

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2013/15822
Term/Cashier: CASH2/Brenda Van Wilpe
03/29/2013 1:59PM
Tran: 231964
Total Fees: \$30.00

Book 2013 Page 15822
Recorded in the Above
DEED Book & Page
03/28/2013

**AMENDMENT TO THE BILL OF ASSURANCES AND PROTECTIVE COVENANTS AND RESTRICTIONS FOR BORGHESI
GARDENS, PHASE I n/k/a TUSCAN HEIGHTS SUBDIVISION, PHASE I, A PLATTED SUBDIVISION OF LOWELL, BENTON
COUNTY, ARKANSAS**

KNOWN ALL MEN BY THESE PRESENTS:

WHEREAS the undersigned property owners are now the owner of 80% of the lots in Tuscan Heights, Phase I, (previously known as Borghesi Gardens, PHASE I Subdivision) named and established as such through the Lowell City Council's amended Ordinance No. 743 which accepted the Final Plat of the Subdivision, by Ordinance No. 845, changing the name of the subdivision from Borghesi Gardens, PHASE I to Tuscan Heights Subdivision, PHASE I on the 5th day of August, 2008 and filed for record under instrument reference number 2008-31421 in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas; and,

WHEREAS, Owners together desired to support higher property values in the subdivision by providing for certain standards of use and construction in the subdivision and to provide useful and enjoyable common areas and the maintenance of such areas for property owners and their guests and, to this end, subjected the said all lots in Tuscan Heights Subdivision PHASE I, to the covenants, restrictions, easements, charges and liens, set forth in the Amended and Restated Bill of Assurances and Restrictive Covenants for Tuscan Heights which were filed of record in the Benton County Clerk's office on September 12, 2008, each and all of which is and are for the benefit of said property and each owner thereof, hereinafter referred to as the "Covenants"; and,

WHEREAS, Subsequent and pursuant to the filing of the above-stated Covenants, a Tuscan Heights Property Owners Association was organized and properly filed with the Arkansas Secretary of State's office on September 23, 2008, (hereinafter referred to as the "POA") for the purpose of constructing, maintaining and administering the common properties, areas and services, and administering and enforcing the Covenants and restrictions and collecting and distributing the assessments and charges hereinafter created in relations thereto; and,

WHEREAS, All record owners of lots in the Subdivision have been given written notice of a meeting of the record owners for the purposes of re-activating the POA through the election of a new 5-member POA Board of Directors as is stated in the POA bylaws as well as for the discussion of amending a section of the Covenants and to hear about impending improvements to the common areas that are being presented by a new record owner of several lots in the Subdivision;

WHEREAS, Section 9.03 of the Covenants permits a modification of or amendment to the Covenants with the signed approval of 80% of the record owners of lots in the Subdivision;

WHEREAS, Owners believe it is in their best interest to modify Section 8.10 of the previously filed Covenants to permit front load garages, which will lessen the necessity for a protruding side load garage on many more narrow lots in the subdivision, which could decrease the desirability of said homes and therefore negatively impact property values;

NOW, THEREFORE, Section 9.03 of the Covenants states:

9.03 All Other Amendments. The forgoing covenants and restrictions may be changed or amended at any time, provided that said change or amendment is signed by the record Owners of at least 80% of all Lots in said subdivision voting for such amendments and properly recording such vote with the Registrar of Deeds in Benton County, Arkansas.

NOW THEREFORE, As there are 83 residential lots of record in the Subdivision with each lot holding the right to cast one vote per lot owned, there will be a requirement of 67 signatures below in favor of the amendment stated herein, in order for the Amendment to the Covenants to be approved;

NOW, THEREFORE, the Owners want to strike the words "All garages must be constructed so that they do not face the street in front of the dwelling structure" from the currently filed Section 8.10 of the Covenants, and therefore declare that the lots in said Tuscan Heights Subdivision Phase I, are and shall be held, transferred, sold, conveyed and occupied subject to this newly Amended Section 8.10 of the Covenants hereinafter set forth below:

"8.10 Number and Location of Buildings. No buildings or structures shall be placed, erected, altered, or permitted to remain on any residential Lot or Lots other than one free-standing, detached, single-family dwelling house having a roof pitch of 10 to 12 feet or steeper, and containing a minimum heated living area of one thousand eight hundred (1,800) square feet of floor space exclusive of garages, porches and terraces; and not to exceed two accessory buildings and/or structures consisting of one attached or detached garage and one storage building and/or home gym.

The attached or detached garage and storage building and/or home gym shall be constructed of the same wood, brick, or masonry composition of the dwelling structure so as to make said garage, storage building, or home gym architecturally harmonious and generally matching with the appearance of the home dwelling. Said garage and storage building or home gym shall have the same roof pitch and roof structural components as the dwelling structure.

All dwellings must have a garage capable of housing a minimum of two or more automobiles. Unenclosed carports are prohibited.

Exteriors of all homes must have at least seventy five percent (75%) brick, stone, or stucco from the top seal down, exclusive of doors and windows.

No dwelling shall exceed two and one-half (2 ½) stories in height above the finish grade.

The subdivision and building codes of the City of Lowell, Arkansas, as they presently exist or are hereinafter amended, shall be and are hereby made applicable to all Lots in the subdivision. All dwellings and other improvements shall comply with said ordinance and the provisions of these protective covenants shall be resolved in favor of more restrictive provisions. All builders and Owners shall contact THE ARCHITECTURAL CONTROL COMMITTEE prior to commencement of construction to be apprised of current requirements. Revisions to approved architectural plans are discouraged; however any revisions to prior approved plan should be for upgrade purposes only. All revisions must be submitted to THE ARCHITECTURAL CONTROL COMMITTEE as set forth herein.

THE ARCHITECTURAL CONTROL COMMITTEE, in addition to its powers and duties hereunder, shall have the authority to limit the number of permitted accessory buildings or structures on any residential lot."

IN WITNESS WHEREOF, The above Amended Section 8.10 of the Covenants is hereby approved by 80% of the owners of record of the 83 lots in the Subdivision, indicated through their signatures below, and the Owners declare that this Amended Section 8.10 shall replace the original Section 8.10 of the Covenants filed on September 12, 2008, and the Owners further declare that all other language in the Covenants filed of record on September 12, 2008 shall remain in effect as filed on that date.

PLEASE SIGN NAME IN COORDINATION WITH LOT NUMBER OWNERSHIP		
1	Sprout Holdings by TM	43
2		44
3	Sprout Holdings by TM	45
4	Sprout Holdings by TM	46
5	Sprout Holdings by TM	47
6	Sprout Holdings by TM	48
7	Sprout Holdings by TM	49
8	Sprout Holdings by TM	50
9	Sprout Holdings by TM	51
10	Sprout Holdings by TM	52
11	Sprout Holdings by TM	53
12	Sprout Holdings by TM	54
13	Sprout Holdings by TM	55
14	Sprout Holdings by TM	56
15		57
16	Sprout Holdings by TM	58
17	David Huggins	59
18		60
19	Sprout Holdings by TM	61
20	Sprout Holdings by TM	62
21	Sprout Holdings by TM	63
22	Sprout Holdings by TM	64
23	Sprout Holdings by TM	65
24	Sprout Holdings by TM	66
25	Jon Saffelield	67
26		68
27	Patricia A. Kendrick	69
28	Patricia A. Kendrick	70
29	Sprout Holdings by TM	71
30		72
31	Paul Humphrey	73
32	Paul Humphrey	74
33		75
34	Sprout Holdings by TM	76
35		77
36	Sprout Holdings by TM	78
37	Harry Chant	79
38	Sprout Holdings by TM	80
39	Sprout Holdings by TM	81
40	Sprout Holdings by TM	82
41	Sprout Holdings by TM	83
42	Sprout Holdings by TM	

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03/29/2013

IN WITNESS WHEREOF, the undersigned secretary of the TUSCAN HEIGHTS SUBDIVISION PHASE I POA shall cause this Amendment to be filed with the Benton County Circuit Clerk for the purpose of amending the Bill of Assurances and Protective Covenants and Restrictions for all current and future property owners, signed this 26th day of March, 2013.

