

2006 18078
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REC 2006 by Dimeo Land
Total Fees: \$ 47.00

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DECLARATION OF
COVENANTS AND RESTRICTIONS FOR
ROCKY CREEK SUBDIVISION

THIS DECLARATION made this 14 day of March
LLC herein "Developer".

WITNESETH:

WHEREAS, Developer, as owner of certain real property located in Rogers, Arkansas, desires to create thereon a development known as ROCKY CREEK SUBDIVISION ("Development") as more particularly described on the recorded Plat of said subdivision as found at _____ of the real estate records of Benton County, Arkansas; 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 development to certain covenants and restrictions as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development and each and every owner of any and all parts thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Development, 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 Properties (as hereinafter defined) and 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 as hereinafter created; and

WHEREAS, Developer has caused or will cause to be incorporated under the law, of the State of Arkansas, ROCKY CREEK SUBDIVISION PROPERTY OWNER' ASSOCIATION, INC., (herein RCSPOA), an Arkansas nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter;

NOW, THEREFORE, the Developer subjects the Development property to the terms of this Declaration and declares that the same is and shall be held, transferred, sold, conveyed, occupied and used, subject to the covenants and restrictions ("Covenants") hereinafter set forth. These Covenants shall touch and concern and run with the property and each lot thereof.

ARTICLE I
ARCHITECTURAL CONTROL

- 1.01 **Architectural and Design Review.** In order to establish and preserve a harmonious design for the Development, to promote and protect the property values, to insure that all dwellings and accessory buildings constructed or erected shall have good quality materials and workmanship and are compatible with other dwellings and accessory buildings constructed or to be constructed in the Development, the Developer or the Architectural Control Committee (herein "RCSACC") of the RCSPOA shall approve the details of construction plans including dwelling placements. The Developer shall have sole architectural and design reviewing authority for the Development until the RCSACC has been established and Developer has sold 75% of the lots in the Development. The Developer shall transfer all reviewing authority to RCSACC when 75% of the lots in the Development have been sold. (The entity with architectural and design reviewing authority shall hereinafter be referred to as the "Review Approver" regardless of whether referring to Developer or RCSACC.)
- 1.02 **Approval Requirements.** No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure on the Lot and a finished floor elevation (FFE) relative to the street curb have been approved by the Review Approver. If the FFE is not at least one (1) foot higher than the street curb elevation, the building plans shall include a drainage plan. Such plans shall be delivered to Review Approver approval at least 15 days prior to the planned commencement of any construction, and the written approval of the Review Approver shall be required before construction commences. A satisfactory FFE relationship, or a satisfactory drainage plan will be required for the Review Approver's approval. Should any plan submitted hereunder fail to be approved or disapproved within 15 days of delivery to the Review Approver, no further approval will be required, and the related Covenants shall be deemed to have been fully complied with.
- 1.03 **Approval Guidelines and Limitation.** Approval of any proposed plans submitted shall be rejected unless such plans and specifications comply with the applicable Covenants. Approval of plans and specifications by the Review Approver is for the mutual benefit of all property owners and is not intended to be, and shall not be construed as, an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural viewpoint. Each property owner shall be individually responsible for the technical aspect or the plans and specifications.

ARTICLE II
COVENANTS, USES AND RESTRICTIONS

- 2.01 **Residential Use.** The use of all lots within the Development shall be governed by the provisions of the City of Rogers codes and regulations governing single-family residences on the date the subdivision plan was approved.
- 2.02 **Building Limitations.** The building codes of the City of Rogers, as they presently exist or are hereinafter amended, shall be and are hereby made applicable to all lots in the Development. 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 these Covenants shall be resolved in favor of the more restrictive provisions. No dwelling structure shall be constructed on any lot within the Development of a size less than 1800 square feet of heated and cooled living space, without the approval of the Review Approver. All dwellings shall have at least a two (2)-car garage with a wooden or metal garage door approved by the Review Approver, and with a concrete driveway at least 16 feet wide. All building exteriors must be at least 75% brick, stucco or other material specifically approved by the Review Approver. All roofs must have a pitch of at least 8/12 and be architectural roofing shingles or other roofing material specifically approved by the Review Approver. No standard 3-tab roofing material will be allowed.
- 2.03 **Home Occupations.** Home occupations as defined by the City of Rogers shall be prohibited.
- 2.04 **Setbacks.** No building shall be erected on any lot in the Development nearer than (1) 25 feet to the front lot line of a corner lot; (2) 20 feet to the rear lot line; (3) 25 feet to the exterior side of any corner lot line; (4) 7-1/2 feet to the interior side lot line. For the purposes at these covenants, eaves, steps and open porches shall not be considered as part of the building, providing, 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 ROCKY CREEK SUBDIVISION plat vary from the setback requirements required herein, the building setback line shown upon said 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 of Rogers shall take precedence and be controlling over any other provision continued herein.
- 2.05 **Fences.** The approval requirements outlined in subsection 1.02 for buildings shall also apply to fences. Fencing of front yards is prohibited. Fencing on corner lots may extend to, but not beyond, the exterior side setback lines established in section 2.04.

