family.

1.27 “Supplemental Declaration” means any amendment to this Declaration or any separate or additional declaration of covenants, conditions and restrictions pertaining or applicable to the Property which may hereafter be recorded pursuant to the terms of this Declaration.

1.28 “Visible from Neighboring Property” means, with respect to any given object, that such object located on a Lot that is or would be visible to a person six (6) feet tall, standing on any part of an adjoining Lot at an elevation no greater than the elevation of the base of the object being viewed.

The definitions in this Declaration shall apply equally to both the singular and plural forms of the terms defined.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Existing Property.** The Property is and shall be held, transferred, sold, conveyed, encumbered and occupied subject to this Declaration and the Bylaws of the Association. Each grantee of a portion of the Property and each Owner of a Lot, by accepting a deed thereto, agrees to, acknowledges and accepts all terms contained in this Declaration and the Bylaws of the

Association as the same may be amended from time to time.

2.2 **Additional Property.** Additional land may be subjected to this Declaration in the following manner:

(a) Developer shall have the right, but not the obligation, to subject additional land to the terms of this Declaration regardless of whether said land is presently owned by Developer or subsequently acquired from time to time. Under no circumstances shall this Declaration, or any Supplemental Declaration, obligate Developer to subject additional land to this Declaration or to adhere to any plan of development in any subsequent phase of development to any additional or adjoining land, or in any way preclude Developer from conveying any land owned by Developer which may adjoin the Property and which has not been made subject to this Declaration, or Supplemental Declaration as provided herein, free and clear of this Declaration or any Supplemental Declaration.

(b) Additional land may be subjected to this Declaration by Developer filing of record in the Recording Office a Supplemental Declaration describing the additional land and a final plat showing and describing the additional land which identifies the lots and Common Areas contained therein, which right shall include any re-plat or amended plat of the Subdivision. Thereafter, the Owners of any Lot within the additional land, including Developer, shall immediately be entitled to all privileges and be subject to all of the obligations of this Declaration, as amended from time to time, to the extent of and in accordance with the terms set forth in such Supplemental Declaration.

2.3 **Covenants Running with Land; Enforcement.**

(a) The agreements, restrictions, reservations and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions, reservations and other provisions; provided, however, that neither Developer, the Association nor any other Person shall be obligated to enforce any such agreements, restrictions, reservations or other provisions. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the agreements, restrictions and reservations set forth herein as applied to the Lot owned by such Owner. No agreement, restriction, reservation or other provision herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed or allowed to continue during his or her ownership; provided, however, that (i) the immediate grantee from the Builder of a Single-Family Residence on a Lot shall be personally responsible for breaches committed during such Builder's ownership of such Lot, and (ii) an Owner shall be personally responsible for any breach committed by any prior Owner of the Lot to the extent notice of such breach was filed of record, as provided in Section 2.3(c) hereof, prior to the transfer of ownership.

(b) Developer, the Association and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions, reservations and other provisions herein set forth, in addition to any action at law for damages. To the extent permitted by law, if Developer or the Association shall be successful in obtaining a judgment or consent decree in any such court action, Developer and/or the Association shall be entitled to receive from the breaching party as part of the judgment or decree the legal fees and expenses incurred by Developer and/or the Association with respect to such action.

(c) Whenever Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, Developer or the Association may file with the Recording Office a certificate setting forth public notice of the nature of the breach and the Lot involved.

(d) No delay or failure by any Person to exercise any of its rights or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation.

(e) In addition to the specific provisions of this Declaration that allow Developer to make certain decisions or give permission for certain matters, Developer may, under special situations or circumstances as determined by it, allow variances or waivers of the requirements or terms set forth in this Declaration. Any such variation or waiver so granted by Developer shall not constitute a waiver of such requirement or term in any other situation or under any other circumstances.

(f) Developer and the Association, through its authorized representative(s), may at any reasonable time enter any Lot, without being deemed guilty of trespass, for the purpose of inspecting the Lot and any improvements thereon to ascertain compliance or noncompliance with the requirements and terms of this Declaration and/or any plans approved hereunder.

ARTICLE III COMMON AREAS

3.1 **Creation of Common Areas.** Developer shall have the right (but is not obligated) to provide Common Areas for the use and benefit of the Subdivision. The size, location, nature and extent of improvements and landscaping, and all other aspects of the Common Areas that are provided by Developer shall be determined by Developer in its absolute discretion.

3.2 **Grant of Easement.** Developer, the Owners of Lots and the Association shall have the right and easement of enjoyment in and to all of the Common Areas and the improvements thereon, but only for the intended use or uses thereof. Such right and easement shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto, this Declaration, any Supplemental Declaration, the Articles of

Incorporation and Bylaws of the Association, and any Rules adopted by the Association as amended from time to time. Each Owner uses Common Areas and related amenities at such Owner's own risk. By purchasing a Lot, each Owner releases and holds Developer and the Association harmless with respect to any damages suffered by such Owner related to the use of any Common Areas and related amenities.

3.3 Conveyance of Common Areas. Developer covenants and agrees to convey all of its right, title and interest in the Common Areas (except any part thereof that is within any Lot) to the Association, without any cost to the Association, not later than thirty (30) days after the end of the Control Period. If Developer fails to execute and record a separate deed conveying the Common Areas to the Association within thirty (30) days following the end of the Control Period, this Article III of the Declaration shall be deemed a conveyance to the Association of all of Developer's right, title and interest in and to the Common Areas. Any improvements to be constructed by Developer on the Common Areas shall be constructed on a timeframe determined by Developer, in Developer's sole discretion.

3.4 Maintenance of Common Areas. The Association, by and through the Board, shall have the authority and the responsibility, for the term of this Declaration and all renewals or extensions thereof, to provide for the maintenance and repair of the Common Areas (including the purchase of liability insurance providing coverage to the Common Areas and the payment of real estate taxes assessed to the Common Areas), to contract with such firms of Persons as it deems necessary and desirable, and to hire Persons to perform such functions, including management, clerical and administrative duties, as it deems necessary and desirable for the maintenance and repair of the Common Areas in accordance with the terms of this Declaration, the Bylaws of the Association, and the requirements of the City and the County. The Association is hereby granted an easement of access and entry to every Lot and the Common Areas to perform maintenance, enforce architectural and use restrictions and to perform any other duties required of the Association.

3.5 Utility Easements. Notwithstanding any term or provision of this Article III to the contrary, the right and easement of enjoyment of the Owners as to any of the Common Areas shall be subject to the right of Developer, and after the expiration of the Control Period, the Association, to convey sewer, water, drainage, maintenance, access, utility or other easements over, under, upon and through the Common Areas or any portion thereof, as is necessary or in Developer's judgment desirable for the proper operation and development of the Property. Companies, both public and private, furnishing utility services to the Property are hereby granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair or replacement of utility lines and equipment for other purposes proper and necessary to provide utility services to the Property.

3.6 Alteration of Common Areas. No Owner shall improve, destroy or otherwise alter any of the Common Areas without the express written consent of Developer or, after the expiration of the Control Period, the Association.

3.7 Additional Rules. Developer and the Association shall have the right from time to time to make, alter, revoke and enforce additional rules, regulations and restrictions pertaining to the use of the Common Areas.

ARTICLE IV
ASSESSMENTS FOR MAINTENANCE OF COMMON AREAS

4.1 **Obligation and Lien for Assessments.** Except for Developer and any Builder, each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges as set forth in this Declaration, the Bylaws of the Association, or as the Association may fix and determine from time to time; and (b) such special assessments as the Association may fix and determine in accordance with the terms of this Declaration and as may be provided in the Association's Bylaws. The annual and any special assessments, together with interest thereon, costs of collection and attorneys' fees incurred in the collection thereof, shall be the personal obligation of the Owner of each Lot at the time when each such assessment is due and payable. Such personal obligation for such assessments shall not pass to such Owner's successors in title unless expressly assumed by such successors. However, each such annual and special assessment, together with interest accruing thereon, costs of collection and attorneys' fees incurred in the collection thereof, shall to the full extent permitted by law, be a charge on each Lot and shall be a continuing lien upon each Lot against which each such assessment is made. During the Control Period, Lots owned by Developer and Builders are not subject to any assessments until such Lots are transferred to a Public Purchaser.

4.2 **Purpose of Assessments.** The assessments levied by the Association shall be used for the maintenance, repair and upkeep of the Common Areas and for promoting the general benefit, recreation, health, safety, property values and welfare of the residents in the Subdivision (including any additions thereto). Such purpose shall include (in addition to the rights and powers set forth in this Declaration or in the Association's Bylaws) provisions for the improvement, construction, repair, maintenance, care, upkeep and management of the Common Areas and any improvement and facilities thereon, including Common Area fences within and along the perimeter of the Subdivision, maintenance of any private Subdivision roads, the payment of any taxes and assessments by any governmental agency, the payment of insurance premiums on the Common Areas and any improvements thereon, and all other costs and expenses related to the management and maintenance of the Common Areas. Nothing contained herein shall limit the Association's rights and powers granted in this Article or granted elsewhere in this Declaration or the Bylaws of the Association.

4.3 **Annual General Assessment.** In order to provide the Association with a general fund with which to exercise the powers, maintain the Common Areas and improvements located thereon, and to render the services provided for herein and as may be provided under the Association's Bylaws, all Lots, other than Lots owned by Developer or Builders, shall be subject to an annual general assessment to be paid to the Association in such amount as shall be determined by the Board from time to time.

4.4 **Special Assessments.**

(a) In addition to the annual assessment contemplated by Section 4.3 above, the Association may levy, in any assessment year, a special assessment for capital improvements to the Common Areas or for such emergency purposes or otherwise as the

Board may recommend. So long as the total amount of special assessments allocable to each Lot does not exceed the amount of the then current general assessments allocable to each Lot in any one fiscal year, the Board may assess the special assessment without the consent of the Owners. Any special assessment, other than those described in Sections 4.4(b) and 4.4(c) hereof and other than those permitted by the immediately preceding sentence, shall require the affirmative vote of a majority of the Owners. Neither Developer nor any Builder nor any Lots then owned by Developer or any Builder shall have any liability for any special assessment, except for Builders under Sections 4.4(b) or 4.4(c) hereof. Special assessments are due on the date stated in the notice of assessment.

(b) If an Owner (other than Developer) fails to properly maintain, repair or replace any improvements on the Owner's Lot, the Association, acting through the Board and after giving adequate notice to the Owner of the need for the maintenance, repair or replacement, may enter onto the Lot and perform such maintenance, repair or replacement. The Association's costs thereof, plus a reasonable overhead and supervisory fee, shall be payable by the Owner of the Lot and shall be a special assessment against and lien upon the Lot until paid by the Owner.

(c) If any Owner (other than Developer) commences a lawsuit or files a counterclaim or crossclaim against the Association, the Board, or any committee member of the Association, or any individual director, officer or committee member of the Association, and such Owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Association, the Board, or individual director, officer or committee member sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including reasonable attorneys' fees. Such recovery right shall constitute a special assessment against the Owner's Lot and shall be enforceable against such Lot as provided herein.

4.5 Commencement of Assessments. The annual assessment per Lot shall be made at the time the initial Public Purchaser of each Lot receives a deed from Developer or a Builder for such Public Purchaser's Lot, and shall be due at the time of delivery of the deed to each initial Public Purchaser, provided, however, the same shall be prorated as of the date the deed is recorded, and provided further, the Board may, in its discretion, allow or permit such annual assessment or any special assessment to be paid in quarterly installments. All annual assessments thereafter shall be paid on or before the 31st day of January in the year for which the assessment applies (e.g. 2007 annual assessment is due and payable on or before January 31, 2007). In January of each year, the Board shall send a notice to each Owner providing for the amount then due, as well as the address to which payment should be made.

4.6 Remedies. If any Owner fails to pay any assessment as and when the same becomes due (a "Delinquent Owner"), the Association may take such action as the Board may determine necessary or appropriate for collection of the same, including suit for collection and foreclosure of the lien for assessments provided for herein. If the Board employs one or more attorneys for collection of any unpaid assessment for foreclosure of such lien, the Delinquent Owner shall, in addition to the amount of unpaid assessments then due, also pay all reasonable attorneys' fees and costs of collection and/or foreclosure incurred by the Association in connection therewith. Each assessment that remains unpaid for a period of more than thirty (30)

days shall, at the election of the Board, bear interest at the lower of eight percent (8%) per annum or the highest rate allowable under applicable law. The Board may also suspend the Delinquent Owner's right to vote on Association matters and the Delinquent Owner's right to use Common Areas and the amenities related thereto. The Association, upon a determination by the Board, may also cease to provide any or all of the services (including, without limitation, use of Common Areas and any trash services) to be provided by or through the Association with respect to any Lot during any period that the Owner of the Lot is delinquent on the payment of an assessment due under this Declaration, and no such cessation of use privileges or services shall result in a reduction of any amount due from the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Association. The remedies provided for herein are not exclusive and are in addition to any and all other remedies available at law or in equity.

4.7 **Foreclosure of Lien.** Each Owner, by accepting a deed to such Owner's respective Lot, acknowledges that a continuing lien with power of sale is hereby created for securing payment of any and all assessments due with respect to such Lot, together with any and all interest accrued upon a delinquent assessment and all costs of collection, including all reasonable attorneys' fees incurred by the Association in the collection of such delinquent assessment or foreclosure of the lien provided for herein. At any time after thirty (30) days from the date any assessment shall be due, the Board may, but shall not be required, to make written demand for payment to the Delinquent Owner, setting forth the amount then due. If such amount is not paid within ten (10) days after delivery of such demand, the Board may then cause a Notice of Delinquent Assessment to be recorded in the Recording Office with copies thereof to be delivered by the Board to the then Owner of such Lot. The Notice of Delinquent Assessment shall be executed and acknowledged by a member of the Board and shall state the following:

- (a) The name and last known address of the Delinquent Owner;
- (b) The legal description and street address of the Lot to which such delinquent assessment pertains;
- (c) The amount due as of the date such Notice of Delinquent Assessment is executed and acknowledged; and
- (d) That a lien exists against the Lot in favor of the Association pursuant to this Declaration for which the Association may foreclose pursuant to the power of sale granted herein.

Following the recording of the Notice of Delinquent Assessment, the Board may proceed with foreclosure of the lien provided for herein in the same manner as provided by the laws of the State of Arkansas for foreclosure of a mortgage with power of sale, or by appropriate action for judicial foreclosure and sale. At any such sale the Association may purchase the Lot and the Delinquent Owner shall remain liable for any deficiency resulting from any sale by foreclosure.