TUSCAN HEIGHTS POA

Haley May
by POA Secretary

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
)ss
COUNTY OF BENTON)

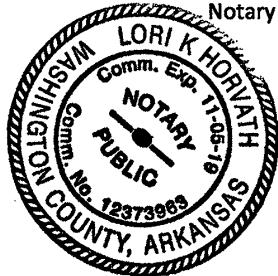
Benton County, AR
I certify this instrument was filed on
03/29/2013 2:00PM
and recorded in DEED Book
2013 at pages 15822 - 15825
Brenda DeShields-Circuit Clerk

On this 28 day of March, 2013, before me, a Notary Public, personally appeared Haley May, the duly elected Secretary of the Tuscan Heights POA, known to me (or satisfactorily proven) to be the person who has been charged with witnessing the above signatures of the owners of record and filing this Amendment with the Benton County Circuit Clerk.

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

Lori K Horvath
Notary Public

My Commission Expires:
11-5-19



Protective Covenants and Restrictions for Borghese Subdivision Benton County, AR

1. The Borghese Property Owners Association shall be formed by the Developer. All property owners must be members of the association and shall automatically become members upon conveyance of a lot to them. Each owner shall be assessed an annual membership fee of \$400.00, due and payable to the association bi-annually on or before tenth day of January and on or before the tenth day of June. If the annual membership fees are not paid on the date when due, then said dues shall become delinquent and subject to penalties, interest and late charges. In no event shall an annual membership fee be applicable at any time to any lot owned by the developer.
2. No Building or structure of any kind whatsoever, except as hereinafter provided, other than a single family dwelling house shall be erected on the property. Any such dwelling house shall be used for residential.
3. No dwelling shall be permitted on any of said lots unless heated floor area of said residence, exclusive of garage and porch areas, shall be at least 2,300 square feet, and the first floor area of any multi-level dwelling shall be at least 1,500 square feet.
4. No dwelling shall exceed two and one-half (2 ½) stories in height above the finished grade level.
5. All exterior walls shall have masonry veneer from the top seal down exclusive of doors and windows. All roofs shall have a minimum 10/12-pitch slope. All composition shingles to be architectural grade, have 25 year warranty, and self-sealing.
6. All setbacks of the subdivision will follow the city setbacks dictated by the City of Lowell, Arkansas.
7. No structure of a temporary nature, trailer, tent, shack, barn or similar structure of any nature whatsoever shall be moved onto any portion of the above described tract. However, a temporary storage building for the use of a contractor engaged in constructing a residence upon a lot may be left in place only during the construction of the residence.
8. No structure of a temporary character, trailer, basement, tent, shack, barn, mobile home or outbuilding shall be used on any tract at any time as a residence, either temporarily or permanently. No structure other than a fully completed residence shall be occupied at any time.

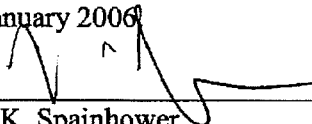
9. No outbuilding shall be constructed on any lot within said tract which exceed seven-hundred-fifty (750) square feet in area, and such outbuildings so permitted shall be constructed so as not to detract from the general appearance of the neighborhood and shall be painted to duplicate the exterior trim of the main structure. No sheet iron, tin or metal shall be used for siding or roof or any part thereof. The roof must be constructed of composition shingle, wood shakes or tile.
10. No obnoxious or offensive activities shall be engaged in upon any lot within the property, nor shall anything be done on any of said lots which is or may become a nuisance to the neighborhood; whether a nuisance exists shall be determined by affirmative vote of two-thirds (2/3) of the owners of the property of Borghese Gardens.
11. Television satellite dishes up to a maximum size of 18" are permitted, but must not be visible from the street.
12. No owner of any lot within said tract shall allow garbage or other debris to accumulate on the property, but shall dispose of at regular intervals to eliminate nuisance in the neighborhood.
13. No inoperative or junk motor vehicles or other similar vehicles shall be permitted to remain on any portion of this subdivision for a period in excess of ten (10) days, unless such vehicle is stored inside a garage or other structure.
14. All dwellings must have at the least a 2-car, side entry garage. Carports are not permitted.
15. All driveways must be paved from the garage to the street. Curbs shall be saw cut at the driveway with a diamond blade.
16. All mail boxes and supports shall be made of brick or be ornamental type.
17. No animals or livestock of any kind shall be raised, bred or kept on any plot except as hereinafter provided: Not more than two (2) dogs, two (2) cats or other household pets may be kept, provided they are not kept for any commercial purposes. No hogs, goats, cows, mules, or fowl of any kind shall be permitted.
18. Any fence shall be of residential type, wood, masonry, or ornamental type. No hog wire, barbed wire or cyclone type is to be used; the height of the fence is not to exceed six (6) feet.
19. Any boat, motor home, camper, antique auto, etc. can only be parked on a concrete parking area to the rear of the dwelling.

Book/Pg: 2006/1497
Term/Cashier: CIRCUIT-L9HWHGG / Kjackson
Tran: 3753.112598.313174
Recorded: 01-09-2006 13:51:53
OFE Deed 14.00
REC Recording Fee 0.00
Total Fees: \$ 14.00

2006 1499
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Deed Book & Page
01-09-2006 01:51:21 PM
Brenda DeShields-Circuit Clerk
Benton County, AR

20. No lot shall be subdivided.
21. Easements for the installation and maintenance of utilities and drainage facilities are reserved within the dedicated roadways and drainage ways, and as shown on the recorded final plat.
22. No business other than arts, crafts or professions operated solely by family members occupying the residence shall be conducted.
23. The grass on each lot shall be maintained by mowing along the entire street frontage. Lawn shall be established within 90 days of house completion. Finish grade and seeding shall be a part of lot owner's responsibility.
24. These restrictions shall operate as covenants running with the land for the benefit of any and all persons who now may own, or who may hereafter own, any part of the above described subdivision, and such owners are specifically given the right to enforce these restrictions, and to recover any damages suffered by them from any violation thereof, including reasonable attorney's fee and punitive damages in the amount of \$50.00 per day for each day a violation of these covenants continue.
25. Each and all of the covenants, conditions, restrictions, and agreements contained herein shall be deemed and construed to be continuing, and no waiver or a breach of any of these covenants or failure to enforce anyone of such restrictions be construed as a wavier of any other restriction or condition.
26. It is expressly agreed that if any covenant, condition or restriction herein above contained, or any portion thereof, is invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition, or restriction.
27. The foregoing restrictions, covenants and conditions shall bind and insure to the benefit of all present and future owners of the property, and they may be enforced by any owner or group of owners by appropriate action in a court of law.
28. These covenants and restrictions may be amended, canceled, or supplemented only by the written consent of at least seventy-five percent (75%) of the owners of the property agreeing to change the covenants and restrictions, which agreement shall be placed on record in the records of the Circuit Clerk and Ex-Officio Recorder for Benton County, Arkansas.