No fences shall exceed 6 feet in height. Except for common sections of fence installed by the owners of adjoining lots when the fence is not visible to other lot owners, all fences shall be installed with the finished side facing out. All fencing materials shall be approved by the Review Approver prior to commencement of any construction. Chain link and other forms of wire fencing are specifically prohibited.

- 2.06 Vehicle Parking. All vehicles, except recreational vehicles and equipment owned by lot owners, 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, may not be parked or stored within 30 feet, of the front lot line for more than 3 days in any calendar month. Recreational vehicles and equipment may be parked on hard surface areas in backyards for any length of time so long as those hard surface areas are screened by proper fencing, or a hedge composed of shrubs, so as to reasonably screen the sight of the recreational vehicle or equipment from the sight of neighbors and public view. Except for guest of lot owners parking for short-term social visits, no vehicle shall be parked in any Development street.
- 2.07 Signs. No sign in excess of 6 square feet in areas may be placed or erected on any lot. No sign advertising any business or commercial activity may be placed or erected on any lot, except that the Developer, builders, real estate companies and financiers may place or erect temporary signs on lots to advertise the construction, financing or offer for sale of real property on the particular lot.
- 2.08 Temporary Structures. No trailer, tent, shack, garage, barn or other outbuilding or structure erected on a building site within the Development shall be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used to human habitation. This restriction does not prohibit the storing of recreational vehicles or equipment on the lots when done in accordance with the subsection 2.06. This restriction does not prohibit the Developer or approved builders from placing temporary construction trailers and/or storage facilities on lots as deemed necessary.
- 2.09 Accessory Structures. Subject to the approval of Review Approver, accessory buildings, in-ground swimming pools, cabana structures and gazebos may be built within the building area on any lot. The approval requirements outlined in subsection 1.02 for buildings; shall apply to these structures. Accessory buildings shall be restricted to one per lot, the size shall be specifically approved by the Review Approver and the design shall be compatible with the main dwelling. In-ground swimming pools, cabana structures, gazebos shall be restricted to one each per lot and designs that are compatible with the main dwelling. The interior area of outbuildings

and cabana structures shall not be included in the determination of the minimum dwelling sizes. Above ground and semi permanent swimming pools shall be prohibited.

- 2.10 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 Development without the approval of the Review Approver; nor shall the radio, television signals, nor 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. EXCEPTION: Digital satellite system receivers not more than 18 inches in diameter shall be allowed provided they are not visible from the street.
- 2.11 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 manner and shall not create any nuisance to any lot. Each household shall be limited to not more than 3 dogs and/or cats. Dogs must be considered tame and no Rotweillers, Doberman Pincers, Pit Bulldogs or other breeds of dogs commonly recognized as "vicious" shall be raised, bred or kept on any lot. No reptiles shall be kept as pets on any lot. All lot owners shall comply with all applicable law regarding the housing and maintenance of animals.
- 2.12 Easements. Perpetual easements have been reserved, as shown on the approved plat, for the construction and maintenance of utilities and drainage, and no permanent structure of any kind shall be erected or maintained upon or over said easements.
- 2.13 Nuisances. No noxious or offensive activity shall be carried upon any lot, nor shall anything be done thereupon which may be or may become an annoyance or a nuisance to the neighborhood. 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. Should any owner fail to comply with this subsection, the Review Approver 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.
- 2.14 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 material shall not be placed or stored in the street or between the curb and property lines. Upon completion of the improvements requiring such material, any remaining building materials and refuse shall be removed from the subdivision, and the lot restored to a clear and aesthetically pleasing appearance.

2.15 Inoperative Vehicles. Any inoperative vehicle, bus, tractor, or other conveyance or rig must be stored within the lot owner's garage and must not be left in public view.

2.16 Sight Distance at Intersection. No fence, wall, hedge or shrub, which obstructs sight lines at intersections within the subdivision, shall be permitted.

2.17 Sound Devices. No exterior speaker, horn, whistle, bell or other sound device except security devices used exclusively for security purposes, shall be located, used or placed upon lots in the subdivision. The playing of loud noise from porches, decks, swimming pools areas or yards shall be considered offensive, obnoxious activity constituting a nuisance.

2.18 Laundry. The hanging of laundry from any area within or outside a residence, which places the laundry within public view, is prohibited.

2.18 Landscaping. Weather Conditions. The front and side yards will be sodded within 90 days after completion of construction, weather conditions permitting; however, if weather conditions have not permitted seed sodding within 90 days after completion of construction, then the lot owner shall be allowed such time to complete the sodding as is reasonably necessary.