4.8 **Subordination of Lien for Assessments.** The lien for assessments provided for herein shall be subordinate to the lien of any deed of trust or mortgage granted by the Owner for the purchase of such Owner's Lot, provided, however, no sale, grant of a deed of trust or mortgage or other transfer of any interest in any Lot shall relieve such Lot from liability for any assessments then or thereafter becoming due or from the lien therefore.

ARTICLE V USE AND BUILDING RESTRICTIONS

5.1 **Single-Family Residence Use.** The Lots constituting a part of the Property are intended solely for use as Single-Family Residences. Each Lot shall be used, improved and devoted exclusively for single-family residential use in accordance with the restrictions, conditions and covenants set forth in this Declaration. No duplex, flat, boarding house, rooming house, apartment house or other multi-family or multi-unit residential structure, or any nonresidential structure or other improvement (except Exterior Structures approved by the Architectural Control Committee as set forth herein) may be erected on any Lot. No more than one (1) Single-Family Residence shall be located on any Lot and no such residence shall exceed two (2) stories in height. Each such residential structure shall have an attached garage for not less than two motor vehicles and shall have a concrete driveway at least 18 feet wide. All residential structures shall be of new construction on-site; no residential building or structure which has previously been at another location shall be moved onto any Lot, and no "prefabricated", "modular", "manufactured" or otherwise pre-assembled or pre-constructed homes or structures of any nature or kind whatsoever (except Exterior Structures approved by the Architectural Control Committee) shall be erected, stored or placed on any Lot. The building exteriors must be at least 80% brick, stone, stucco or other material specifically approved by the Architectural Control Committee. Up to 20% of the exterior of the residence, all of which must be on the back exterior of the residence, may be vinyl. No plastic materials will be allowed on the exterior of any residence. No camper, trailer, mobile home, vehicle, tent, outbuilding, Exterior Structure or any other apparatus or structure whatsoever except a permanent residence (the Plans and Specifications for which have been approved by the Architectural Control Committee as set forth herein) shall at any time be used for human habitation, temporarily or permanently, nor shall any residence or other structure or improvement of a temporary character be erected, moved onto or maintained upon any Lot or any Common Areas. Notwithstanding the foregoing, nothing herein shall prevent or prohibit Developer or its designees authorized by Developer from placing and using temporary buildings, structures or any residence for model, office, sales or storage purposes prior to the end of the Control Period. Further, nothing herein shall be deemed to prevent the leasing of any Single-Family Residence from time to time by the Owner thereof, subject to all of the provisions of this Declaration. The provisions of the City codes and regulations in effect on the date the Plat is approved regarding Single-Family Residences shall govern all Lots within the Subdivision.

5.2 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept and maintained provided that they not be kept, bred or maintained for any commercial purposes. Household pets shall be maintained in a clean and sanitary situation and shall not be noxious or a nuisance to the surrounding Owners. Each household shall be limited to not more than 3 dogs and/or cats. Dogs

must be considered tame. No reptiles shall be kept as pets. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether a particular animal is a common household pet, a nuisance, or whether the number of animals kept on any Lot is reasonable. Any decision rendered by the Board on such matters shall be as enforceable and in the same manner as any other restriction contained herein. No pet or animal shall be allowed to run loose or unsupervised within the Subdivision.

5.3 **Antennas.** No television antenna, dish, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any dwelling or other structure within the Subdivision without the approval of the Architectural Control Committee; nor shall radio, television signals, or any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other Lot or the Common Areas, provided, however, that digital satellite receivers not more than 18 inches in diameter shall be allowed if they are not visible from the street.

5.4 **Construction of Residence, Improvements and Alterations.** No building, residence, fence, wall, swimming pool, drive, Exterior Structure or other structure or improvement shall be commenced, constructed, improved or altered, without the prior written approval of the Architectural Control Committee as set forth herein.

5.5 **Trailers and Motor Vehicles.** All vehicles, and equipment owned by Owners of Lots shall be parked only in the Lot Owner's garage or driveway. Recreational vehicles and equipment, including but not limited to boats, motor homes, travel trailers, campers and the like, shall not be parked or stored within the Subdivision. Small boats may be stored in the Lot Owner's garage or behind a privacy fence as long as the boat is not visible by neighbors or not visible from the street. The Board may provide in the Rules such other and further restrictions, prohibitions and conditions pertaining to the storage, maintenance, keeping and use of motor vehicles, trailers, boats and watercraft which shall be deemed incorporated herein by reference and as effective and binding as set forth expressly herein.

5.6 **Inoperative Vehicles.** No vehicle, bus, tractor, or other conveyance or rig, other than a lawn grass apparatus, shall be left inoperative on any Lot for a period of more than 3 days.

5.7 **Common Areas Lawns and Plantings.** Developer or the Association shall have the right at any time, to plant, replace, maintain, and cultivate shrubs, trees, grass, and plantings within the Common Areas and on such easements as may be granted to or reserved by Developer or the Association over and across each Lot. No Owner or other Person shall remove, alter, injure or interfere in any way with such shrubs, trees, grass and plantings without the prior approval of Developer or the Board. Developer or the Association shall have the right to enter any Lot at any reasonable time, for the purpose of maintaining, placing or replacing shrubs, trees, grass and plantings.

5.8 **Nuisances.**

(a) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereupon which may be or may become an annoyance or a

nuisance to the neighborhood. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or noxious fumes shall be permitted to emanate therefrom so as to render any Lot, or portion thereof, unsanitary, unsightly, offensive or detrimental to any other Lot or its occupants. Without limiting the generality of the foregoing, no exterior speakers, excessive exterior lights, horns, whistles, bells or other sound devices, except those designed solely for security purposes, shall be used, placed or located on any Lot. The Board in its sole discretion shall have the right to determine whether any of the foregoing conditions or circumstances not specifically described herein constitutes a nuisance to any other Lot or the Subdivision and may require the removal or remediation of such condition. Any such Board decision shall be conclusive.

(b) Grass, trees and various vegetation shall be kept neatly cut and maintained. Lawns shall not be allowed to exceed six (6) inches from the ground surface. Fences or other outside structures or outdoor decorations shall be maintained so as not to become unsightly or an annoyance or a nuisance to the neighborhood. Upon an Owner's failure to comply with this subsection, the Association may perform, or have performed, the necessary action to remedy the problem, and shall be entitled to recover the expense associated with such remedial action from the offending Owner together with interest thereon at the lower of eight percent (8%) per annum or the highest rate allowable under applicable law.

5.9 **Repair and Maintenance of Buildings.** No building, residence or structure within any Lot shall be permitted to fall into a state of disrepair and the same shall at all times be kept in good condition and repair and adequately painted. The Board may determine violations of this Section to constitute a nuisance subject to remediation by the Association in the manner provided for in Section 5.8.

5.10 **Trash Containers and Collection.** No garbage or trash shall be placed, permitted or kept on any Lot except in covered containers of a standard residential type. Such containers shall not be Visible from Neighboring Property except at such time as to make the same available for collection and then only for the time reasonably necessary to allow for such collection. All rubbish, trash and garbage shall be removed from each Lot at least once per week either by or on behalf of each Owner.

5.11 **Clothes Drying Facilities.** The hanging of laundry from any area within or outside a residence, which places the laundry within public view, is prohibited.

5.12 **Encroachments.** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet, without the prior approval of the Architectural Control Committee. No fence, wall, hedge or shrub, which obstructs sight lines at intersections within the Subdivision, shall be permitted.

5.13 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment

as is usual and customary in connection with the use, maintenance or construction of the improvements on such Lot, and except that which Developer or the Association may require for the operation and maintenance of the Common Areas.

5.14 **Restrictions on Further Subdivision.** No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner without the prior written approval of the Board.

5.15 **Signs.** No signs, either permanent or temporary, of any kind, shall be placed or erected on any property, without the consent of the Architectural Control Committee unless signage upon property advertises the same for sale or rent, and does not exceed 6 square feet in area; provided, however, that Developer and Builders (with Developer's approval) may erect signs to advertise the Subdivision and model homes.

5.16 **Dwelling Size.** The Architectural Control Committee shall exercise its best reasonable efforts to see that all structures, as to size, conform to and harmonize with the existing surroundings and structures. No permanent residence to be constructed on a Lot shall contain less than 1,600 square feet of heated and cooled living space regardless of the size of the Lot. No permanent residence to be constructed on a Lot shall contain more than (1) 2,500 square feet of heated and cooled living space if the size of the Lot upon which the permanent residence is to be constructed is equal to or less than .35 acres, or (2) 2,800 square feet of heated and cooled living space if the size of the Lot upon which the permanent residence is to be constructed is greater than .35 acres.

5.17 **Building Location.** No building shall be erected on any Lot nearer than (1) 25 feet to the front Lot line; (2) 20 feet to the rear Lot line; (3) 7 feet to the interior side Lot line; and (4) 25 feet to the side lot line of a Lot facing a street. For purposes of this covenant, eaves, steps and open porches shall not be considered as part of the building; provided, however, this shall not be construed to permit any portion of the building on a Lot to encroach upon another Lot. Should any building setback lines shown upon the Plat vary from the setback requirements required herein, the building setback lines shown upon the Plat shall control and take precedence over those stated herein. Variances to the setback requirements established herein, as may from time to time be permitted by the City, shall take precedence and be controlling.

5.18 **Fences.** The approval requirements outlined in Section 6.2 below for approval of structures also applies to fences. Fencing of front yards is prohibited. Fencing on Corner Lots may extend to, but not beyond, the exterior side setback lines established herein. No fences shall exceed 6 feet in height. All fences, except a fence, boundary wall or privacy screen that surrounds a swimming pool, shall be 6 feet wood privacy fences and shall be the same style fences. All fences (except for fences around swimming pools, hot tubs and patio areas) must be joined to or abutting any previously existing fences on adjacent Lots. All wood fence shall be treated with a clear stain and not be painted or stained any color, unless otherwise approved by the Architectural Control Committee. Subject to the foregoing sentence, all wood fences shall be painted or stained within nine months after installation. Supporting structures on all fences shall be placed on the side of the fence facing the property of the Owner building the fence. Chain link

and other forms of wire fencing are specifically prohibited. No fence shall be installed without a permit from the City (where required) and complying with all applicable laws and codes. No fence or obstruction of any kind shall be erected or constructed within the boundaries of drainage easements shown and identified as such on the Plat.

5.19 Lawns, Landscaping and Gardens.

(a) Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, all lawns, including all areas between each residence and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter; provided, however, that the Owner of a Lot may leave a portion of the back yard of a Lot as a natural area with the express written permission of the Architectural Control Committee.

(b) Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the Subdivision (which shall include, but not be limited to, foundation plantings in the front yard, plus at least one hardwood tree of two inch or more caliper in the front yard (in addition to any trees planted by Developer)). All landscaping shall be installed in accordance with any landscaping plans approved by the Architectural Control Committee.

(c) To the extent any of the foregoing items are not completed prior to occupancy, the Owner shall escrow funds, in an amount (if any) and manner determined by the Architectural Control Committee, to assure such installation when weather permits.

(d) All vegetable gardens shall be located behind the rear corners of the residence (as determined by the Architectural Control Committee) and at least five feet away from the boundary of the Lot. No vegetable garden(s) shall exceed 100 square feet in size on any Lot, except with the prior written consent of the Architectural Control Committee.

(e) The lawn of each Lot shall be kept in good condition at all times and uniformly mowed and clipped with a length of grass not to exceed six inches.

(f) Developer shall have the right (but not the obligation) to install one or more trees on each Lot. The type of tree(s) and location shall be selected by Developer in its absolute discretion. Each Owner shall properly water, maintain and replace all trees and landscaping on the Owner's Lot (including any trees planted by or for Developer, but excluding those in a Common Area maintained by the Association).

(g) No tree of four inch (4") caliper or more may be removed from any Lot at any time (other than by Developer) without the written approval of the Architectural Control Committee.

5.20 **Easements.** Perpetual easements for the construction and maintenance of utilities and drainage will be reserved on the Plat, and no permanent structure of any kind shall be erected or maintained upon or over said easements.

5.21 **Soil Removal.** Soil may not be removed from any Lot or Common Areas without the consent of Developer or the Architectural Control Committee.

5.22 **Garage Doors.** The doors of all garages shall be kept closed at all times except when necessary for ingress and egress. The doors of all garages shall be installed with electric or battery powered opening and closing devices.

5.23 **Improvements.** Each Owner shall, within one (1) year after the date of commencement of construction of any improvements on their Lot, complete said improvements. If said improvements are not completed within said one (1) year period, Developer shall have the option to repurchase said Lot for a sum equal to the original purchase price of said improvements.

5.24 **Outside Lighting.** Except as may be initially installed by a Builder or Developer, no spotlights, floodlights or similar type high intensity lighting (including mercury vapor or sodium vapor lighting) shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon or upon the Common Areas or any part thereof without the written authorization of the Architectural Control Committee. Other types of low intensity lighting which do not cast excessive light onto adjoining Lots are allowed. No lighting shall be installed on or around the Common Areas, except that deemed necessary by Developer or the Board. Christmas lights must be removed from houses by January 31st of each year.

5.25 **Mailboxes.** To enhance the appearance of the Subdivision consistent with United States Postal Service regulations, mailboxes in the Subdivision will be located as required by the United States Postal Service. A decorative mailbox will be supplied and installed by the Builders (of design materials and specifications approved by the Architectural Control Committee) within 2 feet of the nearest property line. All mailboxes will be the same. With respect to Lots with frontage on a cul-de-sac, Developer may, in its discretion require that one or more residences located on such Lots locate their respective mailbox on a common pedestal or structure shared with other mailboxes for other residences located on such cul-de-sac.

5.26 **Roofs.** All roofs shall have an exterior surface that shall be subject to approval by the Architectural Control Committee, in its sole discretion. All gables must have a pitch of at least 8/12 and consist of architectural roofing shingles or other roofing material specifically approved by the Architectural Control Committee. No standard 3-tab roofing material will be allowed.

5.27 **Swimming Pools.** Accessory buildings, in-ground swimming pools, cabana structures and gazebos may be built within the building area on any Lot subject to the approval of the Architectural Control Committee. The approval requirements outlined in Subsection 6.2 below for buildings shall apply to these structures. Permanent and semi-permanent above-

ground swimming pools shall be prohibited.

5.28 **Solar Collectors.** The construction, installation and location of solar collectors shall be permitted only upon advance approval by the Architectural Control Committee.

5.29 **Building Limitations.** The building codes of the City as they presently exist or are hereafter amended, shall be and are hereby made applicable to all Lots. All dwellings and other improvements shall comply with said ordinances as they exist on the date of such construction. Any conflict between such ordinances and the provisions of this Declaration shall be resolved in favor of the more restrictive provisions.