IN WITNESS WHEREOF, the undersigned, being the owners of the within described property, have executed these restrictive covenants at Lowell, Arkansas on this 9th day of January 2006



Michael K. Spainhower

Benton County, AR
I certify this instrument was filed on
01-09-2006 01:51:21 PM
and recorded in Deed Book
2006 at pages 1497 - 1499
Brenda DeShields-Circuit Clerk

BILL OF ASSURANCES AND PROTECTIVE COVENANTS FOR BORGHESE GARDENS

DECLARATION OF BILL OF ASSURANCES AND
PROTECTIVE COVENANTS FOR
BORGHESE GARDENS PHASE 1
A Platted Subdivision of Lowell, Benton, County, Arkansas

2006 39432
 Recorded in the Above
 Deed Book & Page
 2006 02:03:06 PM
 Brenda DeShields-Circuit Clerk
 Benton County, AR

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the undersigned (herein referred to as Owner) is now the owner of all the lots in the **BORGHESE GARDENS PHASE ONE [BORGHESE GARDENS]** Subdivision reflected upon a plat of said subdivision filed at plat book and page 2006 51 on the ninth day of January, 2006 at 02:58:59 p.m. in the Office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, sometimes referred to herein as the "subdivision", and which plat is, by reference, made a part of this Declaration, and this Declaration is likewise made a part by reference of said plat; and,

WHEREAS, Owner desires to provide for common areas and the maintenance of such areas for itself and others and, to this end, desires to subject the said all lots of **BORGHESE GARDENS** Subdivision to the covenants, restrictions, easements, charges and liens, hereinafter set froth, each and all of which is and are for the benefit of said property and each Owner thereof; and,

WHEREAS, Owner has deemed it desirable and necessary that an agency be created, to which should be delegated and assigned the powers of acquisition, construction, maintaining and administering the common properties, areas, and services, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created in relations thereto; and,

WHEREAS, Owner has or will organize **BORGHESE GARDENS** Subdivision Property Owner's Association, Inc., hereinafter referred to as "association", to be a non-profit organization organized and existing under and by virtue of the laws of the State of Arkansas, with its principal office located in Benton County, Arkansas for the purposes of exercising the functions aforesaid;

NOW, THEREFORE, the Owner declares that the lots in said **BORGHESE GARDENS** Subdivision are and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set froth or as hereinafter changed or amended.

ARTICLE 1

DEFINITIONS

1.01 "Annexable Area" shall mean any real property, which is adjacent or contiguous to the subdivision that, in the future, will be made subject to this Declaration, and any amendments thereto.

1.02 "Association" shall mean and refer to **BORGHESE GARDENS** Subdivision Property Owner's Association, Inc., an Arkansas non-profit corporation established pursuant to the

BILL OF ASSURANCES AND PROTECTIVE COVENANTS FOR BORGHESE GARDENS

provisions of Article 3 hereof to own and administer the Common Area and exercise such additional powers as set forth in this Declaration.

THE "ARCHITECTURAL CONTROL COMMITTEE" of BORGHESE GARDENS shall mean and refer to the original owners/declarants committee set up to approve or deny construction plans for the home to be built in this subdivision, and such power shall continue until the **ARCHITECTURAL CONTROL COMMITTEE** delegates its powers to the Home Owners Association.

1.03 **"Board of Directors"** shall mean and refer to the Board of Directors of the Association.

1.04 **"Fence"** refers to that certain privacy fence shown on the recorded plat of the subdivision and designated as such together with easements, landscaping, and other matters as disclosed.

1.05 **"By-laws"** shall mean and refer to the By-laws of the Association as they may from time to time be amended.

1.06 **"Common Area"** shall mean and refer to all easements, real property and improvements now or hereafter owned by the Association or dedicated by a recorded plat of the subdivision for common use and enjoyment of all Owners, including, without limitation, the fence, sidewalks, recreational sites or landscaped areas.

1.07 **"Declarant"** shall mean and refer to the original owner and the developer of the subdivision, NORTHWEST ARKANSAS INVESTMENT CAPITAL, LLC.

1.08 **"Declaration of Annexation"** shall mean a supplement to this Declaration adding Annexable Area or other property to the properties which may be recorded with the Benton County Arkansas Recorded pursuant to Article 2 of this Declaration.

1.09 **"Lot"** shall mean and refer to any lot shown upon any recorded subdivision map of the properties.

1.10 **"Member"** shall mean all those Owners who are members of the Association as provided in Article 3.02 hereof.

1.11 **"Mortgage"** shall mean and refer to a deed of trust as well as a mortgage, and the terms may be used interchangeably herein.

1.12 **"Mortgagor"** shall mean and refer to the trustor of a deed of trust as well as a mortgagor, and the terms may be used interchangeably herein.

1.13 **"Owner"** shall mean and refer to the actual record title owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the properties, but excluding those having such interest merely as security for the performances of an obligation. However, whenever Declarant contracts for the sale of a Lot, the contract purchaser shall be deemed the Owner thereof. Until conveyance, the Declarant herein is deemed to be an owner with; all rights

and privileges arising therefrom. .

1.14 "Phase of Development" shall mean the initial subdivision referred to on page 1 hereof of all the real property covered by this Declaration.

1.15 "Properties" shall mean and refer to all real estate that is subject to this Declaration, or such additional property as may be annexed pursuant to the provisions of Article 2.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, is located and situated in the County of Benton, State of Arkansas, to-wit:

LOTS 1-83 OF BORGHESE GARDENS SUBDIVISION PHASE 1 AS PER PLAT RECORDED WITH THE BENTON COUNTY CIRCUIT CLERK AND EX-OFFICIO RECORDER AT 2006 51-2006 52.

THIS DECLARATION OF BILL OF ASSURANCES AND PROTECTIVE COVENANTS FOR BORGHESE GARDENS SUBDIVISION SUPERSEDES AND REPLACES IN ITS ENTIRETY THE PREVIOUS PROTECTIVE COVENANTS AND RESTRICTIONS OF BORGHESE SUBDIVISION BENTON COUNTY, AR WHICH WERE FILED ON THE NINTH DAY OF JANUARY, 2006 AS PROTECTIVE COVENANTS DOC# 2006-1497. THE FINAL PLAT FILED AT 2006 51 ON JANUARY 9, 2006 IS LABELED FINAL PLAT FOR BORGHESE SUBDIVISION PHASE I, WHICH IS ONE AND THE SAME AS BORGHESE GARDENS PHASE ONE OR ANY OTHER DERIVATION THEREOF. THE PREVIOUS COVENANTS AND RESTRICTIONS ARE HEREBY CANCELLED, RESCINDED, NULLIFIED AND VOIDED IN THEIR ENTIRETY.

Commons areas designated on plat are not subject to this declaration except as is set forth herein in ARTICLES 4 AND ARTICLE 6.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS OF THE ASSOCIATION

1. 3.01 **Membership.** Every person or entity, successor, and assign, who is a record owner of a fee, or undivided fee, interest in any Lot which is located in the **BORGHESE GARDENS** Subdivision shall be a member of the Association. Any person or entity who holds such an interest merely as security for the performance of any obligation shall not be a member. The Borghese Property Owners Association shall be formed by the Developer. All property owners must be members of the association and shall automatically become members upon conveyance of a lot to them. Each owner shall be assessed an annual membership fee of \$400.00, due and payable to the association bi-annually on or before the tenth day of January and on or before the tenth day of June. Initial membership assessments are pro rated on a quarterly basis. If the annual membership

BILL OF ASSURANCES AND PROTECTIVE COVENANTS FOR BORGHESE GARDENSRecorded in the Above
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fees are not paid on the date when due, then said dues shall become delinquent and subject to penalties, interest and later charges. In no event shall an annual membership fee be applicable at any time to any lot owned by the developer.

3.02 Classes of membership. The Association shall have two classes of voting membership:

Class A: Class A members shall be all those Owners with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 3.01 hereof. When more than one person holds such interest in any Lot, all such person shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B: Class B members shall be the Declarant. The Class B members shall be entitled to three (3) votes for each Lot in which is holds the interest required for membership by Section 3.01, provided that the Class B membership shall cease and be converted to Class A membership in the event of any of the following, whichever occurs first:

- (a) When the total votes outstanding in Class A membership reach an amount equal to eighty percent (80%) of the maximum number of Lots which Declarant might develop.
- (b) The expiration of ten (10) years from the date hereof.

3.03 Cumulative Voting. Any Member shall be entitled to cumulate his votes in any election or removal of Directors.

3.04 Powers and Obligations of the Association. In addition to the powers delegated to it by its Articles of Incorporation and By-Laws or elsewhere herein, and without limiting the generality thereof, the Association shall:

(a) Own, maintain, and otherwise manage, in accordance with all applicable health, fire, and safety codes, all of the Common Areas and all facilities, improvements and landscaping thereon, and all property acquired by the Association.

(b) Pay any and all real and personal property taxes and other charges assessed against the Common Areas or the Association;

(c) Have the authority to obtain, for the benefit of all the Common Areas, all water, gas, electric power, security, gardening service, and refuse collection; provided, however, nothing contained in this subparagraph shall be construed to impose any obligation on the Association to remove garbage or rubbish from any individual residence;

(d) Maintain Workmen's Compensation Insurance, if required, to comply with any applicable law.

(e) Maintain its funds in a trust account and render an annual accounting to its Members;

(f) Employ a professional management firm or agency and enter into contracts for the purpose of performing any and all of the foregoing duties on its part to be performed and continuance of the same management agent. The Board of Directors shall determine the selection of another management body or agent.

(g) Maintain public liability insurance covering damages and injuries to person and property in, around, and on Common Areas.

(h) Institute and maintain rules and regulations pertaining to the use of Common Areas, including any fees for the use of Common Areas and for renting space that might be available for rent.

ARTICLE 4

PROPERTY RIGHTS OF THE COMMON AREAS

4.01 **Member's Easement of Enjoyment.** Subject to the provisions of this article and related provisions set forth elsewhere herein, every Member shall have a right of enjoyment in and to the Common Areas, subject to rules and regulations governing such use as promulgated, from time to time, by the Association. Such right and easement shall be appurtenant to and shall pass with the conveyance of title to every Lot.

4.02 **Extent of Members' Right of Enjoyment.** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to borrow money for the purpose of acquiring, constructing, improving and maintaining the Common Areas and, in aid thereof, to mortgage said properties or execute a deed of trust or other trust instrument covering said properties. In the event of default upon any such mortgage the lender shall have the right, after taking possession of such properties, to charge service or use charges, admission and other fees as a condition to continued enjoyment by the Members, and if necessary, to have other relief as permitted by law; and,

(b) The right of the Association to take such steps as are necessary to protect the above-described properties against foreclosure; and,

(c) The right of the Association to suspend or permanently cancel the rights of any Member's membership in the Association for any period during which any assessment, service or use charge, remains unpaid and for any period not to exceed thirty (30) consecutive days for any infraction of its published rules and regulations; and,

(d) The right of the Association to charge a reasonable yearly fee to the Members, the initial amount of which shall be Four Hundred Dollars (\$400.00) per year per Lot.

(e) The right of the Association to pass and enforce rules and regulations relating to

use, control, and maintenance of the Common Areas and the areas situate thereon.

(f) The right of the Declarant or Association to delegate, transfer, or grant easements for utilities or to public agencies in, over, and upon the Common Areas.

4.03 Legal Title. Legal title to Common Areas will be vested in the Association.

4.04 Management of Common Areas. The Association is charged with the management and maintenance of all the Common Areas. All improvements located in the Common Areas, such as storm drainage devices, landscaping, fences, street lights, and parking areas, shall be maintained in a serviceable, safe condition and in a state of good repair all in accordance with Governmental Requirements. The Owner shall maintain all common areas until formation of the property owner's association.

ARTICLE 5

COVENANT FOR MAINTENANCE AND OTHER ASSESSMENTS

5.01 Creation of Lien. Each Owner of any Lot described herein, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, contract or purchase, or other conveyance, shall be deemed to covenant and agree to pay to the Association (1) annual assessments or charge; (2) special assessments for capital improvements, such assessments to be fixed, established and corrected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made.

5.02 Purpose of Assessments. The assessments levied hereunder by the Association shall be used exclusively for the purpose of acquisition, improvement, and maintenance of the Common Areas, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, insurance thereon, and repair, replacement, and additions thereto, and for the cost of taxes, labor, equipment, materials, management, and supervision thereof.

5.03 Annual Assessments. The annual assessment for membership shall be the annual assessment as set from time to time by the by-laws of the Association. Initially, the assessment shall be \$400.00 per Lot commencing on January 1, 2006, and thereafter on January 1 of each year. There shall be no assessment as against Lots owned by Declarant, except the Lots, if any, upon which there is build a dwelling. The initial membership assessment is pro rated quarterly.

5.04 Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 5.03 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of 2/3 of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to all Members, at the last known address of each Member, at least

15 days in advance, and shall set forth the purpose of the meeting. The Board of Directors of the Association may, after consideration of lack of improvements as to Lots in a certain area, fix the actual assessment for any year as to these particular Lots at a lesser amount.

5.05 Effects of Non-Payment of Assessment and The Lien Remedies of the Association.

If the assessments (annual or special) are not paid on the date when due (being the date specified in the by-laws of the Association), then such assessment shall become delinquent as provided in the by-laws and shall, together with such interest, late charges thereon, and cost of collection thereof as herein provided, become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, and assigns.

In the assessment is not paid as provided in the by-laws, the assessment shall bear interest from date of delinquency at the highest lawful rate per annum, and the Association may foreclose the lien against said property, and there shall be added to the amount of such assessment the cost of attorney's fees in connection with any court proceedings arising therefrom, together with all courts costs, late charges, service costs, interest, and expenses incurred in said proceedings.

5.06 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

5.07 Suspension of Rights and Membership. Prior to foreclosure of any lien upon any Lot subject to this Declaration, the Board of Directors of the Association may elect to suspend all membership rights of any Member or Members of the Association who are delinquent in any payment due to the association for more than 30 days, with such suspension to continue for so long as any such delinquency exists, and said Board of Directors may further suspend membership rights, for a period not to exceed 30 days, for the infraction of any rules or regulations by the Member, family of the Member or guests of the Member, relating to the use of any of the Common Areas. Suspension of membership rights shall be effective from the date that notice of suspension is mailed to the Member via U.S. Certified Mail, Return Receipt Requested, postage prepaid, to the last known address of said Member, and a copy of the notice shall be posted on the Common Areas during said suspension.

5.08 Cancellation and Hearings. The Board of Directors may elect to permanently cancel the membership and all membership rights of any Member who is delinquent in any payment due to the Association for more than 90 days or when such Member, family of the Member, or guest of the Member are guilty of repeated or flagrant violations after a hearing conducted by said Board of Directors, with notice of such hearing mailed to such Member at least 30 days in advance of said hearing date. The Member may appeal any such decision of said Board of Directors to the membership of the Association by such affected Member calling a special meeting of the membership of the Association by notice mailed to each Member at least ten (10) days in advance of the desired special meeting date, and said notice setting forth the time, date, place, and purpose of said meeting. A majority vote of the Members of the Association attending such special meeting

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shall be necessary to override the decision of the Board of Directors, and all votes shall be by secret ballot. The Member shall mail the notice U.S. Certified Mail, postage prepaid, return receipt requested.