5.30 **Home Occupations.** Home occupations and professions shall be prohibited, notwithstanding the allowance of such by the City or other governmental authority.

5.31 **Temporary Structures.** No trailer, tent, shack, garage, barn, or other outbuilding or structure erected on a building site within the Subdivision 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. This restriction does not prohibit Developer or Builders from placing temporary construction trailers and/or storage facilities on Lots as deemed necessary.

5.32 **Building Materials.** No building material 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 promptly removed from the Subdivision.

5.33 **Sound Devices.** No exterior speaker, horn, whistle, bell or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used or placed upon Lots. The playing of loud music from porches or decks shall be considered offensive, obnoxious activity constituting a nuisance.

5.34 **Basketball Goals.** The placement and quality of all basketball goals must be approved by the Association.

5.35 **Garage Sales.** Garage sales shall only be held semi-annually and only as a neighborhood event, unless otherwise approved by the Association. The dates of neighborhood garage sales will be determined by the Association.

5.36 **Remedies.** If an Owner (or guest, invitee, licensee, tenant, lessee, family member, agent or employee thereof) shall violate, or permit to be violated, any of the provisions set forth in this Article, the Board shall cause to be delivered to said Owner a written Notice of Violation. Said Notice of Violation shall set forth the nature of the alleged violation and shall request that the violation be voluntarily terminated and remedied within a reasonable time as determined by the Board from the mailing of said notice. If, after a reasonable time has lapsed from the date of said Notice, the violation has not been voluntarily terminated by the Owner, the Board shall have

the authority to pursue and effect any and all procedures which may be calculated as reasonably necessary to remove and/or terminate the cause of said violation. This authority shall include, but shall not be limited to, the power to employ laborers to enter upon the premises of said Owner for the purpose of removing and/or terminating said violation, and the collection of said expenses so incurred may be effected in the manner provided in Article IV for the collection and enforcement of assessments. For purposes of administering this Section, the determination of whether a violation has been, or is being committed, and the determination of what time period constitutes a "reasonable time" allowable for voluntary termination of the same, shall be made by the Board after taking into consideration the facts and circumstances surrounding the particular violating situation, condition or occurrence. If the Board does not elect to exercise its authority of enforcement as set forth above, then Developer or any other Owner or Owners shall have the right to pursue, at law or in equity, any remedy for enforcement of these covenants which remedy is hereby specifically granted by this Section. If it is necessary for the Association, Developer or any Owner or Owners to retain the services of legal counsel in an attempt to enforce these covenants, the enforcing parties or party shall be entitled to reimbursement of all litigation costs, including reasonable attorneys' fees and court costs, with such reimbursement being awarded by way of judgment against the Owner or Owners responsible for any such violation or violations.

ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

6.1 **Membership.** From the date of this Declaration to the end of the Control Period Developer shall be the Architectural Control Committee. Developer may appoint such person or persons to act as the Architectural Control Committee on its behalf during the period in which Developer is the Architectural Control Committee. Thereafter, the Board shall comprise the Architectural Control Committee unless the Board shall see fit to delegate this function to a Committee appointed by the Board, which committee shall be comprised of no more than five (5) Owners.

6.2 **Architectural Control Function.** No structure, whether a residence, Exterior Structure, accessory building, mailbox, awning, swimming pool, fence, wall, lot, drainage works, exterior area lighting or any other improvement whatsoever shall be constructed, reconstructed, repaired or maintained upon any Lot, and no alteration to the exterior of a structure shall be undertaken unless complete Plans and Specifications and plot plans therefore showing the exterior design, height, building material and color scheme thereof, the location of the structure on the Lot plotted horizontally and vertically, the location of driveways and fencing, shall have been approved in writing by the Architectural Control Committee. A copy of such Plans and Specifications and plot plans as finally approved shall be deposited with the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the properties conform to and harmonize with the existing surroundings and structures.

6.3 **Liability.** The Architectural Control Committee shall not be liable for damages to any Person who has submitted a request for approval by reason of any action, failure to act, approval or disapproval, or failure to approve or disapprove such request. No approval of Plans

and Specifications by the Architectural Control Committee shall be construed to mean that such Plans and Specifications are technically correct from an architectural or engineering perspective or comply with applicable governmental requirements.

6.4 **Restrictions on Builders.** Developer reserves the right to implement and enforce such rules, regulations and policies as may be reasonable and necessary during the developmental stage of the Subdivision regarding the original construction of improvements within the Subdivision. Any Builder constructing improvements within the Subdivision shall be bound by such rules, regulations and policies, including, without limitation, the following:

(a) Each Builder shall remove rubbish and debris and otherwise clean each Lot on which it is constructing a residence at least one (1) time each week;

(b) Builder shall construct, at its earliest convenience, a gravel driveway or approach, the purpose of which shall be to prevent Builder's employees, agents, subcontractors and others under its control from transferring soil and mud from a Lot to the Subdivision streets and roads; and

(c) Builder shall prevent its employees, agents, subcontractors and all others under its control from parking on a portion of the Lot not specifically designed for parking (e.g. gravel driveway). Unless Builder has constructed an appropriate gravel driveway or approach, Builder and its employees, agents, subcontractors and others under its control shall park only on the paved roadway adjoining the Lot on which Builder is constructing the residence.

ARTICLE VII PERMITTED USE AND RESTRICTIONS TO COMMON AREAS

7.1 **Maintenance by Association.** The Board may, at any time, as to any Common Areas owned, leased or otherwise controlled by the Association, take the following actions without any approval of the Owners being required:

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area in accordance with (1) the last plans thereof approved by the Board, (2) the original plans for the improvements, or (3) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed;

(b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a private road, street, walk, driveway, or parking area;

(c) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration; and

(f) The Board shall be the sole judge as to the appropriate maintenance of all grounds within and improvements upon the Common Areas, including Common Areas fences.

7.2 Damage or Destruction of Common Areas by Owners. If any portion of the Common Areas is willfully or maliciously damaged or destroyed by an Owner or any of his or her guests, tenants, licensees, agents or members of his or her family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a workmanlike manner in conformance with the original plans and specifications for the area involved or as the area may have been modified or altered subsequently by the Association. The cost for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

ARTICLE VIII BRENTWOOD PROPERTY OWNERS' ASSOCIATION

8.1 Organization.

(a) The Association shall be a not-for-profit corporation organized and existing under the not-for-profit corporation law of the State of Arkansas, charged with the duties and invested with the powers prescribed by law and set forth in its Articles of Incorporation, Bylaws, this Declaration and any Supplemental Declarations. Neither the Articles of Incorporation nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration or any amendments thereto.

(b) The affairs of the Association shall be conducted by a Board of Directors and such Officers as the Board may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws.

8.2 Powers and Duties of the Association. The Association shall have the power and obligation to provide for the maintenance, repair, replacement, administration, insuring and operation of the Subdivision and Common Areas as herein provided and as may be provided in the Bylaws.

8.3 Rules. By majority vote of the Board, the Association may from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations covering the use of any Common Areas by any Owner, by the family of such Owner, or by any

invitee, licensee or lessee of such Owner; provided, however, that such rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Association's Articles of Incorporation or Bylaws. A copy of such rules as they may from time to time be adopted, amended or repealed, shall be made available to each Owner, at said Owner's request. Upon enactment, said rules shall have the same force and effect as if they were set forth in and were part of this Declaration.

8.4 Personal Liability. No member of the Board or any committee of the Association, or any officer of the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board or any other committee, or any officer of the Association; provided that such Person has, upon the basis of such information as may be possessed by such Person, acted in good faith, without willful or intentional misconduct.

8.5 Responsibility for Common Areas. The Association shall have the responsibility for maintaining and insuring the Common Areas and the Common Areas improvements, and shall be responsible for the payment of taxes (if any) and insurance on the Common Areas.

8.6 Indemnification of Developer by Association. The Association hereby agrees and covenants to indemnify Developer and Developer's managers and members from any and all claims for personal or property damage which may result from the use, ownership, possession, control or maintenance of the Common Areas, including any drainage detention area, and hold Developer harmless therefrom on a continuing basis.

8.7 Insurance. The cost of insurance for the Common Areas is a cost of the Association. The Association shall be named as an insured on all policies. The Association shall, through the Board, maintain the following insurance policies:

(a) Insurance on all improvements in the Common Areas which have insurable value against loss or damage by fire or by any and all other risks insured by standard extended coverage policies in use in the State of Arkansas, with such endorsements as the Board deems advisable, but in any event in an amount not less than the full insurable replacement cost thereof.

(b) Comprehensive general liability insurance, including medical payments insurance, against claims for personal injury or death (minimum coverage of One Million Dollars (\$1,000,000.00) per occurrence) and property damage (minimum coverage of Two Hundred Thousand Dollars (\$200,000.00) per occurrence) suffered by the public or any Owner, the family, agent, employee, or invitee of any Owner, occurring in, on or about any Common Areas. Any policy obtained pursuant to this Subsection (b) shall, if possible and practical considering the cost thereof, contain a cross-liability endorsement whereby the rights of a named insured shall not prejudice his, her, or their action or actions against another named insured, and shall contain a "severability of interest" type of endorsement precluding the insurer from denying a claim of an Owner or the Association because of the negligent acts of other Owners, or the Association.

(c) Director's and Officer's liability insurance for the directors and officers of the Association against any liability arising out of such party's status as a director or officer is suggested, but not required.

(d) Such other insurance as the Board deems appropriate to protect the Association and the Owners.

All insurance provided for in this Article shall be obtained from responsible insurers authorized to do business in the State of Arkansas.

8.8 Board of Directors. The initial Board, to consist of three (3) members, shall be designated by Developer and shall serve until the end of the Control Period. Thereafter, the Owners shall elect the Board. Elections of the Board by the Owners shall be held in accordance with the Bylaws. The Board's responsibilities, as set forth herein and in the Bylaws, shall include the following:

(a) During the first week in December of each year, the Board shall meet and establish a budget for the next succeeding calendar year for the maintenance of the Common Areas and other obligations of the Association as described herein and in the Bylaws. Each annual budget shall be effective the first calendar month of the succeeding year, unless Owners (eligible to vote) holding at least a majority of the votes in the Association, in writing or by a majority at any regular or special meeting of the Owners, reject the budget; provided, however, that if a budget increase is ten percent (10%) or less, from one year to the next, then the budget shall be effective the first calendar month of the succeeding year unless Owners (eligible to vote) holding at least seventy-five (75%) of the votes in the Association, in writing or by a majority at any regular or special meeting of the Owners, reject the budget. The Owner's right to reject a budget shall not apply during the Control Period.

(b) After each budget is established, the Board shall determine the annual assessment required to be paid by each Owner, which shall be paid in accordance with Subsection 4.5 hereof.

ARTICLE IX MEMBERSHIP AND VOTING RIGHTS

9.1 Membership. Every Owner, either of a fee of undivided interest of a Lot, other than Builders, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment of the Association. A Builder shall have no vote in the affairs of the Association.

9.2 Voting Rights.

(a) Until the end of the Control Period, the Association shall have two classes of membership, namely Class A and Class B. Every Owner (other than Developer or Builders) shall be a Class A Member of the Association. Class A membership shall be appurtenant to and may not be separated from Lot ownership. Subject to the provisions of Subsections 9.2(c) and 9.2(d) below, Class A Members shall be entitled to one vote for each Lot they own. The Class B Member of the Association shall be Developer, and Developer shall be entitled to three (3) votes for each Lot owned by it. Upon the sale of a Lot, the Class B Member shall forfeit its three (3) votes with respect to such Lot.

(b) After the end of the Control Period, there shall be only one class of membership, which shall consist of the Owners of the Lots in the Subdivision, and every such Owner shall be a voting member of the Association, entitled to one vote for each Lot he or she owns, subject to the provisions of Subsections 9.2(c) and 9.2(d) below.

(c) Where voting rights exist based on Lot ownership, each Class A Member (before the end of the Control Period) and each member of the Association (after the end of the Control Period) shall have one vote for each Lot for which he or she is the Owner; provided that when more than one Person is an Owner of any particular Lot, all such Persons shall be members and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot. The Owner of adjacent Lots shall only have one vote with respect to such adjacent Lots if only one Single-Family Residence has been, is being, or will be erected thereon.

(d) DURING ANY PERIOD IN WHICH A MEMBER IS IN DEFAULT IN THE PAYMENT OF ANY ASSESSMENT LEVIED BY THE ASSOCIATION UNDER THIS DECLARATION, THE VOTING RIGHTS OF SUCH MEMBER MAY BE SUSPENDED UNTIL SUCH ASSESSMENT HAS BEEN PAID IN FULL.

(e) Subject to the foregoing, the Board shall be the sole judge of the qualifications of each Owner to vote and an Owner's right to participate in Association meetings and proceedings.

9.3 Management of Association. Owners shall have no right to manage the business and affairs of the Association except as provided in the Articles of Incorporation or Bylaws of the Association. The management of the Association shall be vested entirely in the Board as provided in the Association's Articles of Incorporation and Bylaws.

**ARTICLE X
GENERAL PROVISIONS**

10.1 Enforcement. The Association, Developer, and any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration

and any subsequently recorded Supplemental Declarations. Failure by the Association, Developer or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

10.3 **Amendment.**

(a) The covenants and restrictions of this Declaration shall run with and bind the land, in perpetuity, or if not permitted by operation of law to run in perpetuity, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless otherwise amended as herein provided or terminated by the unanimous vote of all of the then existing members of the Association.

(b) This Declaration may be amended in whole or in part at any time during the Control Period by an instrument in writing executed by Developer. Developer may release and relinquish its right to amend this Declaration earlier than the expiration of the Control Period by a writing recorded in the Recording Office.

(c) This Declaration may be amended after the end of the Control Period (or earlier, if Developer relinquishes its amendment rights early) by an instrument in writing executed by the Association, with the approval of a majority of the votes of the members voting in person or by proxy at a meeting called for that purpose.

(d) No amendment of this Declaration shall be effective until it is recorded in the Recording Office.

10.4 **Violations and Nuisances.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Developer, the Association, or any Owner. However, any other provision of this Declaration to the contrary notwithstanding, only Developer, the Association, the Board, or the duly authorized agent of any of the above, may enforce by self-help any of the provisions of these restrictions.

10.5 **Violation of Law.** Any violation of any state, municipal or local law, ordinance of regulation pertaining to the ownership, occupation or use of any property within the Subdivision is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

10.6 **Remedies Cumulative.** Each remedy provided by this Declaration is cumulative and not exclusive.

10.7 **Delivery of Notices and Documents.** Any written notice or other document relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty eight (48) hours after a copy of the same has been deposited in the United States mail, postage pre-paid, as to any Owner, to the address of any Lot within the Subdivision, owned, in whole or in part, by him or her, or to any other address last furnished by the Owner to the Association.

10.8 **The Declaration.** By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each Person, for himself, herself or itself, and their heirs, personal representatives, successors, transferees and assigns, binds them and the subject Lot(s) to the covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby.

10.9 **Mortgagee Protections.** This Declaration may not be amended in a manner that materially affects the rights or security interest of a Mortgagee without the Mortgagee's consent. Notwithstanding Developer's right to amend this Declaration, unless at least fifty-one percent (51%) of the Mortgagees in the Subdivision have given prior written approval, neither the Owners nor the Association shall be entitled to abandon or terminate the legal status of the Subdivision. Approval is implied if Mortgagee fails to respond within thirty (30) days of written request, sent by certified or registered mail. If a Mortgagee requests from the Association compliance with the guidelines of the underwriting lender, the Board, without approval of the Owners or Mortgagees, may make reasonable amendments to this Subsection to meet the requirements of the underwriting lender.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto executed this Declaration as of the day and year first above written.

CAVERN SPRINGS DEVELOPMENT, LLC
By: Spectrum Management Company, LLC, its
authorized Manager

By: 
Amit Raizada, Sole Member

STATE OF MISSOURI)
)SS
COUNTY OF JACKSON)

On this 25th day of May, 2007, before me, the undersigned officer, personally appeared Amit Raizada, who acknowledged himself to be the authorized member of Spectrum Management Company, LLC, a Missouri limited liability company and an authorized manager of Cavern Springs Development, LLC, an Arkansas limited liability company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Spectrum Management Company, LLC as authorized manager of Cavern Springs Development, LLC.

In witness whereof I hereunto set my hand and official seal.



Notary Public

My commission expires: 1-31-2010



EXHIBIT "A"
[Legal Description]

Tract A of the Tract Split, as filed for record May 21, 2007, In Plat Book 2007, at Page 466, and being part of the Southwest Quarter of Section 5, Township 18 North, Range 30 West, Benton County, Arkansas, more particularly described as follows:

Beginning at a found railroad spike at the Southwest Corner of said Section 5; Thence along the west line of said Southwest Quarter, North 02°29'46" East, 954.45 feet; Thence leaving said west line South 87°14'40" East, 840.75 feet; Thence North 02°29'46" East, 365.00 feet; Thence South 87°14'40" East, 477.88 feet; Thence South 86°42'49" East, 1318.02 feet to a found railroad spike on the east line of said Southwest Quarter; Thence along said east line, South 02°25'05" West, 1323.09 feet to a found railroad spike at the Southeast Corner of said Southwest Quarter; Thence along the south line of said Southwest Quarter, North 87°01'14" West, 1318.47 feet to a found stone at the Southwest Corner of the Southeast Quarter of the Southwest Quarter; Thence continuing along said south line of the Southwest Quarter, North 86°46'49" West, 1320.00 feet to the Point of Beginning, containing 73.22 acres, more or less, and being subject to all easements and rights-of-way of record or fact.

Benton County, AR
I certify this instrument was filed on
06/01/2007 4:18:50PM
and recorded in DEED Book
2007 at pages 0022257 - 0022284
Brenda DeShields-Circuit Clerk

THIS INSTRUMENT PREPARED BY:

Patrick A. Burrow
Quattlebaum, Grooms, Tull & Burrow PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas 72201

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2013/44604
Term/Cashier: CASH5/Jimmy Bennett
08/12/2013 1:45PM
Tran: 252757
Total Fees: \$55.00

Book ~~2013~~ Page ~~44604~~
Recorded in the Above
DEED Book & Page
08/12/2013

**SECOND SUPPLEMENTAL DECLARATION TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BRENTWOOD SUBDIVISION**

THIS SECOND SUPPLEMENTAL DECLARATION TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRENTWOOD SUBDIVISION ("**Second Supplemental Declaration**") is made on this 29th day of July, 2013 by Cavern Springs Development, LLC, an Arkansas limited liability company ("**CSD**"), to amend that certain Instrument entitled Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision dated May 26, 2006 and recorded with the Office of the Recorder of Deeds of Benton County, Arkansas on May 26, 2006 in Book 2006 at Page 26702, as amended by First Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision dated November 28, 2006 recorded with the Office of the Recorder of Deeds of Benton County, Arkansas on December 4, 2006 in Book 2006 at Page 57299 (the "**Original Restrictions**"); and subsequently amended and restated in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision, dated May 25, 2007 recorded with the Office of the Recorder of Deeds of Benton County, Arkansas on June 1, 2007 in Book 2007 at Page 22257 ("**Amended Restrictions**").

RECITALS:

- A.** The real property described on Exhibit A hereto and incorporated herein by this reference (the "**Property**") is subject to the restrictions, limitations and conditions set forth in the Amended Restrictions.
- B.** CSD is designated as the Developer in the Original Restrictions and the Amended Restrictions.
- C.** In anticipation of the conveyance of all of that part of the Property which is owned by CSD pursuant to deeds in lieu of foreclosure, CSD desires to amend the Amended Restrictions to designate Big Creek Investors, LLC, a Missouri limited liability company, as the Developer under the Amended Restrictions.
- D.** Section 10.3(b) of the Amended Restrictions permits CSD, as the Developer, to amend the Amended Restrictions at any time during the Control Period (as defined in the Amended Restrictions).

E. The date of this Second Supplemental Declaration is within the Control Period.

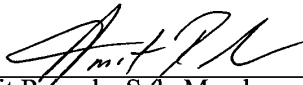
NOW, THEREFORE, in consideration of the premises, CSD, as the Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that Section 1.12 of the Amended Restrictions is amended in its entirety to read as follows:

1.12 "Developer" means Big Creek Investors, LLC, a Missouri limited liability company, and includes its successors and assigns.

IN WITNESS WHEREOF, the CSD has caused this Declaration to be duly executed the day and year first above written.

CAVERN SPRINGS DEVELOPMENT, LLC

By: Spectrum Management Company, LLC
its authorized Manager

By: 
Amit Raizada, Sole Member

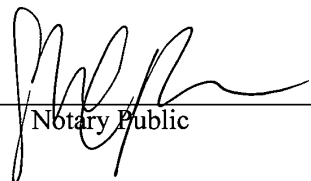
STATE OF MISSOURI)
) ss
COUNTY OF JACKSON

BE IT REMEMBERED that on this 24th day of July, 2013, before me, a Notary Public in and for said county and state, personally appeared Amit Raizada, authorized member of Spectrum Management Company, LLC, a Missouri limited liability company and Manager of Cavern Springs Development, LLC, an Arkansas limited liability company, who is personally known to me to be the same person who executed the above and foregoing instrument in writing, and acknowledged its execution as the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.



SARAH C. ROWE
My Commission Expires
May 25, 2015
Jackson County
Commission # 11830861


Notary Public

My Commission expires:

Book 2013 Page 44605
Recorded in the Above
DEED Book & Page
08/12/2013

EXHIBIT "A"
[Legal Description]

Tract A of the Tract Split, as filed for record May 21, 2007, In Plat Book 2007, at Page 466, and being part of the Southwest Quarter of Section 5, Township 18 North, Range 30 West, Benton County, Arkansas, more particularly described as follows:

Beginning at a found railroad spike at the Southwest Corner of said Section 5; Thence along the west line of said Southwest Quarter, North 02°29'46" East, 954.45 feet; Thence leaving said west line South 87°14'40" East, 840.75 feet; Thence North 02°29'46" East, 365.00 feet; Thence South 87°14'40" East, 477.88 feet; Thence South 86°42'49" East, 1318.02 feet to a found railroad spike on the east line of said Southwest Quarter; Thence along said east Line, South 02°25'05" West, 1323.09 feet to a found railroad spike at the Southeast Corner of said Southwest Quarter; Thence along the south line of said Southwest Quarter, North 87°01'14" West, 1318.47 feet to a found stone at the Southwest Corner of the Southeast Quarter of the Southwest Quarter; Thence continuing along said south line of the Southwest Quarter, North 86°46'49" West, 1320.00 feet to the Point of Beginning, containing 73.22 acres, more or less, and being subject to all easements and rights-of-way of record or fact.

Book 2013 Page 44606
Recorded in the Above
DEED Book & Page
08/12/2013

Benton County, AR
I certify this instrument was filed on
08/12/2013 1:45PM
and recorded in DEED Book
2013 at pages 44604 - 44606
Brenda DeShields-Circuit Clerk

THIRD SUPPLEMENTAL DECLARATION TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BRENTWOOD SUBDIVISION

THIS THIRD SUPPLEMENTAL DECLARATION TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRENTWOOD SUBDIVISION ("Third Supplemental Declaration") is made on this 17th day of December, 2013 by Big Creek Investors, LLC, a Missouri limited liability company ("Big Creek"), to amend that certain Instrument entitled Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision dated May 26, 2006 and recorded with the Office of the Recorder of Deeds of Benton County, Arkansas on May 26, 2006 in Book 2006 at Page 26702, as amended by First Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision dated November 28, 2006 and recorded with the Office of the Recorder of Deeds of Benton County, Arkansas on December 4, 2006 in Book 2006 at Page 57299 (the "Original Restrictions"); and subsequently amended and restated in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision, dated May 25, 2007 recorded with the Office of the Recorder of Deeds of Benton County, Arkansas on June 1, 2007 in Book at Page 22257; and as subsequently amended and restated by Second Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision dated July 24, 2013 and recorded with the Office of the Recorder of Deed of Benton County, Arkansas on August 12, 2013 in Book 2013 Page 44604 ("Amended Restrictions").

RECITALS:

- A. The real property described on Exhibit A hereto and incorporated herein by this reference (the "Property") is subject to the restrictions, limitations and conditions set forth in the Amended Restrictions.
- B. Big Creek is designated as the Developer in the Amended Restrictions.
- C. As a result of a sale of the Property from Big Creek to Buffington Homes of Arkansas, LLC, an Arkansas limited liability company ("Buffington"), and in anticipation of the conveyance of individual lots from Buffington to individual purchasers of homes, Big Creek desires to amend the Amended Restrictions to designate Buffington Homes of Arkansas, LLC, an Arkansas limited liability company, as the Developer under the Amended Restrictions.
- D. Sections 10.3(b) of the Amended Restrictions permits Big Creek, as the Developer, to amend the Amended Restrictions at any time during the Control Period (as defined in the Amended Restrictions).

Exhibit A

Tract A of the Tract Split, as filed for record May 21, 2007, in Plat Book 2007, at Page 466, and being part of the Southwest Quarter of Section 5, Township 18 North, Range 30 West, Benton County, Arkansas, more particularly described as follows:

Beginning at a found railroad spike at the Southwest Corner of said Section 5; Thence along the west line of said Southwest Quarter, North 2 degrees 29' 46" East, 954.45 feet; Thence leaving said west line South 87 degrees 14' 40" East, 840.75 feet; Thence North 02 degrees 29' 46" East, 365.00 feet; Thence South 87 degrees 14' 40" East, 477.88 feet; Thence South 86 degrees 42' 49" East, 1318.02 feet to a found railroad spike on the east line of said Southwest Quarter; Thence along said east line, South 02 degrees 25' 05" West, 1323.09 feet to a found railroad spike at the Southeast Corner of said Southwest Quarter; Thence along the south line of said Southwest Quarter, North 87 degrees 01' 14" West, 1318.47 feet to a found stone at the Southwest Corner of the Southeast Quarter of the Southwest Quarter; Thence continuing along said south line of the Southwest Quarter, North 86 degrees 46' 49" West, 1320.00 feet to the Point of Beginning, containing 73.22 acres, more or less, and being subject to all easements and rights-of-way of record or fact.

Tran: 269514
Total Fees: \$70.00

Benton County, AR
I certify that this instrument was Electronically filed
on 12/23/2013 1:20:46PM
in DEED Book 2013 Pages 69803 - 69806
Brenda DeShields-Circuit Clerk



2006 26702
 Recorded in the Above
 Deed Book & Page
 05-26-2006 02:51:05 PM
 Brenda DeShields-Circuit Clerk
 Benton County, AR
 Book/Pa: 2006/26702
 Term/Cashier: CIRCUIT-L9HW4GG / dbrandon
 Tran: 4216.125026.349693
 Recorded: 05-26-2006 14:51:35
 DFE Deed 86.00
 REC Recordings Fee 0.00
 Total Fees: \$ 86.00

Recording Requested By:]
 Cavern Springs Development, LLC]
]
 When Recorded, Mail To:]
]
 Spectrum Management, LLC]
 903 E. 104th Street, Suite 630]
 Kansas City, MO 64131]
 Attn: Amit Raizada]

(Above Space for Recorder's Use Only)

**DECLARATION OF COVENANTS, CONDITIONS
 AND RESTRICTIONS FOR BRENTWOOD SUBDIVISION**

THIS DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS FOR BRENTWOOD SUBDIVISION is made this 26th day of May 2006, by Cavern Springs Development, LLC, an Arkansas limited liability company (hereinafter "Developer"):

WITNESSETH:

WHEREAS, Developer owns certain real property described on Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Developer intends to develop the Property as a private residential subdivision to be known as the Brentwood Subdivision (the "Subdivision"), and desires to provide for the orderly development of the Property by placing certain restrictions on the Property which shall be for the use and benefit of Developer, its future grantees, successors and assigns; and

WHEREAS, Developer desires to provide for the preservation and enhancement of value when and as the Property is improved and desires to subject the Property to certain covenants and restrictions as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Subdivision and each and every owner of any and all parts thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the value and amenities in the Subdivision, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering the Common Areas (as hereinafter defined), administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement; and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Arkansas, The Brentwood Property Owners' Association, Inc., an Arkansas nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter;

NOW, THEREFORE, in consideration of the foregoing recitals, Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the Property, including all Lots and Common Areas as shown on the Plat (all, as hereinafter defined) shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth and shall be subject to the covenants, conditions, easements and charges set forth below, which shall run with the land and shall be binding on all present and future owners, and shall inure to the benefit of each owner of a Lot, Developer and the Association.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the following meanings:

1.1 "Architectural Control Committee" means (i) prior to the end of the Control Period, Developer (or its designees or assignees from time to time) and (ii) on and after the end of the Control Period, the Board (or its designees in accordance with the Bylaws).

1.2 "Association" means The Brentwood Property Owners' Association, an Arkansas not-for-profit corporation, its successors and assigns.

1.3 "Board" means the Board of Directors of the Association.