ARTICLE 6**GENERAL PROVISIONS REGARDING COMMON AREAS**

6.01 Restoration and Repair. In the event of the total or partial destruction of damage to any of the improvements erected upon the Common Areas in shall be the duty of the Association to restore and repair the same to their former condition as promptly as practicable and in lawful and workmanlike manner. The proceeds of any insurance shall be made available for such purposes subject to the prior rights of Mortgagees whose interest may be protected by such insurance policies. In the event that the amount available from the proceeds of such insurance policies shall be inadequate to complete such restoration and repair, the Association may, by vote of two-thirds (2/3) or more of the voting power of the Association authorizes the necessary restoration and repair. In the event of any affirmative vote, a special assessment shall be levied to provide the necessary funds for such restoration and repair, over and above the amount of any insurance proceeds available for such purpose. Such assessment shall be due at such time or times as determined by such vote and shall be enforced in the same manner as the assessments provided by Article 5 hereof.

6.02 Insurance. Adequate public liability and casualty (including fire) insurance covering the Common Areas and all structures situated thereon, in amounts satisfactory to and consistent with prudent management principles, shall be obtained by the Association as promptly as possible and shall be maintained in force at all times, the premiums thereof to be paid out of assessment funds. Nothing herein contained shall preclude any Owner from carrying such public liability insurance, as he may deem desirable to cover his individual liability for damage to person or property occurring on or adjacent to the Common Areas.

6.03 Damage Due to Negligence. The Owner of any Lot shall be liable to the Association for any damages to the Common Areas or any structure or equipment thereon which may be sustained by reason of the intentional or negligent act or omission of such Owner or of his guests or invitees.

6.04 Regulations for Usage. Regulations for the use of the Common Areas may be adopted by the Board of Directors of the Association at a duly constituted meeting, including any fees for use of Common Areas. No such regulations shall conflict with the provisions of this Declaration.

6.05 Inspection of Books. The Owner of any Lot may at any time, at his own expense, cause an audit, or inspection to be made of the books and financial records of the Association in the manner provided by the By-Laws of the Association.

6.06 Improvements on Common Areas. No improvement of any kind or nature shall be constructed, altered, or allowed to remain on any of the Common Areas except those constructed originally by the Declarant or any such improvements constructed in the future by the Association. No Owner shall obstruct, alter, or otherwise impair any portion of the Common Areas. Without limiting the generality of the foregoing, no Owner shall erect any fence, gate, and structure, plant

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any tree, shrub, grass, or other plant, or remove or disturb any existing fence or landscaping thereof. All improvements within Common Areas shall be approved by the ARCHITECTURAL CONTROL COMMITTEE, as elsewhere provided, and shall conform and harmonize in appearance, location on the site, and cost with existing structures on the Properties, and the overall development plans for the property subject to this Declaration.

6.07 Limitations on Use of Common Areas.

(a) **Firearms.** No guns or firearms of any nature shall be used on any of the Common Areas excluding policemen, sheriffs, sheriff's deputies, authorized armed guards, or other such officers in the performance of their official duties.

(b) **Hunting.** No hunting of any nature shall be allowed on any of the Common Areas, whether by firearms, bow and arrow, or otherwise.

(c) **Motor Vehicles.** No motor vehicles, motorized bicycles, bicycles, or motorized vehicles of any nature may be used on the Common Areas except as follows:

(i) Ambulance, police, security guards, or fire vehicles in performance of official duties.

(ii) Maintenance equipment of the Association in the performance of work authorized by the Association.

(iii) Such motor vehicles as are specifically authorized by written authorization from the Association for specific occasions but not for general use.

(iv) Such areas designated for parking on such Common Areas as may be designated by the Association from time to time.

6.08 Written Notices. Notice to and requests of the Association shall be in writing, and shall be sufficient if personally served on the Chairman of the Board of Directors of is sent by U. S. Certified or Registered Mail, Return Receipt Requested, postage prepaid, to the Chairman of the Board of Directors, at the address which he may from time to time designate as the address to which notices to him should be sent as hereinafter provided. Any party sending notices to or requests of the Declarant shall send said notices or request to Declarant by U. S. Certified or Registered Mail, Return Receipt Requested, postage prepaid, to 2552 JOYCE BLVD., BUILDING 2, Fayetteville, AR 72703. Notices to or requests of any Owner (other the Declarant) of any Lot shall be in writing and shall be sufficient if personally served upon such Owner or if sent by U. S. Certified or Registered Mail, Return Receipt Requested, postage prepaid, to such Owner at the address which such Owner may from time to time designate, by notice in writing given in accordance with this paragraph to the Association. In the event of the failure of any Owner to designate the address to which notices to or requests of him may be sent, such notices or requests shall be sufficient if mailed by U. S. Certified or Registered Mail to such Owner at the address of any Lot of his within the properties.

ARTICLE 7

THE ARCHITECTURAL CONTROL COMMITTEE

7.01 Creation. THE ARCHITECTURAL CONTROL COMMITTEE is hereby created with the rights, powers, privileges, and duties herein set forth. THE ARCHITECTURAL CONTROL COMMITTEE shall be Declarant and any two (2) persons designated by Declarant, as a successor committee, except as provided in Section 7.02.

In the event of the death, incompetency, resignation or inability to act of any member of THE ARCHITECTURAL CONTROL COMMITTEE, the remaining member or members shall designate a successor. Declarant may, at his sole discretion, at any time, assign by supplement declaration its power of removal and appointment with respect to said committee to such Association or corporation as Declarant may select and subject to such terms and conditions as Declarant may select and subject to such terms and conditions with respect to the exercise thereof as Declarant may impose.

After One (1) year from the date of the sale of the first Lot in the subdivision, the Board of Directors of the Association shall have the power to appoint one (1) member of THE ARCHITECTURAL CONTROL COMMITTEE. Members appointed to THE ARCHITECTURAL CONTROL COMMITTEE by the Board of Directors shall be from membership of the Association.

7.02 Transfer of Powers. After sixty (60) lots have been sold or within five (5) years from the date of the sale of the first Lot, whichever event occurs first, at and within the discretion of THE ARCHITECTURAL CONTROL COMMITTEE the power to replace and fill vacancies among the members of THE ARCHITECTURAL CONTROL COMMITTEE, shall belong solely to and be exercisable only by THE ARCHITECTURAL CONTROL COMMITTEE.

7.03 Procedure. All plans, specifications, and other materials required or permitted to be filed with THE ARCHITECTURAL CONTROL COMMITTEE hereunder shall be filed at 2552 Joyce Blvd. Building 2, Fayetteville, Arkansas, 72703, or such other office as Declarant shall specify, when all materials shall be filed in care of THE ARCHITECTURAL CONTROL COMMITTEE. THE ARCHITECTURAL CONTROL COMMITTEE'S approval or disapproval on matters required by this Declaration shall be by majority vote of THE ARCHITECTURAL CONTROL COMMITTEE.

7.04 Function. The function of THE ARCHITECTURAL CONTROL COMMITTEE, in addition to the functions set forth elsewhere in this Declaration, shall be to consider and approve or disapprove any plans, specifications, or other materials submitted to it with respect to buildings, homes, fences, or other structures to be erected, constructed, installed, altered, placed, or maintained on Lots, and for the alteration or remodeling of or additions to any then existing structure on Lots, so that all structures shall conform to the provisions hereof, the general plan of development and such rules and regulations as THE ARCHITECTURAL CONTROL COMMITTEE may adopt for the improvement and development of the subject property.