1.4 "Builder" means any builder, contractor, investor, or other Person who purchases a Lot for the purpose of constructing improvements thereon for immediate resale, excluding Developer.

1.5 "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by Developer stating that all or, in Developer's absolute discretion, a substantial number of the Lots in the Subdivision have been sold and the Single-Family Residences to be constructed thereon are substantially completed. The recording of a Certificate of Substantial Completion in the Recording Office shall constitute record notice that the Control Period has ended and Developer has turned control of the Subdivision over to the Association.

1.6 "City" means the City of Cave Springs, Benton County, Arkansas.

1.7 "Common Areas" mean (i) private street right-of-ways, (ii) private streets and street islands, (iii) gateways, entrances, monuments and other ornamental areas and related utilities, street lights, sprinkler systems and landscaping constructed or installed by or for Developer at or near the entrance of any street or along any street shown on the Plat, and any easements related thereto, (iv) any and all storm water drainage or detention areas as shown on

the Plat, and (v) all other property, including any and all green space, parks, improvements, pools, fences or other structures within the designated Common Areas, which are intended for the use and benefit of all of the Owners, as may be designated or shown on the Plat or any amendment thereto.

1.8 "Control Period" means that period of time during which Developer controls issues related to the Subdivision, including, without limitation the Architectural Control Committee and the operation of the Association. The duration of the Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earliest of:

- (a) Ten (10) years from the date this Declaration is recorded;
- (b) One (1) month after title to all of the Lots (including any additional Lots created pursuant to Section 2.2) have been conveyed to Owners other than Builders;
- (c) Two (2) years after Developer ceases developing, constructing or marketing the Lots; or
- (d) The date Developer records a Certificate of Substantial Completion in the Recording Office.

The rights reserved to Developer during the Control Period are intended to preserve the orderly build out and sellout of the Lots, which is ultimately for the benefit of the Owners.

1.9 "Corner Lot" means any Lot which abuts or adjoins more than one street within the Subdivision other than at its rear boundary line.

1.10 "County" means the County of Benton, Arkansas.

1.11 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision as the same may be amended from time to time, together with any and all Supplemental Declarations which may be recorded by Developer from time to time.

1.12 "Developer" means Cavern Springs Development, LLC, an Arkansas limited liability company, and includes its successors and assigns.

1.13 "Exterior Structure" means any structure or other improvement erected or maintained on a Lot other than the main residential structure, and shall include, without limitation, any deck, gazebo, greenhouse, doghouse or other animal shelter or run, outbuilding, fence, patio wall, privacy screen, boundary or retaining wall, bridge, patio enclosure, tennis court, basketball court, swimming pool, hot tub, basketball goal, swing set, trampoline, sand box, playhouse, tree house or other recreational or play structure.

1.14 "Lot" means any parcel or portion of the Property designated as a lot on the recorded Plat of the Subdivision, or any additions thereto, with the exception of the Common Areas.

1.15 "Mortgage" means a security interest, deed of trust, or lien granted by an Owner in and to, or against, a Lot and improvements thereon to secure the repayment of a loan, and duly filed for record in the Recording Office.

1.16 "Mortgagee" means the Person who holds a Mortgage as security for repayment of a debt.

1.17 "Owner" means the record owner in fee of any Lot, whether one or more Persons, including Developer, and for purposes of all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees. The foregoing does not include any Person who holds an interest in a Lot merely as security for the performance of an obligation.

1.18 "Person" means a natural individual or any partnership, joint venture, trust, limited liability company, unincorporated organization, association, corporation, institution, or other legal entity.

1.19 "Plans and Specifications" means any and all documents designed to guide or control the construction or installation of any improvement on any Lot, or other proposal for the same, including but not limited to those indicating size, shape, location, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

1.20 "Plat" means, collectively, each plat of the Property filed of record in the Recording Office covering and describing any or all of the Subdivision and any additions thereto.

1.21 "Project" means the Property and any additional real estate submitted or subjected to this Declaration and any improvements now or hereafter constructed thereon.

1.22 "Property" means the real property more fully described on Exhibit A attached hereto and incorporated herein by this reference, and any additional real property which may be made subject to this Declaration. References herein to "Property" shall also include any portion thereof as the context may require.

1.23 "Public Purchaser" means the Person who initially becomes an Owner of any Lot other than Developer or a Builder.

1.24 "Recording Office" means the Office of the Recorder of Deeds of Benton County, Arkansas.

1.25 "Rules" means those rules and regulations as passed and promulgated by the Association, or the Board acting on behalf thereof, under the authority granted by this

Declaration, a Supplemental Declaration, the Articles of Incorporation or the Bylaws of the Association.

1.26 "Single-Family Residence" means a structure containing one (1) dwelling unit only and occupied by not more than one (1) family.

1.27 "Supplemental Declaration" means any amendment to this Declaration or any separate or additional declaration of covenants, conditions and restrictions pertaining or applicable to the Property which may hereafter be recorded pursuant to the terms of this Declaration.

1.28 "Visible from Neighboring Property" means, with respect to any given object, that such object located on a Lot that is or would be visible to a person six (6) feet tall, standing on any part of an adjoining Lot at an elevation no greater than the elevation of the base of the object being viewed.

The definitions in this Declaration shall apply equally to both the singular and plural forms of the terms defined.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Existing Property.** The Property is and shall be held, transferred, sold, conveyed, encumbered and occupied subject to this Declaration and the Bylaws of the Association. Each grantee of a portion of the Property and each Owner of a Lot, by accepting a deed thereto, agrees to, acknowledges and accepts all terms contained in this Declaration and the Bylaws of the Association as the same may be amended from time to time.

2.2 **Additional Property.** Additional land may be subjected to this Declaration in the following manner:

(a) Developer shall have the right, but not the obligation, to subject additional land to the terms of this Declaration regardless of whether said land is presently owned by Developer or subsequently acquired from time to time. Under no circumstances shall this Declaration, or any Supplemental Declaration, obligate Developer to subject additional land to this Declaration or to adhere to any plan of development in any subsequent phase of development to any additional or adjoining land, or in any way preclude Developer from conveying any land owned by Developer which may adjoin the Property and which has not been made subject to this Declaration, or Supplemental Declaration as provided herein, free and clear of this Declaration or any Supplemental Declaration.

(b) Additional land may be subjected to this Declaration by Developer filing of record in the Recording Office a Supplemental Declaration describing the additional land and a final plat showing and describing the additional land which identifies the lots and Common Areas contained therein, which right shall include any re-plat or amended

plat of the Subdivision. Thereafter, the Owners of any Lot within the additional land, including Developer, shall immediately be entitled to all privileges and be subject to all of the obligations of this Declaration, as amended from time to time, to the extent of and in accordance with the terms set forth in such Supplemental Declaration.

2.3 Covenants Running with Land; Enforcement.

(a) The agreements, restrictions, reservations and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions, reservations and other provisions; provided, however, that neither Developer, the Association nor any other Person shall be obligated to enforce any such agreements, restrictions, reservations or other provisions. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the agreements, restrictions and reservations set forth herein as applied to the Lot owned by such Owner. No agreement, restriction, reservation or other provision herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed or allowed to continue during his or her ownership; provided, however, that (i) the immediate grantee from the Builder of a Single-Family Residence on a Lot shall be personally responsible for breaches committed during such Builder's ownership of such Lot, and (ii) an Owner shall be personally responsible for any breach committed by any prior Owner of the Lot to the extent notice of such breach was filed of record, as provided in Section 2.3(c) hereof, prior to the transfer of ownership.

(b) Developer, the Association and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions, reservations and other provisions herein set forth, in addition to any action at law for damages. To the extent permitted by law, if Developer or the Association shall be successful in obtaining a judgment or consent decree in any such court action, Developer and/or the Association shall be entitled to receive from the breaching party as part of the judgment or decree the legal fees and expenses incurred by Developer and/or the Association with respect to such action.

(c) Whenever Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, Developer or the Association may file with the Recording Office a certificate setting forth public notice of the nature of the breach and the Lot involved.

(d) No delay or failure by any Person to exercise any of its rights or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation.

(e) In addition to the specific provisions of this Declaration that allow Developer to make certain decisions or give permission for certain matters, Developer may, under special situations or circumstances as determined by it, allow variances or waivers of the requirements or terms set forth in this Declaration. Any such variation or waiver so granted by Developer shall not constitute a waiver of such requirement or term in any other situation or under any other circumstances.

(f) Developer and the Association, through its authorized representative(s), may at any reasonable time enter any Lot, without being deemed guilty of trespass, for the purpose of inspecting the Lot and any improvements thereon to ascertain compliance or noncompliance with the requirements and terms of this Declaration and/or any plans approved hereunder.

ARTICLE III COMMON AREAS

3.1 **Creation of Common Areas.** Developer shall have the right (but is not obligated) to provide Common Areas for the use and benefit of the Subdivision. The size, location, nature and extent of improvements and landscaping, and all other aspects of the Common Areas that are provided by Developer shall be determined by Developer in its absolute discretion.

3.2 **Grant of Easement.** Developer, the Owners of Lots and the Association shall have the right and easement of enjoyment in and to all of the Common Areas and the improvements thereon, but only for the intended use or uses thereof. Such right and easement shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto, this Declaration, any Supplemental Declaration, the Articles of Incorporation and Bylaws of the Association, and any Rules adopted by the Association as amended from time to time. Each Owner uses Common Areas and related amenities at such Owner's own risk. By purchasing a Lot, each Owner releases and holds Developer and the Association harmless with respect to any damages suffered by such Owner related to the use of any Common Areas and related amenities.

3.3 **Conveyance of Common Areas.** Developer covenants and agrees to convey all of its right, title and interest in the Common Areas (except any part thereof that is within any Lot) to the Association, without any cost to the Association, not later than thirty (30) days after the end of the Control Period. If Developer fails to execute and record a separate deed conveying the Common Areas to the Association within thirty (30) days following the end of the Control Period, this Article III of the Declaration shall be deemed a conveyance to the Association of all of Developer's right, title and interest in and to the Common Areas. Any improvements to be constructed by Developer on the Common Areas shall be constructed on a timeframe determined by Developer, in Developer's sole discretion.

3.4 **Maintenance of Common Areas.** The Association, by and through the Board, shall have the authority and the responsibility, for the term of this Declaration and all renewals or extensions thereof, to provide for the maintenance and repair of the Common Areas (including

the purchase of liability insurance providing coverage to the Common Areas and the payment of real estate taxes assessed to the Common Areas), to contract with such firms of Persons as it deems necessary and desirable, and to hire Persons to perform such functions, including management, clerical and administrative duties, as it deems necessary and desirable for the maintenance and repair of the Common Areas in accordance with the terms of this Declaration, the Bylaws of the Association, and the requirements of the City and the County. The Association is hereby granted an easement of access and entry to every Lot and the Common Areas to perform maintenance, enforce architectural and use restrictions and to perform any other duties required of the Association.

3.5 Utility Easements. Notwithstanding any term or provision of this Article III to the contrary, the right and easement of enjoyment of the Owners as to any of the Common Areas shall be subject to the right of Developer, and after the expiration of the Control Period, the Association, to convey sewer, water, drainage, maintenance, access, utility or other easements over, under, upon and through the Common Areas or any portion thereof, as is necessary or in Developer's judgment desirable for the proper operation and development of the Property. Companies, both public and private, furnishing utility services to the Property are hereby granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair or replacement of utility lines and equipment for other purposes proper and necessary to provide utility services to the Property.

3.6 Alteration of Common Areas. No Owner shall improve, destroy or otherwise alter any of the Common Areas without the express written consent of Developer or, after the expiration of the Control Period, the Association.

3.7 Additional Rules. Developer and the Association shall have the right from time to time to make, alter, revoke and enforce additional rules, regulations and restrictions pertaining to the use of the Common Areas.

ARTICLE IV ASSESSMENTS FOR MAINTENANCE OF COMMON AREAS

4.1 Obligation and Lien for Assessments. Except for Developer and any Builder, each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges as set forth in this Declaration, the bylaws of the Association, or as the Association may fix and determine from time to time; and (b) such special assessments as the Association may fix and determine in accordance with the terms of this Declaration and as may be provided in the Association's Bylaws. The annual and any special assessments, together with interest thereon, costs of collection and attorneys' fees incurred in the collection thereof, shall be the personal obligation of the Owner of each Lot at the time when each such assessment is due and payable. Such personal obligation for such assessments shall not pass to such Owner's successors in title unless expressly assumed by such successors. However, each such annual and special assessment, together with interest accruing thereon, costs of collection and attorneys' fees incurred in the collection thereof, shall to the full extent permitted by law, be a charge on each Lot and shall be a continuing lien upon each Lot against which each such assessment is made. During the Control Period, Lots owned by Developer and Builders are not subject to any

assessments until such Lots are transferred to a Public Purchaser.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used for the maintenance, repair and upkeep of the Common Areas and for promoting the general benefit, recreation, health, safety, property values and welfare of the residents in the Subdivision (including any additions thereto). Such purpose shall include (in addition to the rights and powers set forth in this Declaration or in the Association's Bylaws) provisions for the improvement, construction, repair, maintenance, care, upkeep and management of the Common Areas and any improvement and facilities thereon, including Common Area fences within and along the perimeter of the Subdivision, maintenance of any private Subdivision roads, the payment of any taxes and assessments by any governmental agency, the payment of insurance premiums on the Common Areas and any improvements thereon, and all other costs and expenses related to the management and maintenance of the Common Areas. Nothing contained herein shall limit the Association's rights and powers granted in this Article or granted elsewhere in this Declaration or the Bylaws of the Association.

4.3 Annual General Assessment. In order to provide the Association with a general fund with which to exercise the powers, maintain the Common Areas and improvements located thereon, and to render the services provided for herein and as may be provided under the Association's Bylaws, all Lots, other than Lots owned by Developer or Builders, shall be subject to an annual general assessment to be paid to the Association in such amount as shall be determined by the Board from time to time.

4.4 Special Assessments.

(a) In addition to the annual assessment contemplated by Section 4.3 above, the Association may levy, in any assessment year, a special assessment for capital improvements to the Common Areas or for such emergency purposes or otherwise as the Board may recommend. So long as the total amount of special assessments allocable to each Lot does not exceed the amount of the then current general assessments allocable to each Lot in any one fiscal year, the Board may assess the special assessment without the consent of the Owners. Any special assessment, other than those described in Sections 4.4(b) and 4.4(c) hereof and other than those permitted by the immediately preceding sentence, shall require the affirmative vote of a majority of the Owners. Neither Developer nor any Builder nor any Lots then owned by Developer or any Builder shall have any liability for any special assessment, except for Builders under Sections 4.4(b) or 4.4(c) hereof. Special assessments are due on the date stated in the notice of assessment.

(b) If an Owner (other than Developer) fails to properly maintain, repair or replace any improvements on the Owner's Lot, the Association, acting through the Board and after giving adequate notice to the Owner of the need for the maintenance, repair or replacement, may enter onto the Lot and perform such maintenance, repair or replacement. The Association's costs thereof, plus a reasonable overhead and supervisory fee, shall be payable by the Owner of the Lot and shall be a special assessment against and lien upon the Lot until paid by the Owner.

(c) If any Owner (other than Developer) commences a lawsuit or files a counterclaim or crossclaim against the Association, the Board, or any committee member of the Association, or any individual director, officer or committee member of the Association, and such Owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Association, the Board, or individual director, officer or committee member sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including reasonable attorneys' fees. Such recovery right shall constitute a special assessment against the Owner's Lot and shall be enforceable against such Lot as provided herein.

4.5 Commencement of Assessments. The annual assessment per Lot shall be made at the time the initial Public Purchaser of each Lot receives a deed from Developer or a Builder for such Public Purchaser's Lot, and shall be due at the time of delivery of the deed to each initial Public Purchaser, provided, however, the same shall be prorated as of the date the deed is recorded, and provided further, the Board may, in its discretion, allow or permit such annual assessment or any special assessment to be paid in quarterly installments. All annual assessments thereafter shall be paid on or before the 31st day of January in the year for which the assessment applies (e.g. 2007 annual assessment is due and payable on or before January 31, 2007). In January of each year, the Board shall send a notice to each Owner providing for the amount then due, as well as the address to which payment should be made.

4.6 Remedies. If any Owner fails to pay any assessment as and when the same becomes due (a "Delinquent Owner"), the Association may take such action as the Board may determine necessary or appropriate for collection of the same, including suit for collection and foreclosure of the lien for assessments provided for herein. If the Board employs one or more attorneys for collection of any unpaid assessment for foreclosure of such lien, the Delinquent Owner shall, in addition to the amount of unpaid assessments then due, also pay all reasonable attorneys' fees and costs of collection and/or foreclosure incurred by the Association in connection therewith. Each assessment that remains unpaid for a period of more than thirty (30) days shall, at the election of the Board, bear interest at the lower of eight percent (8%) per annum or the highest rate allowable under applicable law. The Board may also suspend the Delinquent Owner's right to vote on Association matters and the Delinquent Owner's right to use Common Areas and the amenities related thereto. The Association, upon a determination by the Board, may also cease to provide any or all of the services (including, without limitation, use of Common Areas and any trash services) to be provided by or through the Association with respect to any Lot during any period that the Owner of the Lot is delinquent on the payment of an assessment due under this Declaration, and no such cessation of use privileges or services shall result in a reduction of any amount due from the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Association. The remedies provided for herein are not exclusive and are in addition to any and all other remedies available at law or in equity.

4.7 Foreclosure of Lien. Each Owner, by accepting a deed to such Owner's respective Lot, acknowledges that a continuing lien with power of sale is hereby created for securing payment of any and all assessments due with respect to such Lot, together with any and all interest accrued upon a delinquent assessment and all costs of collection, including all

reasonable attorneys' fees incurred by the Association in the collection of such delinquent assessment or foreclosure of the lien provided for herein. At any time after thirty (30) days from the date any assessment shall be due, the Board may, but shall not be required, to make written demand for payment to the Delinquent Owner, setting forth the amount then due. If such amount is not paid within ten (10) days after delivery of such demand, the Board may then cause a Notice of Delinquent Assessment to be recorded in the Recording Office with copies thereof to be delivered by the Board to the then Owner of such Lot. The Notice of Delinquent Assessment shall be executed and acknowledged by a member of the Board and shall state the following:

- (a) The name and last known address of the Delinquent Owner;
- (b) The legal description and street address of the Lot to which such delinquent assessment pertains;
- (c) The amount due as of the date such Notice of Delinquent Assessment is executed and acknowledged; and
- (d) That a lien exists against the Lot in favor of the Association pursuant to this Declaration for which the Association may foreclose pursuant to the power of sale granted herein.

Following the recording of the Notice of Delinquent Assessment, the Board may proceed with foreclosure of the lien provided for herein in the same manner as provided by the laws of the State of Arkansas for foreclosure of a mortgage with power of sale, or by appropriate action for judicial foreclosure and sale. At any such sale the Association may purchase the Lot and the Delinquent Owner shall remain liable for any deficiency resulting from any sale by foreclosure.

4.8 **Subordination of Lien for Assessments.** The lien for assessments provided for herein shall be subordinate to the lien of any deed of trust or mortgage granted by the Owner for the purchase of such Owner's Lot, provided, however, no sale, grant of a deed of trust or mortgage or other transfer of any interest in any Lot shall relieve such Lot from liability for any assessments then or thereafter becoming due or from the lien therefore.

ARTICLE V USE AND BUILDING RESTRICTIONS

5.1 **Single-Family Residence Use.** The Lots constituting a part of the Property are intended solely for use as Single-Family Residences. Each Lot shall be used, improved and devoted exclusively for single-family residential use in accordance with the restrictions, conditions and covenants set forth in this Declaration. No duplex, flat, boarding house, rooming house, apartment house or other multi-family or multi-unit residential structure, or any nonresidential structure or other improvement (except Exterior Structures approved by the Architectural Control Committee as set forth herein) may be erected on any Lot. No more than one (1) Single-Family Residence shall be located on any Lot and no such residence shall exceed two (2) stories in height. Each such residential structure shall have an attached garage for not less than two motor vehicles and shall have a concrete driveway at least 18 feet wide. All

residential structures shall be of new construction on-site; no residential building or structure which has previously been at another location shall be moved onto any Lot, and no "prefabricated", "modular", "manufactured" or otherwise pre-assembled or pre-constructed homes or structures of any nature or kind whatsoever (except Exterior Structures approved by the Architectural Control Committee) shall be erected, stored or placed on any Lot. The front portion of all building exteriors must be at least 80% brick, stone, stucco or other material specifically approved by the Architectural Control Committee. No vinyl or plastic materials will be allowed on the exterior of any residence. No camper, trailer, mobile home, vehicle, tent, outbuilding, Exterior Structure or any other apparatus or structure whatsoever except a permanent residence (the Plans and Specifications for which have been approved by the Architectural Control Committee as set forth herein) shall at any time be used for human habitation, temporarily or permanently, nor shall any residence or other structure or improvement of a temporary character be erected, moved onto or maintained upon any Lot or any Common Areas. Notwithstanding the foregoing, nothing herein shall prevent or prohibit Developer or its designees authorized by Developer from placing and using temporary buildings, structures or any residence for model, office, sales or storage purposes prior to the end of the Control Period. Further, nothing herein shall be deemed to prevent the leasing of any Single-Family Residence from time to time by the Owner thereof, subject to all of the provisions of this Declaration. The provisions of the City codes and regulations in effect on the date the Plat is approved regarding Single-Family Residences shall govern all Lots within the Subdivision.

5.2 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept and maintained provided that they not be kept, bred or maintained for any commercial purposes. Household pets shall be maintained in a clean and sanitary situation and shall not be noxious or a nuisance to the surrounding Owners. Each household shall be limited to not more than 3 dogs and/or cats. Dogs must be considered tame. No reptiles shall be kept as pets. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether a particular animal is a common household pet, a nuisance, or whether the number of animals kept on any Lot is reasonable. Any decision rendered by the Board on such matters shall be as enforceable and in the same manner as any other restriction contained herein. No pet or animal shall be allowed to run loose or unsupervised within the Subdivision.

5.3 Antennas. No television antenna, dish, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any dwelling or other structure within the Subdivision without the approval of the Architectural Control Committee; nor shall radio, television signals, or any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other Lot or the Common Areas, provided, however, that digital satellite receivers not more than 18 inches in diameter shall be allowed if they are not visible from the street.

5.4 Construction of Residence, Improvements and Alterations. No building, residence, fence, wall, swimming pool, drive, Exterior Structure or other structure or improvement shall be commenced, constructed, improved or altered, without the prior written approval of the Architectural Control Committee as set forth herein.

5.5 Trailers and Motor Vehicles. All vehicles, and equipment owned by Owners of Lots shall be parked only in the Lot Owner's garage or driveway. Recreational vehicles and equipment, including but not limited to boats, motor homes, travel trailers, campers and the like, shall not be parked or stored within the Subdivision. Small boats may be stored in the Lot Owner's garage or behind a privacy fence as long as the boat is not visible by neighbors or not visible from the street. The Board may provide in the Rules such other and further restrictions, prohibitions and conditions pertaining to the storage, maintenance, keeping and use of motor vehicles, trailers, boats and watercraft which shall be deemed incorporated herein by reference and as effective and binding as set forth expressly herein.

5.6 Inoperative Vehicles. No vehicle, bus, tractor, or other conveyance or rig, other than a lawn grass apparatus, shall be left inoperative on any Lot for a period of more than 3 days.

5.7 Common Areas Lawns and Plantings. Developer or the Association shall have the right at any time, to plant, replace, maintain, and cultivate shrubs, trees, grass, and plantings within the Common Areas and on such easements as may be granted to or reserved by Developer or the Association over and across each Lot. No Owner or other Person shall remove, alter, injure or interfere in any way with such shrubs, trees, grass and plantings without the prior approval of Developer or the Board. Developer or the Association shall have the right to enter any Lot at any reasonable time, for the purpose of maintaining, placing or replacing shrubs, trees, grass and plantings.

5.8 Nuisances.

(a) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereupon which may be or may become an annoyance or a nuisance to the neighborhood. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or noxious fumes shall be permitted to emanate therefrom so as to render any Lot, or portion thereof, unsanitary, unsightly, offensive or detrimental to any other Lot or its occupants. Without limiting the generality of the foregoing, no exterior speakers, excessive exterior lights, horns, whistles, bells or other sound devices, except those designed solely for security purposes, shall be used, placed or located on any Lot. The Board in its sole discretion shall have the right to determine whether any of the foregoing conditions or circumstances not specifically described herein constitutes a nuisance to any other Lot or the Subdivision and may require the removal or remediation of such condition. Any such Board decision shall be conclusive.

(b) Grass, trees and various vegetation shall be kept neatly cut and maintained. Lawns shall not be allowed to exceed six (6) inches from the ground surface. Fences or other outside structures or outdoor decorations shall be maintained so as not to become unsightly or an annoyance or a nuisance to the neighborhood. Upon an Owner's failure to comply with this subsection, the Association may perform, or have performed, the necessary action to remedy the problem, and shall be entitled to recover the expense associated with such remedial action from the offending Owner together with interest thereon at the lower of eight percent (8%) per annum or the highest rate allowable under

applicable law.

5.9 Repair and Maintenance of Buildings. No building, residence or structure within any Lot shall be permitted to fall into a state of disrepair and the same shall at all times be kept in good condition and repair and adequately painted. The Board may determine violations of this Section to constitute a nuisance subject to remediation by the Association in the manner provided for in Section 5.8.

5.10 Trash Containers and Collection. No garbage or trash shall be placed, permitted or kept on any Lot except in covered containers of a standard residential type. Such containers shall not be Visible from Neighboring Property except at such time as to make the same available for collection and then only for the time reasonably necessary to allow for such collection. All rubbish, trash and garbage shall be removed from each Lot at least once per week either by or on behalf of each Owner.

5.11 Clothes Drying Facilities. The hanging of laundry from any area within or outside a residence, which places the laundry within public view, is prohibited.

5.12 Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet, without the prior approval of the Architectural Control Committee. No fence, wall, hedge or shrub, which obstructs sight lines at intersections within the Subdivision, shall be permitted.

5.13 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of the improvements on such Lot, and except that which Developer or the Association may require for the operation and maintenance of the Common Areas.

5.14 Restrictions on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner without the prior written approval of the Board.

5.15 Signs. No signs, either permanent or temporary, of any kind, shall be placed or erected on any property, without the consent of the Architectural Control Committee unless signage upon property advertises the same for sale or rent, and does not exceed 6 square feet in area; provided, however, that Developer and Builders (with Developer's approval) may erect signs to advertise the Subdivision and model homes.

5.16 Dwelling Size. The Architectural Control Committee shall exercise its best reasonable efforts to see that all structures, as to size, conform to and harmonize with the existing surroundings and structures. No permanent residence to be constructed on a Lot shall contain less than 1,800 square feet of heated and cooled living space, without approval of Developer.

5.17 Building Location. No building shall be erected on any Lot nearer than (1) 25 feet to the front Lot line; (2) 20 feet to the rear Lot line; (3) 7 feet to the interior side Lot line; and (4) 25 feet to the side lot line of a Lot facing a street. For purposes of this covenant, eaves, steps and open porches shall not be considered as part of the building; provided, however, this shall not be construed to permit any portion of the building on a Lot to encroach upon another Lot. Should any building setback lines shown upon the Plat vary from the setback requirements required herein, the building setback lines shown upon the Plat shall control and take precedence over those stated herein. Variances to the setback requirements established herein, as may from time to time be permitted by the City, shall take precedence and be controlling.

5.18 Fences. The approval requirements outlined in Section 6.2 below for approval of structures also applies to fences. Fencing of front yards is prohibited. Fencing on Corner Lots may extend to, but not beyond, the exterior side setback lines established herein. No fences shall exceed 6 feet in height. All fences, except a fence, boundary wall or privacy screen that surrounds a swimming pool, shall be 6 feet wood privacy fences and shall be the same style fences. All fences (except for fences around swimming pools, hot tubs and patio areas) must be joined to or abutting any previously existing fences on adjacent Lots. All wood fence shall be treated with a clear stain and not be painted or stained any color, unless otherwise approved by the Architectural Control Committee. Subject to the foregoing sentence, all wood fences shall be painted or stained within nine months after installation. Supporting structures on all fences shall be placed on the side of the fence facing the property of the Owner building the fence. Chain link and other forms of wire fencing are specifically prohibited. No fence shall be installed without a permit from the City (where required) and complying with all applicable laws and codes. No fence or obstruction of any kind shall be erected or constructed within the boundaries of drainage easements shown and identified as such on the Plat.

5.19 Lawns, Landscaping and Gardens.

(a) Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, all lawns, including all areas between each residence and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter; provided, however, that the Owner of a Lot may leave a portion of the back yard of a Lot as a natural area with the express written permission of the Architectural Control Committee.