7.05 Variances. Where circumstances, such as topography, location of property lines, location of trees, or other matters require, THE ARCHITECTURAL CONTROL COMMITTEE, by an affirmative vote of a majority of the members of THE ARCHITECTURAL CONTROL

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COMMITTEE, may allow the reasonable variances as to any of the covenants and restrictions contained in this Declaration, in such terms and conditions as it shall require.

7.06 Right of Entry. THE ARCHITECTURAL CONTROL COMMITTEE shall have the right, from time to time, to enter on any Lot for the purpose of determining if new construction is proceeding in compliance with this Declaration.

7.07 THE ARCHITECTURAL CONTROL COMMITTEE Not Liable. THE ARCHITECTURAL CONTROL COMMITTEE shall not be liable in damages to any person or association submitting any architectural plans for approval, or to any Owner or Owners of lands subject to this Declaration, due to any action, failure to act, approval, disapproval or failure to approve or disapprove, with regard to such architectural plans. Any person or association acquiring the title to any such property, or any person or association submitting plans to THE ARCHITECTURAL CONTROL COMMITTEE for approval, by so doing does agree and covenant that he or it will not bring any action or suit to recover damages against THE ARCHITECTURAL CONTROL COMMITTEE, its members as individuals, or its advisors, employees or agents.

7.08 Written Records. THE ARCHITECTURAL CONTROL COMMITTEE shall keep for at least five (5) years, complete permanent written records of all applications for approval submitted to it (including one set of all preliminary sketches and all architectural plans so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this Declaration.

ARTICLE 8

GENERAL RESTRICTION ON ALL LOTS

8.01 Zoning Regulations, Compliance with Law. No lands subject to this Declaration shall ever be occupied or used by, for any structure or purpose, or in any manner that is contrary to the zoning, safety, and health ordinances, resolutions, rules, and regulations of the City of Lowell, and, Benton County, Arkansas, validly in force from time to time. Each Owner shall comply with all Governmental Requirements now or hereafter applicable to a Lot or the use thereof.

8.02 Setbacks. All setbacks shown in the final plat of the subdivision shall not be subject to granting of variances from the Planning Commission or Board of Adjustment of the City of Lowell.

8.03 No Mining, Drilling, or Quarrying. No mining, quarrying, tunneling, excavating, or drilling for any substances within the earth, including water, oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted within the limits of any Lot. Each Owner of any Lot or Lots herein shall be deemed to have independently covenanted with the remaining Owners of all said Lots herein to preserve the peace, dignity, and quiet enjoyment of all of the Lots of said subdivision.

8.04 Tree Removal. Property Owners shall not remove any trees of any nature having a diameter larger than eight (8) inches except those within a ten-foot lineal distance from the actual footprint of the construction pad and driveway. Owners shall as a pre-condition to removal clearly identify the trees to be removed by encircling it with brightly colored survey tape. The trees can

only then be removed when permission has been secured from THE ARCHITECTURAL CONTROL COMMITTEE. Each Owner is also responsible for the actions of his contractors and subcontractors. Owners agree to use their best and highest efforts to ensure that no trees are inappropriately trimmed or cut.

The cutting of any tree having a diameter of larger than eight (8) inches that is not absolutely essential to allow construction is absolutely prohibited. Violation of this covenant will subject the Owner to a property owner fine and assessment not to exceed Five Hundred Dollars (\$500) per tree.

8.05 No Noxious Activity. No lands subject to this Declaration shall ever be occupied for any commercial or business purpose, except as permitted under Section 8.19 hereof. No noxious or offensive activities shall be carried on or permitted to be done upon any Lot or Lots nor shall anything lese be done thereon which may be or become an annoyance or nuisance to the neighborhood or to any Owner or Owners of any said lands.

8.06 Animals. Owners of Lots which are developed and occupied by said Owner may keep ordinary household pets so long as such pets are disciplined and do not constitute an undue annoyance to other Owners of any Lot or Lots. THE ARCHITECTURAL CONTROL COMMITTEE shall have the power to require any Owner of any Lot to remove any animal or household pet belonging to it which is not disciplined or which constitutes an undue annoyance or danger to other Owners of any other Lot. Animal keeping is permitted subject to compliance with all existing and applicable state, local, and federal governmental regulations. No pets other than ordinary household pets are permitted. For purposes of this declaration the term "household pets" means cats and dog. Without limiting the generality of the foregoing, no poultry, fowls, cattle, pigs or any kind may be kept on any Lot. All dogs shall be kept on a leash or enclosed in a fence area approved by THE ARCHITECTURAL CONTROL COMMITTEE. No pets may be permitted to run at large.

No animals or livestock of any kind shall be raised, maintained, permitted, kept, or bred in said subdivision for any commercial purposes.

8.07 No Resubdivision. No Lots in the lands subject to this Declaration shall ever be resubdivided into smaller Lots nor conveyed or encumbered in any les than the full original dimensions as shown on the subdivision map creating such Lots, recorded by Declarant, unless written approval, in recordable form, is given by THE ARCHITECTURAL CONTROL COMMITTEE.

8.08 Combining Lots. If two or more contiguous residential Lots are owned by the same Owner or Owners, they may be combined into one or more larger residential Lot or Lots by means of a written document executed and acknowledged by all the Owners thereof, approved by THE ARCHITECTURAL CONTROL COMMITTEE, and recorded in the real property records of Benton County, Arkansas. Thereafter, the new and larger Lot or Lots shall each be considered as one residential Lot for all the purposes of this Declaration, except that each separate Lot thus combined into a larger Lot shall continue to be deemed a separate Lot for assessment purposes under Article 5 hereof.

8.09 Underground Utility Lines. All water, gas, electrical, telephone, satellite cables,

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television cables, electrical service to storage buildings or garages, and any and all other electronic pipes and lines, within the limits of the Properties must be buried underground and may not be carried on overhead poles not above the surface of the ground.

8.10 Number and Location of Buildings. No buildings or structures shall be placed, erected, altered, or permitted to remain on any residential Lot or Lots other than one free-standing, detached, single-family dwelling house having a roof pitch of 10 to 12 feet or steeper, and containing a minimum heated living area of eighteen hundred (1,800) square feet of floor space exclusive of garages, porches, and terraces; and not to exceed two accessory buildings and/or structures consisting of one attached or detached garage and one storage building and/or home gym.

The attached or detached garage and storage building and/or home gym shall be constructed of the same wood, brick, or masonry composition of the dwelling structure so as to make said garage, storage building, or home gym architecturally harmonious and generally matching with the appearance of the home dwelling. Said garage and storage building or home gym shall have the same roof pitch and roof structural components as the dwelling structure.

All dwellings must have a garage capable of housing a minimum of two or more automobiles. Unenclosed carports are prohibited. All garages must be constructed so that they do not face the street in front of the dwelling structure.

All exterior walls shall have masonry veneer from the top seal down exclusive of doors and windows.

No dwelling shall exceed two and one-half (2 ½) stories in height above the finish grade.

THE ARCHITECTURAL CONTROL COMMITTEE, in addition to its powers and duties hereunder, shall have the authority to limit the number of permitted accessory buildings or structures on any residential Lot.

8.11 Roofs, Plastic Roofs or Awnings, Towers and Antennae. No plastic roofs or awnings, no towers, and, except as hereinafter provided, no exposed or outside radio, satellite dishes, television or other electronic antennae shall be allowed or permitted to remain on any Lot. However, this restriction shall not apply to the small (24 inch or less) digital satellite dishes. Without limiting the foregoing, a small (24 inch or less) satellite dish shall be permitted providing that it is shielded from view from any street in the subdivision. Ham radio facilities shall not be allowed or permitted on any Lot.