(b) Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the Subdivision (which shall include, but not be limited to, foundation plantings in the front yard, plus at least one hardwood tree of two inch or more caliper in the front yard (in addition to any trees planted by Developer)). All landscaping shall be installed in accordance with any landscaping plans approved by the Architectural Control Committee.

(c) To the extent any of the foregoing items are not completed prior to occupancy, the Owner shall escrow funds, in an amount (if any) and manner determined

by the Architectural Control Committee, to assure such installation when weather permits.

(d) All vegetable gardens shall be located behind the rear corners of the residence (as determined by the Architectural Control Committee) and at least five feet away from the boundary of the Lot. No vegetable garden(s) shall exceed 100 square feet in size on any Lot, except with the prior written consent of the Architectural Control Committee.

(e) The lawn of each Lot shall be kept in good condition at all times and uniformly mowed and clipped with a length of grass not to exceed six inches.

(f) Developer shall have the right (but not the obligation) to install one or more trees on each Lot. The type of tree(s) and location shall be selected by Developer in its absolute discretion. Each Owner shall properly water, maintain and replace all trees and landscaping on the Owner's Lot (including any trees planted by or for Developer, but excluding those in a Common Area maintained by the Association).

(g) No tree of four inch (4") caliper or more may be removed from any Lot at any time (other than by Developer) without the written approval of the Architectural Control Committee.

5.20 Easements. Perpetual easements for the construction and maintenance of utilities and drainage will be reserved on the Plat, and no permanent structure of any kind shall be erected or maintained upon or over said easements.

5.21 Soil Removal. Soil may not be removed from any Lot or Common Areas without the consent of Developer or the Architectural Control Committee.

5.22 Garage Doors. The doors of all garages shall be kept closed at all times except when necessary for ingress and egress. The doors of all garages shall be installed with electric or battery powered opening and closing devices.

5.23 Improvements. Each Owner shall, within one (1) year after the date of commencement of construction of any improvements on their Lot, complete said improvements. If said improvements are not completed within said one (1) year period, Developer shall have the option to repurchase said Lot for a sum equal to the original purchase price of said improvements.

5.24 Outside Lighting. Except as may be initially installed by a Builder or Developer, no spotlights, floodlights or similar type high intensity lighting (including mercury vapor or sodium vapor lighting) shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon or upon the Common Areas or any part thereof without the written authorization of the Architectural Control Committee. Other types of low intensity lighting which do not cast excessive light onto adjoining Lots are allowed. No lighting shall be installed on or around the Common Areas, except that deemed necessary by Developer or the Board. Christmas lights must be removed from houses by January 31st of each

year.

5.25 Mailboxes. To enhance the appearance of the Subdivision consistent with United States Postal Service regulations, mailboxes in the Subdivision will be located as required by the United States Postal Service. A decorative mailbox will be supplied and installed by the Builders (of design materials and specifications approved by the Architectural Control Committee) within 2 feet of the nearest property line. All mailboxes will be the same. With respect to Lots with frontage on a cul-de-sac, Developer may, in its discretion require that one or more residences located on such Lots locate their respective mailbox on a common pedestal or structure shared with other mailboxes for other residences located on such cul-de-sac.

5.26 Roofs. All roofs shall have an exterior surface that shall be subject to approval by the Architectural Control Committee, in its sole discretion. All gables must have a pitch of at least 8/12 and consist of architectural roofing shingles or other roofing material specifically approved by the Architectural Control Committee. No standard 3-tab roofing material will be allowed.

5.27 Swimming Pools. Accessory buildings, in-ground swimming pools, cabana structures and gazebos may be built within the building area on any Lot subject to the approval of the Architectural Control Committee. The approval requirements outlined in Subsection 6.2 below for buildings shall apply to these structures. Permanent and semi-permanent above-ground swimming pools shall be prohibited.

5.28 Solar Collectors. The construction, installation and location of solar collectors shall be permitted only upon advance approval by the Architectural Control Committee.

5.29 Building Limitations. The building codes of the City as they presently exist or are hereafter amended, shall be and are hereby made applicable to all Lots. All dwellings and other improvements shall comply with said ordinances as they exist on the date of such construction. Any conflict between such ordinances and the provisions of this Declaration shall be resolved in favor of the more restrictive provisions.

5.30 Home Occupations. Home occupations and professions shall be prohibited, notwithstanding the allowance of such by the City or other governmental authority.

5.31 Temporary Structures. No trailer, tent, shack, garage, barn, or other outbuilding or structure erected on a building site within the Subdivision 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. This restriction does not prohibit Developer or Builders from placing temporary construction trailers and/or storage facilities on Lots as deemed necessary.

5.32 Building Materials. No building material 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 promptly removed from the

Subdivision.

5.33 **Sound Devices.** No exterior speaker, horn, whistle, bell or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used or placed upon Lots. The playing of loud music from porches or decks shall be considered offensive, obnoxious activity constituting a nuisance.

5.34 **Basketball Goals.** The placement and quality of all basketball goals must be approved by the Association.

5.35 **Garage Sales.** Garage sales shall only be held semi-annually and only as a neighborhood event, unless otherwise approved by the Association. The dates of neighborhood garage sales will be determined by the Association.

5.36 **Remedies.** If an Owner (or guest, invitee, licensee, tenant, lessee, family member, agent or employee thereof) shall violate, or permit to be violated, any of the provisions set forth in this Article, the Board shall cause to be delivered to said Owner a written Notice of Violation. Said Notice of Violation shall set forth the nature of the alleged violation and shall request that the violation be voluntarily terminated and remedied within a reasonable time as determined by the Board from the mailing of said notice. If, after a reasonable time has lapsed from the date of said Notice, the violation has not been voluntarily terminated by the Owner, the Board shall have the authority to pursue and effect any and all procedures which may be calculated as reasonably necessary to remove and/or terminate the cause of said violation. This authority shall include, but shall not be limited to, the power to employ laborers to enter upon the premises of said Owner for the purpose of removing and/or terminating said violation, and the collection of said expenses so incurred may be effected in the manner provided in Article IV for the collection and enforcement of assessments. For purposes of administering this Section, the determination of whether a violation has been, or is being committed, and the determination of what time period constitutes a "reasonable time" allowable for voluntary termination of the same, shall be made by the Board after taking into consideration the facts and circumstances surrounding the particular violating situation, condition or occurrence. If the Board does not elect to exercise its authority of enforcement as set forth above, then Developer or any other Owner or Owners shall have the right to pursue, at law or in equity, any remedy for enforcement of these covenants which remedy is hereby specifically granted by this Section. If it is necessary for the Association, Developer or any Owner or Owners to retain the services of legal counsel in an attempt to enforce these covenants, the enforcing parties or party shall be entitled to reimbursement of all litigation costs, including reasonable attorneys' fees and court costs, with such reimbursement being awarded by way of judgment against the Owner or Owners responsible for any such violation or violations.

**ARTICLE VI
ARCHITECTURAL CONTROL COMMITTEE**

6.1 **Membership.** From the date of this Declaration to the end of the Control Period Developer shall be the Architectural Control Committee. Developer may appoint such person or persons to act as the Architectural Control Committee on its behalf during the period in which

Developer is the Architectural Control Committee. Thereafter, the Board shall comprise the Architectural Control Committee unless the Board shall see fit to delegate this function to a Committee appointed by the Board, which committee shall be comprised of no more than five (5) Owners.

6.2 Architectural Control Function. No structure, whether a residence, Exterior Structure, accessory building, mailbox, awning, swimming pool, fence, wall, lot, drainage works, exterior area lighting or any other improvement whatsoever shall be constructed, reconstructed, repaired or maintained upon any Lot, and no alteration to the exterior of a structure shall be undertaken unless complete Plans and Specifications and plot plans therefore showing the exterior design, height, building material and color scheme thereof, the location of the structure on the Lot plotted horizontally and vertically, the location of driveways and fencing, shall have been approved in writing by the Architectural Control Committee. A copy of such Plans and Specifications and plot plans as finally approved shall be deposited with the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the properties conform to and harmonize with the existing surroundings and structures.

6.3 Liability. The Architectural Control Committee shall not be liable for damages to any Person who has submitted a request for approval by reason of any action, failure to act, approval or disapproval, or failure to approve or disapprove such request. No approval of Plans and Specifications by the Architectural Control Committee shall be construed to mean that such Plans and Specifications are technically correct from an architectural or engineering perspective or comply with applicable governmental requirements.

6.4 Restrictions on Builders. Developer reserves the right to implement and enforce such rules, regulations and policies as may be reasonable and necessary during the developmental stage of the Subdivision regarding the original construction of improvements within the Subdivision. Any Builder constructing improvements within the Subdivision shall be bound by such rules, regulations and policies, including, without limitation, the following:

(a) Each Builder shall remove rubbish and debris and otherwise clean each Lot on which it is constructing a residence at least one (1) time each week;

(b) Builder shall construct, at its earliest convenience, a gravel driveway or approach, the purpose of which shall be to prevent Builder's employees, agents, subcontractors and others under its control from transferring soil and mud from a Lot to the Subdivision streets and roads; and

(c) Builder shall prevent its employees, agents, subcontractors and all others under its control from parking on a portion of the Lot not specifically designed for parking (e.g. gravel driveway). Unless Builder has constructed an appropriate gravel driveway or approach, Builder and its employees, agents, subcontractors and others under its control shall park only on the paved roadway adjoining the Lot on which Builder is constructing the residence.

**ARTICLE VII
PERMITTED USE AND RESTRICTIONS TO COMMON AREAS**

7.1 Maintenance by Association. The Board may, at any time, as to any Common Areas owned, leased or otherwise controlled by the Association, take the following actions without any approval of the Owners being required:

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area in accordance with (1) the last plans thereof approved by the Board, (2) the original plans for the improvements, or (3) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed;

(b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a private road, street, walk, driveway, or parking area;

(c) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration; and

(f) The Board shall be the sole judge as to the appropriate maintenance of all grounds within and improvements upon the Common Areas, including Common Areas fences.

7.2 Damage or Destruction of Common Areas by Owners. If any portion of the Common Areas is willfully or maliciously damaged or destroyed by an Owner or any of his or her guests, tenants, licensees, agents or members of his or her family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a workmanlike manner in conformance with the original plans and specifications for the area involved or as the area may have been modified or altered subsequently by the Association. The cost for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

**ARTICLE VIII
BRENTWOOD PROPERTY OWNERS' ASSOCIATION**

8.1 Organization.

(a) The Association shall be a not-for-profit corporation organized and existing under the not-for-profit corporation law of the State of Arkansas, charged with the duties and invested with the powers prescribed by law and set forth in its Articles of Incorporation, Bylaws, this Declaration and any Supplemental Declarations. Neither the Articles of Incorporation nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration or any amendments thereto.

(b) The affairs of the Association shall be conducted by a Board of Directors and such Officers as the Board may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws.

8.2 Powers and Duties of the Association. The Association shall have the power and obligation to provide for the maintenance, repair, replacement, administration, insuring and operation of the Subdivision and Common Areas as herein provided and as may be provided in the Bylaws.

8.3 Rules. By majority vote of the Board, the Association may from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations covering the use of any Common Areas by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that such rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Association's Articles of Incorporation or Bylaws. A copy of such rules as they may from time to time be adopted, amended or repealed, shall be made available to each Owner, at said Owner's request. Upon enactment, said rules shall have the same force and effect as if they were set forth in and were part of this Declaration.

8.4 Personal Liability. No member of the Board or any committee of the Association, or any officer of the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board or any other committee, or any officer of the Association; provided that such Person has, upon the basis of such information as may be possessed by such Person, acted in good faith, without willful or intentional misconduct.

8.5 Responsibility for Common Areas. The Association shall have the responsibility for maintaining and insuring the Common Areas and the Common Areas improvements, and shall be responsible for the payment of taxes (if any) and insurance on the Common Areas.

8.6 Indemnification of Developer by Association. The Association hereby agrees and covenants to indemnify Developer and Developer's managers and members from any and all

claims for personal or property damage which may result from the use, ownership, possession, control or maintenance of the Common Areas, including any drainage detention area, and hold Developer harmless therefrom on a continuing basis.

8.7 Insurance. The cost of insurance for the Common Areas is a cost of the Association. The Association shall be named as an insured on all policies. The Association shall, through the Board, maintain the following insurance policies:

(a) Insurance on all improvements in the Common Areas which have insurable value against loss or damage by fire or by any and all other risks insured by standard extended coverage policies in use in the State of Arkansas, with such endorsements as the Board deems advisable, but in any event in an amount not less than the full insurable replacement cost thereof.

(b) Comprehensive general liability insurance, including medical payments insurance, against claims for personal injury or death (minimum coverage of One Million Dollars (\$1,000,000.00) per occurrence) and property damage (minimum coverage of Two Hundred Thousand Dollars (\$200,000.00) per occurrence) suffered by the public or any Owner, the family, agent, employee, or invitee of any Owner, occurring in, on or about any Common Areas. Any policy obtained pursuant to this Subsection (b) shall, if possible and practical considering the cost thereof, contain a cross-liability endorsement whereby the rights of a named insured shall not prejudice his, her, or their action or actions against another named insured, and shall contain a "severability of interest" type of endorsement precluding the insurer from denying a claim of an Owner or the Association because of the negligent acts of other Owners, or the Association.

(c) Director's and Officer's liability insurance for the directors and officers of the Association against any liability arising out of such party's status as a director or officer is suggested, but not required.

(d) Such other insurance as the Board deems appropriate to protect the Association and the Owners.

All insurance provided for in this Article shall be obtained from responsible insurers authorized to do business in the State of Arkansas.

8.8 Board of Directors. The initial Board, to consist of three (3) members, shall be designated by Developer and shall serve until the end of the Control Period. Thereafter, the Owners shall elect the Board. Elections of the Board by the Owners shall be held in accordance with the Bylaws. The Board's responsibilities, as set forth herein and in the Bylaws, shall include the following:

(a) During the first week in December of each year, the Board shall meet and establish a budget for the next succeeding calendar year for the maintenance of the Common Areas and other obligations of the Association as described herein and in the Bylaws. Each annual budget shall be effective the first calendar month of the succeeding

year, unless Owners (eligible to vote) holding at least a majority of the votes in the Association, in writing or by a majority at any regular or special meeting of the Owners, reject the budget; provided, however, that if a budget increase is ten percent (10%) or less, from one year to the next, then the budget shall be effective the first calendar month of the succeeding year unless Owners (eligible to vote) holding at least seventy-five (75%) of the votes in the Association, in writing or by a majority at any regular or special meeting of the Owners, reject the budget. The Owner's right to reject a budget shall not apply during the Control Period.

(b) After each budget is established, the Board shall determine the annual assessment required to be paid by each Owner, which shall be paid in accordance with Subsection 4.5 hereof.