All roofs shall have minimum 10/12-pitch slope. All composition shingles to be architectural grade, have a minimum of a 25 year warranty, and be self-sealing. Other types and styles of roofs must be architectural grade, having a minimum life expectancy and warranty of 35 years.

8.12 Siding. Masonite, steel, aluminum, or vinyl siding is not permitted with the exception of gables, soffits, and fascias. No dwelling shall be constructed or erected on any Lot of said subdivision that has exposed cinder blocks visible from the exterior of the dwelling from any angle.

8.13 Used or Temporary Structures. No used or previously erected or temporary house, structure, house trailer, non-permanent out-buildings, or tents shall ever be placed, erected or

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allowed to remain on any Lot except during construction periods, and no dwelling house shall be occupied in any manner prior to its completion.

8.14 Garbage Disposal. Each dwelling house or other structure containing a kitchen constructed on any residential Lot shall be equipped with a garbage grinder or garbage disposal unit of a type approved by THE ARCHITECTURAL CONTROL COMMITTEE.

8.15 Lot Survey Pins and Markers. At the time of first sale of each Lot by Declarant the corners of each Lot will be marked with permanent survey markers or pins. It is the obligation of each Lot Owner to preserve such markers and pins and to replace the same at his own expense if required by the Association to determine the location of Lot lines.

8.16 Storage of Machinery or Materials. No machinery, junk, garbage, debris, building materials, or similar matter shall be placed, stored, or kept on any Lot or street within or adjoining the properties.

8.17 Storage of Vehicles. No inoperable or unregistered vehicles of any nature shall be permitted to remain on the street in front of or beside any Lot or Lots for a period in excess of three (3) consecutive calendar days. No other form of vehicle, camper, mobile home, or any other licensed or unlicensed wheeled apparatus, of any nature, whether operative or inoperative shall be parked or placed on the street or beside any Lot or Lots for a period in excess of three (3) calendar days.

No inoperable or unregistered vehicles of any nature shall be permitted to remain on the premises of any Lot or Lots unless screened from view from all streets and Lots in the Subdivision. No more than one inoperable or unregistered vehicle or truck will be permitted on any Lot.

No vehicles may be parked overnight on the streets of the subdivision. Lot Owners shall provide sufficient off street parking to accommodate the vehicles used by their family and guests. Also, no vehicles with a gross weight in excess of 15,000 pounds and/or no commercial vehicles shall be allowed to park in said subdivision, either on the streets or on any privately owned Lot.

There shall be no boats, campers, trailers, motor homes, or other recreational vehicles parked in the driveways in front of the house leading to and from the streets. Recreational vehicles, boats, campers, trailers, and motor homes may be stored behind the home or garage, or otherwise stored behind screening, so that they are not readily visible from any street in the subdivision. Screening walls and fences must be constructed of organic materials, brick, stone, or decorative wood.

8.18 Maintenance. Each Owner shall at all times maintain and repair the exterior of all buildings and structures on his Lot, including but not limited to exterior walls, windows, glass, ceilings, floors, patios, fences, garages, storage buildings, home gyms, lawns, roofs, driveways, fixtures, porches, verandas, patios, and all appurtenances thereto in a clean, neat, sanitary and orderly condition.

8.19 Garbage/trash. Trash, garbage, or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and

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sanitary condition and shall be enclosed so as not to be visible from any public street or from any other Lot except when placed at the curb on the days of regularly scheduled garbage collection.

8.20 Signs. No sign of any kind shall be displayed to the public view, except with the permission of THE ARCHITECTURAL CONTROL COMMITTEE, on any Lot except one sign of not more than three feet by two feet "For Rent" and/or "For Sale" per Lot. This section shall not apply to the business activities, signs, and billboards, if any, of the Declarant or its successors in interest, its agents, and assigns.

8.21 Home Businesses: Prohibition of Offensive or Commercial Use. No activity which may become an annoyance or nuisance to the neighborhood or which shall in any way unreasonably interfere with the quiet enjoyment of each Owner of such Owner's Lot or which shall degrade property, shall be conducted thereon. No repair work, dismantling, or assembling of boats, motor vehicles, or other machinery shall be done in any driveway or adjoining street. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes except that a single-family residence may also be used to conduct a home business if the Owner (1) has registered with the Association, (2) has paid any applicable assessments or fees levied by the Association, and (3) is in compliance with the following standards:

(a) No person other than an Owner and resident of the house shall be engaged or employed in the home business; and, the number of residents employed in the home occupation shall not exceed two;

(b) A home business shall not create significant additional vehicular or pedestrian traffic to the residence;

(c) No sign for the home business shall be displayed on the house or property;

(d) No business shall be conducted in or on the Common Areas;

(e) No breeding of animals for sale shall be conducted;

(f) There shall be no visible or outdoor storage or display of materials or products;

(g) There shall be no exterior evidence of the conduct of a home business;

(h) The conduct of any home business shall not reduce or render unusable areas provided for the off-street parking of the residents nor prevent the number of cars intended to be parked in the garage from being so parked; and,

(i) There shall be no process used in the home business that is hazardous to public health, safety, or welfare. No toxic, explosive, radioactive, or other restricted materials not normally used in a single-family dwelling shall be used or stored on the site.

The Association is authorized to promulgate rules and regulations to insure that home

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businesses comply with the above standards and to make factual determinations regarding the impact of the home business on the residential character of the neighborhood. If, in the judgment of the Association, a home business has a detrimental impact on the residential quality of the neighborhood or otherwise constitutes a nuisance, it is authorized to revoke the Owner's home business registration and pursue any other available remedies.

Notwithstanding the above, Declarant, its successors and assigns, may use the properties for model home displays and sales offices during the development period, during construction, or until all new homes on the properties have been sold. Notwithstanding the above, no home business shall be allowed on a Lot in violation of any applicable municipal ordinances and only after the approval of any governmental bodies required to approve such home business.

8.22 Driveway. All private drives on any Lot or Lots connecting with the public street shall be of concrete construction connecting the garage of said dwelling to the street, said drive or drives being of adequate width to accommodate two or more automobiles having a minimum width of ten (10) feet and a maximum width of thirty (30) feet. Drives or driveways constructed of loose gravel, SB2, or the like shall not be permitted.

8.23 Fences. All fences shall be constructed so that the framing shall be toward the inside of the Owner's Lot. Chain link fences are prohibited. No fences of any kind shall be constructed between the front building set back line and the curb. The maximum allowed height of any fence is 8 feet, from yard elevation to top of fence wall.

8.24 Occupation of Dwellings. Each single family dwelling may be occupied only by one (1) family consisting of one or more persons related by birth, adoption, marriage; or, no more than two (2) unrelated persons living and cooking together as a single housekeeping unit, together with not more than one (1) household servant. Each single-family dwelling shall contain no more than one (1) housekeeping unit.

8.25 Mailboxes. THE ARCHITECTURAL CONTROL COMMITTEE must approve the design and location of all mailboxes. All mailboxes and supports shall be made of conforming brick or other materials and be ornamental in appearance and function.

8.26 Enforcement by Association, Right of Entry. In the event any Owner fails to comply with any provisions of this Declaration, the Association, after five (5) days written notice mailed to such Owner at the address of his Lot, may proceed to have said work done and may charge the reasonable value of doing such work to the Owner of said Lot as a special assessment against such Lot. In connection therewith, the Association, and its agents, shall have the right to enter upon said property to do such work.

8.27 Landscaping. The grass yard on each lot shall be maintained by mowing along the entire street frontage. Lawn shall be established within 90 days from the completion of the home dwelling. Finish grade and seeding shall be a part of the lot owner's responsibility. Shrubs and all landscaping shall be installed within 90 days of the completion of the lawn.

ARTICLE 9

DECLARANT RIGHTS

Declarant, its successors or assigns intend, but shall not be obligated, to undertake the work of constructing homes and developing all of the Lots included within the properties. The completion of that work and sale, resale, rental, and other disposal of homes is essential to the establishment and welfare of the Properties as a quality residential community. As sued in this section and its subparagraphs, the words "its successor or assigns" specifically do not include members of the home buying public. In order that such work may be completed and the Properties be established as a fully occupied residential community as rapidly as possible, no Owner not the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any Lot owned by them whatever they determine to be necessary to advisable in connection with the completion of such work, including without limitation, the alteration of construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant, its successors or assign, or its or their representatives, from erecting, constructing, and maintaining on any portion of the Properties owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing such work and establishing the Property as a residential community and disposing of the same by sale, resale, lease or otherwise; or

(c) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from conducting on any Lot, or any portion thereof, owned or controlled by Declarant, its successors or assigns, its or their business of developing, subdividing, grading, and constructing homes and other improvements in the subdivision as a residential community and of disposing of homes thereon by sale, lease or otherwise; or

(d) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs on any portion of the Properties owned or controlled by any of them or the Common Areas as may be necessary in connection with the sale, lease or other marketing of Lots and homes in the Properties; or

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot by a purchaser from Declarant, to establish on that Lot additional easements, licenses, reservations, and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Properties.

Declarant need not seek or obtain an architectural approval of any improvement constructed or placed on the Properties by Declarant. Declarant, in the exercise of its rights under this Section, shall not unreasonably interfere with the use of the Common Areas by any other Owner. The rights and reservations of Declarant set forth in this Article 9 shall terminate on the tenth (10th) anniversary of the first sale of a Lot in the Properties unless so relinquished by Declarant.

ARTICLE 10

COVENANTS TO RUN WITH THE LAND

10.01 **Term.** These covenants and restriction are to run with the land and shall be binding on all parties, their heirs, and assigns, for a period of 25 years from the date hereof. At any time within six months from the expiration period, the record owners of one-half or more of said Lots in said subdivision may express their intention in writing, drafted so as to be recorded with the Registrar of Deeds, that they no longer care for these covenants, and the same shall then be terminated when such writing is recorded. In the event that no such action is taken, these covenants shall continue for periods of five (5) years, and after any such five (5) year period such covenants may be terminated in accordance with the terms for the original termination.

10.02 **Amendments After Expired Time Period.** It is further provided that these Protective Covenants may be amended after the expiration time periods as set forth in section 10.01 above, either by adding to or taking from said Protective Covenants in their present form, provided that said amendment or amendments shall be incorporated in a written instrument executed by the record Owners of not less than one-half of the Lots in said subdivision, and which instrument shall be capable of being recorded and shall be recorded in the same manner as provided in the foregoing paragraph.

10.03 **All Other Amendments.** The foregoing covenants and restrictions may be changed or amended at any time, provided that said change or amendment is signed by the record Owners of at least 80% of all Lots in said subdivision voting for such amendments and properly recording such vote with the Registrar of Deeds of Benton County, Arkansas.

ARTICLE 11

ENFORCEMENT

If the parties herein or any of them or their heirs or assigns or any other person shall violate or attempt to violate any of the covenants or restrictions herein while said covenants or restrictions are still in force, it shall be lawful for any person or persons owning any interest in any Lot or Lots or for the Association in said subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate such covenants or restrictions, and either prevent him or them from doing so or to recover damages or other penalties for such violation. Any judgments rendered in connection with any violation of the restrictive covenants contained herein shall be a lien against the Lot, regardless of whether such Lot is the homestead of the owner or not, enforceable by such owners of the Association in whose favor such judgment is rendered.

ARTICLE 12

INVALIDATION

12.01 **By Court Order.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions herein contained.

12.02 Conflict of Provisions. Where any provisions herein are in conflict with any by-law, resolution, or regulation of the Association, the provisions contained herein shall control.

ARTICLE 13

NOTICE

13.01 Notices by Mail and Waiver of Service. Unless otherwise expressly provided herein, notice shall be effective when mailed postage prepaid, via U. S. Certified Mail, to the person entitled to notice at the last known address of such person as reflected by the records of the Association. Any notice required might be waived by waiver signed by the person entitled to notice or by the attendance of the person who is entitled to notice at any meeting where notice is required.


13.02 Notices by Personal Service. Notice may be given to any person entitled to same by delivery of a copy of such notice by an officer or director of the Association to the person entitled to notice, with the officer or director delivering such notice to certify on a copy thereof that said notice was personally delivered and the date thereof. Said copy shall be maintained in the records of the Association.

13.03 Person Entitled to Notice. The person entitled to notice shall be the person indicated by the books and records of the Association to be the person entitled to the voting rights for each of said Lots and proper notice to such person shall be deemed to be proper notice to all other Owners of any interest in a Lot.

758 8/9/06

IN WITNESS WHEREOF, the DECLARANT AS THE Owner and Developer of ~~all~~ of the Lots in BORGHESE GARDENS SUBDIVISION, A PLATTED SUBDIVISION TO THE CITY OF LOWELL, BENTON COUNTY, ARKANSAS, for the purpose of indicating its agreement to perform the obligations placed upon it by this instrument, have signed this Declaration (and all counterparts, any one of which shall be deemed an original) this 9th day of August, 2006.

NORTHWEST ARKANSAS INVESTMENT CAPITAL, LLC
DECLARANT, OWNER AND DEVELOPER:



MICHAEL K. SPAINHOWER, MEMBER-MANAGER

BILL OF ASSURANCES AND PROTECTIVE COVENANTS FOR BORGHESE GARDENS

ACKNOWLEDGEMENT IMMEDIATELY FOLLOWS:

ACKNOWLEDGEMENT

State of Arkansas)
) ss.
County of Benton)

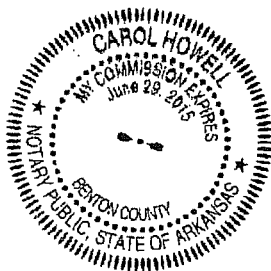
BE IT REMEMBERED, that on this day came before me the undersigned, a Notary Public, duly commissioned and acting within and for the County and State the aforesaid, MICHAEL K. SPAINHOWER, personally known to me to be AUTHORIZED AND ACTING AS THE MEMBER-MANAGER OF NORTHWEST ARKANSAS INVESTMENT CAPITAL, LLC, subscribing to the foregoing Declaration of Bill of Assurances and Protective Covenants of BORGHESE GARDENS Subdivision and who stated that he had executed the same for the purposes and considerations therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 9th day of August 2006.

Carol Howell

Notary Public

My Commission Expires:



2006 39451
Recorded in the Above
Deed Book & Page
08-09-2006 02:03:06 PM
Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2006/39432
Term/Cashier: CIRCUIT-L9HVHGG / dbrandon
Tran: 4492.131613.368066
Recorded: 08-09-2006 14:04:44
DFE Deed 65.00
REC Recording Fee 0.00
Total Fees: \$ 65.00

Benton County, AR
I certify this instrument was filed on
08-09-2006 02:03:06 PM
and recorded in Deed Book
2006 at pages 39432 - 39451
Brenda DeShields-Circuit Clerk