ARTICLE IX MEMBERSHIP AND VOTING RIGHTS

9.1 **Membership.** Every Owner, either of a fee of undivided interest of a Lot, other than Builders, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment of the Association. A Builder shall have no vote in the affairs of the Association.

9.2 **Voting Rights.**

(a) Until the end of the Control Period, the Association shall have two classes of membership, namely Class A and Class B. Every Owner (other than Developer or Builders) shall be a Class A Member of the Association. Class A membership shall be appurtenant to and may not be separated from Lot ownership. Subject to the provisions of Subsections 9.2(c) and 9.2(d) below, Class A Members shall be entitled to one vote for each Lot they own. The Class B Member of the Association shall be Developer, and Developer shall be entitled to three (3) votes for each Lot owned by it. Upon the sale of a Lot, the Class B Member shall forfeit its three (3) votes with respect to such Lot.

(b) After the end of the Control Period, there shall be only one class of membership, which shall consist of the Owners of the Lots in the Subdivision, and every such Owner shall be a voting member of the Association, entitled to one vote for each Lot he or she owns, subject to the provisions of Subsections 9.2(c) and 9.2(d) below.

(c) Where voting rights exist based on Lot ownership, each Class A Member (before the end of the Control Period) and each member of the Association (after the end of the Control Period) shall have one vote for each Lot for which he or she is the Owner; provided that when more than one Person is an Owner of any particular Lot, all such Persons shall be members and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot. The Owner of adjacent Lots shall only have one vote with respect to such

adjacent Lots if only one Single-Family Residence has been, is being, or will be erected thereon.

(d) DURING ANY PERIOD IN WHICH A MEMBER IS IN DEFAULT IN THE PAYMENT OF ANY ASSESSMENT LEVIED BY THE ASSOCIATION UNDER THIS DECLARATION, THE VOTING RIGHTS OF SUCH MEMBER MAY BE SUSPENDED UNTIL SUCH ASSESSMENT HAS BEEN PAID IN FULL.

(e) Subject to the foregoing, the Board shall be the sole judge of the qualifications of each Owner to vote and an Owner's right to participate in Association meetings and proceedings.

9.3 Management of Association. Owners shall have no right to manage the business and affairs of the Association except as provided in the Articles of Incorporation or Bylaws of the Association. The management of the Association shall be vested entirely in the Board as provided in the Association's Articles of Incorporation and Bylaws.

ARTICLE X GENERAL PROVISIONS

10.1 Enforcement. The Association, Developer, and any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and any subsequently recorded Supplemental Declarations. Failure by the Association, Developer or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

10.3 Amendment.

(a) The covenants and restrictions of this Declaration shall run with and bind the land, in perpetuity, or if not permitted by operation of law to run in perpetuity, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless otherwise amended as herein provided or terminated by the unanimous vote of all of the then existing members of the Association.

(b) This Declaration may be amended in whole or in part at any time during the Control Period by an instrument in writing executed by Developer. Developer may release and relinquish its right to amend this Declaration earlier than the expiration of the Control Period by a writing recorded in the Recording Office.

(c) This Declaration may be amended after the end of the Control Period (or earlier, if Developer relinquishes its amendment rights early) by an instrument in writing executed by the Association, with the approval of a majority of the votes of the members voting in person or by proxy at a meeting called for that purpose.

(d) No amendment of this Declaration shall be effective until it is recorded in the Recording Office.

10.4 Violations and Nuisances. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Developer, the Association, or any Owner. However, any other provision of this Declaration to the contrary notwithstanding, only Developer, the Association, the Board, or the duly authorized agent of any of the above, may enforce by self-help any of the provisions of these restrictions.

10.5 Violation of Law. Any violation of any state, municipal or local law, ordinance of regulation pertaining to the ownership, occupation or use of any property within the Subdivision is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

10.6 Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

10.7 Delivery of Notices and Documents. Any written notice or other document relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty eight (48) hours after a copy of the same has been deposited in the United States mail, postage pre-paid, as to any Owner, to the address of any Lot within the Subdivision, owned, in whole or in part, by him or her, or to any other address last furnished by the Owner to the Association.

10.8 The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each Person, for himself, herself or itself, and their heirs, personal representatives, successors, transferees and assigns, binds them and the subject Lot(s) to the covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby.

10.9 Mortgage Protections. This Declaration may not be amended in a manner that materially affects the rights or security interest of a Mortgagee without the Mortgagee's consent. Notwithstanding Developer's right to amend this Declaration, unless at least fifty-one percent (51%) of the Mortgagees in the Subdivision have given prior written approval, neither the Owners nor the Association shall be entitled to abandon or terminate the legal status of the Subdivision. Approval is implied if Mortgagee fails to respond within thirty (30) days of written request, sent by certified or registered mail. If a Mortgagee requests from the Association compliance with the guidelines of the underwriting lender, the Board, without approval of the

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Deed Book & Page

Owners or Mortgagees, may make reasonable amendments to this Subsection to meet the requirements of the underwriting lender.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto executed this Declaration as of the day and year first above written.

CAVERN SPRINGS DEVELOPMENT, LLC
By Cherokee Development, Inc., Manager

By: Michael Shook
Printed Name: Michael Shook
Title: President

STATE OF ARKANSAS)
)SS
COUNTY OF BENTON)

On this 26th day of May, 2006, before me, the undersigned officer, personally appeared Michael Shook, who acknowledged himself to be the President of Cherokee Development, Inc., an Arkansas corporation and an authorized manager of Cavern Springs Development, LLC, an Arkansas limited liability company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company as authorized manager.

In witness whereof I hereunto set my hand and official seal.

Vanessa Dixon
Notary Public

My commission expires:

July 11, 2015

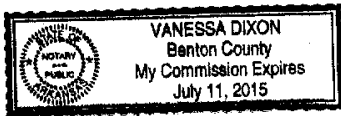


EXHIBIT "A"
[Legal Description]

2006 26728
Recorded in the Above
Deed Book & Page
05-26-2006 02:51:05 PM
Brenda DeShields-Circuit Clerk
Benton County, AR

ALL OF THAT PARCEL DESCRIBED IN WARRANTY DEED RECORDED IN BOOK 600 AT PAGE 584, BEING ALL THAT PART OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 18 NORTH, RANGE 30 WEST, LYING SOUTH OF ARKANSAS STATE HIGHWAY #264, BENTON COUNTY, ARKANSAS, CONTAINING 80.13 ACRES (80.27 ACRES DEED), MORE OR LESS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 5 AND RUNNING THENCE N00°23'10"W 1319.45' ALONG THE WEST LINE OF THE SOUTHWEST QUARTER TO THE CENTERLINE OF ARKANSAS STATE HIGHWAY #264, THENCE ALONG THE CENTERLINE OF SAID ROAD N89°52'24" 1318.63', THENCE S89°35'45"E 1318.02' TO THE EAST LINE OF SAID SOUTHWEST QUARTER, THENCE S00°27'51"E 1320.09' TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER, THENCE N89°54'11"W 1318.47' TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, THENCE N89°47'33"W 1319.96' (N89°39'45"W 1320.00' FEET) TO THE POINT OF BEGINNING

LESS THE FOLLOWING PARCEL, CONTAINING 7.04 ACRES, MORE OR LESS:

A PART OF THE SW 1/4 OF SECTION 5, TOWNSHIP 18 NORTH, RANGE 30 WEST, BENTON COUNTY ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 5; THENCE ALONG THE WEST LINE OF SAID SECTION 5 N00°23'10"W 954.45 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N00°23'10"W 365 FEET TO THE CENTERLINE OF ARKANSAS STATE HIGHWAY #264; THENCE ALONG SAID CENTERLINE N89°52'24"E 840.75 FEET; THENCE DEPARTING SAID CENTERLINE S00°23'10"E 365 FEET; THENCE S89°52'24"W 840.75 FEET; TO THE POINT OF BEGINNING.

Benton County, AR
I certify this instrument was filed on
05-26-2006 02:51:05 PM
and recorded in Deed Book
2006 at pages 26702 - 26728
Brenda DeShields-Circuit Clerk

2006 57299
Recorded in the Above
Deed Book & Page
12-04-2006 01:22:21 PM
Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2006/57299
Term/Cashier: CIRCUIT-L9HVNGG / jsodrey
Tran: 4921.141664.395222
Recorded: 12-04-2006 13:22:36
DFE Deed 14.00
REC Recording Fee 0.00
Total Fees: \$ 14.00

Above Line for Recorder Use Only

After recording return to: Spectrum Management, LLC
903 E. 104th St., Suite 630
Kansas City, MO 64131
Attn: Amit Raizada

This document was prepared by: Valerie B. Mangine

**FIRST SUPPLEMENTAL DECLARATION TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BRENTWOOD SUBDIVISION**

THIS FIRST SUPPLEMENTAL DECLARATION TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRENTWOOD SUBDIVISION ("**First Supplemental Declaration**") is made on this 28th day of November, 2006 by Cavern Springs Development, LLC, an Arkansas limited liability company ("**Developer**"), to amend that certain Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision dated May 26, 2006 and recorded with the Office of the Recorder of Deeds of Benton County, Arkansas on May 26, 2006 in Book 2006 at Page 26702 (the "**Original Restrictions**").

RECITALS:

A. The Developer is the owner of record of the properties described on Exhibit A hereto and incorporated herein by this reference (the "**Property**").

2006 57301
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Deed Book & Page
12-04-2006 01:22:21 PM
Brenda DeShields-Circuit Clerk
Benton County, AR

EXHIBIT A

Legal Description of Property

ALL OF THAT PARCEL DESCRIBED IN WARRANTY DEED RECORDED IN BOOK 600 AT PAGE 584, BEING ALL THAT PART OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 18 NORTH, RANGE 30 WEST, LYING SOUTH OF ARKANSAS STATE HIGHWAY #264, BENTON COUNTY, ARKANSAS, CONTAINING 80.13 ACRES (80.27 ACRES DEED), MORE OR LESS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 5 AND RUNNING THENCE N00°23'10"W 1319.45' ALONG THE WEST LINE OF THE SOUTHWEST QUARTER TO THE CENTERLINE OF ARKANSAS STATE HIGHWAY #264, THENCE ALONG THE CENTERLINE OF SAID ROAD N89°52'24" 1318.63', THENCE S89°35'45"E 1318.02' TO THE EAST LINE OF SAID SOUTHWEST QUARTER, THENCE S00°27'51"E 1320.09' TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER, THENCE N89°54'11"W 1318.47' TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, THENCE N89°47'33"W 1319.96' (N89°39'45"W 1320.00' FEET) TO THE POINT OF BEGINNING

LESS THE FOLLOWING PARCEL, CONTAINING 7.04 ACRES, MORE OR LESS:

A PART OF THE SW 1/4 OF SECTION 5, TOWNSHIP 18 NORTH, RANGE 30 WEST, BENTON COUNTY ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 5; THENCE ALONG THE WEST LINE OF SAID SECTION 5 N00°23'10"W 954.45 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N00°23'10"W 365 FEET TO THE CENTERLINE OF ARKANSAS STATE HIGHWAY #264; THENCE ALONG SAID CENTERLINE N89°52'24"E 840.75 FEET; THENCE DEPARTING SAID CENTERLINE S00°23'10"E 365 FEET; THENCE S89°52'24"W 840.75 FEET; TO THE POINT OF BEGINNING.

Benton County, AR
I certify this instrument was filed on
12-04-2006 01:22:21 PM
and recorded in Deed Book
2006 at pages 57299 - 57301
Brenda DeShields-Circuit Clerk

FOURTH SUPPLEMENTAL DECLARATION TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BRENTWOOD SUBDIVISION

This Fourth Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision (the "Fourth Supplement") is made as of April 17, 2015, by Buffington Homes of Arkansas, LLC, an Arkansas limited liability company (the "Developer").

WITNESSETH:

WHEREAS, Developer is developing the real property described in Exhibit "A" attached hereto pursuant to the restrictions, limitations and conditions set forth in that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision, recorded on June 1, 2007 in the office of the Benton County Circuit Clerk in Book 2007 at Page 22257 ("Restated Declaration"), as amended by that certain Second Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision, recorded on August 12, 2013 in the office of the Benton County Circuit Clerk in Book 2013 at Page 44604 ("Second Supplement"), and as further amended by that certain Third Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for Brentwood Subdivision, recorded on December 23, 2013 in the office of the Benton County Circuit Clerk in Book 2013 at Page 69803 ("Third Supplement") (the Restated Declaration, the Second Supplement and the Third Supplement are herein collectively referred to as the "Declaration");

WHEREAS, Buffington Homes of Arkansas, LLC became the "Developer" in accordance with the terms of the Third Supplement;

WHEREAS, confusion has arisen due to the phrase "*immediate resale*" set forth in the definition of "Builder" in Section 1.4 of the Restated Declaration, and Developer desires to provide certainty with respect to such definition;

WHEREAS, Section 10.3(b) of the Declaration provides that Developer may unilaterally amend the Declaration in whole or in part at any time during the Control Period (as such term is defined in the Declaration); and

WHEREAS, the date of this Fourth Supplement is within the Control Period.

Exhibit "A"

Property

Tract A of the Tract Split, as filed for record May 21, 2007, In Plat Book 2007, at Page 466, and being part of the Southwest Quarter of Section 5, Township 18 North, Range 30 West, Benton County, Arkansas, more particularly described as follows:

Beginning at a found railroad spike at the Southwest Corner of said Section 5; Thence along the west line of said Southwest Quarter, North 02°29'46" East, 954.45 feet; Thence leaving said west line South 87°14'40" East, 840.75 feet; Thence North 02°29'46" East, 365.00 feet; Thence South 87°14'40" East, 477.88 feet; Thence South 86°42'49" East, 1318.02 feet to a found railroad spike on the east line of said Southwest Quarter; Thence along said east Line, South 02°25'05" West, 1323.09 feet to a found railroad spike at the Southeast Corner of said Southwest Quarter; Thence along the south line of said Southwest Quarter, North 87°01'14" West, 1318.47 feet to a found stone at the Southwest Corner of the Southeast Quarter of the Southwest Quarter; Thence continuing along said south line of the Southwest Quarter, North 86°46'49" West, 1320.00 feet to the Point of Beginning, containing 73.22 acres, more or less, and being subject to all easements and rights-of-way of record or fact.

Tran: 328482
Total Fees: \$55.00

Benton County, AR
I certify that this instrument was Electronically filed
on 04/24/2015 9:05:20AM
in DEED Book 2015 Pages 20009 - 20012
Brenda DeShields-Circuit Clerk