2.19 Mailboxes. All mailboxes will meet the requirements of the United States Postal Service and the Review Approver for size, quality and location of placement. Generally, all mailboxes for each street will be located on the same side of the street. RCSACC will supply the Builder of the initial construction on each lot with a decorative mailbox for the lot. The builder will be responsible for installing the mailbox at the location and the manner required by the Review Approver. All subsequent mailboxes will be supplied and paid by the respective lot owner, but must meet the requirements of the Review Approver as to decoration, size, and quality, as well as placement.

2.20 (A) SALE OR LEASE RIGHT OF FIRST REFUSAL: In the event any owner of any lot, other than the Developer or its successor, shall wish to resell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, the remaining owners shall be given written notice thereof together with an executed copy of

such offer and the terms thereof. Such notice and copy shall be given to either the President or Secretary of RCSPOA (Notice Officer); and for as long as the Developer owns 25% or more of the lots in the Development, such Notice and a copy shall also be given to the Developer. The remaining owners through the RCSPOA Board or a person named by the RCSPOA Board, shall have the right to purchase or lease the subject lot upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing owner, and a matching down payment or deposit is provided to the selling or leasing owner during the fifteen (15) day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event any owner shall attempt to sell or lease his lot without affording to the other owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an owner to subject his lot to a deed of trust, mortgage or other security instrument.

The failure of or refusal by the RCSPOA Board to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

(B) GIFT RIGHT OF FIRST REFUSAL: In the event any owner (referred to in this Subsection B as "Donor") of a lot desires to make a gift of the property or any interest in the property to any person or entity other than a spouse of the Donor, the remaining owners must be given written notice from the Donor of that desire to make a gift. The notice must include the name of the prospective donee, and must be given to the Notice Officer for all of the owners. The remaining owners through the RCSPOA Board or a person named by the RCSPOA Board will have the right to purchase the subject lot at the fair market value on the date that the Donor first proposes to make the gift. For any of the remaining owners to exercise this right to purchase, written notice of the election to purchase by the RCSPOA Board must be given to the Donor, and a payment in the amount of the fair market value of the property must be tendered

to the owner during the 15-day period immediately following the determination of fair market value of the Donor's notice of the proposed gift.

Fair market value for purposes of this right of first refusal will be determined first by any agreement between the Donor and the RCSPOA Board. If the Donor and the RCSPOA Board do not agree on the value of the property, then the fair market value of the property will be the value of the property according to an appraisal of an independent appraiser selected first by agreement between the donor and the RCSPOA Board. The appraiser must be a member of the Appraisal Institute and must be certified by the Arkansas Licensing and Certification Board of Residential Appraisers. The cost of the appraisal will be split equally between the Donor and the RCSPOA Board. If the Donor and the RCSPOA Board cannot agree on the appraiser to be selected, then the Donor and the RCSPOA Board will each select and pay the cost of their own appraiser and the two selected appraisers will select a third appraiser. The cost of the third appraiser will be borne by the Donor.

In the event any Donor attempts to gift his lot without giving the notice of the proposed gift to the RCSPOA Board provided for above, that gift will be wholly null and void and will confer no title or interest whatsoever upon the intended donee.

In no case will the right of first refusal reserved herein affect the right of an owner to subject his apartment to a deed of trust, mortgage or other security instrument.

The failure of or refusal by the RCSPOA Board to exercise the right to purchase will not constitute or be deemed to be a waiver of that right to purchase when a Donor subsequently proposes to make a gift of the same property.

This right of first refusal in this Subsection B will not apply to a proposed gift of the property or any interest in the property to a spouse of the Donor.

Any transfer or proposed transfer of the property or any interest in the property to a trust, including a revocable trust, will be treated as a gift for purposes of this Subsection B, regardless of whether or not the transfer is considered a gift under state or federal law.

(C) INHERITANCE OR DEVISE RIGHT OF FIRST REFUSAL: In the event any owner (referred to this Subsection C as "Decedent") of a lot dies leaving the property or any interest in the property to any person or entity other than Decedent's spouse, the remaining owners must be given written notice from the personal representative of the Decedent's estate that the Decedent has died. The notice must include the name of any prospective heir or devisee, and must be given to the Notice Officer for

all of the owners. The remaining owners through the RCSPOA Board or a person named by the RCSPOA Board, will have the right to purchase the subject lot at the fair market value on the date of the Decedent's death. For any of the remaining owners to exercise this right to purchase, written notice of that election to purchase by the RCSPOA Board must be given to the decedent, and a payment in the amount of the fair market value of the property on the date of decedent's death must be tendered to the personal representative of the decedent's estate during the 15-day period immediately following the determination of the fair market value of the property. Fair market value for these purposes will be determined using the same method as the method used above in Subsection B.

In the event any heir or devisee of the decedent's estate receives a distribution of the property without the personal representative of the estate giving the owners the right of first refusal provided for above, that distribution will be wholly null and void and will confer no title or interest whatsoever upon the intended heir or devisee.

In no case will that right of first refusal reserved herein affect the right of an owner to subject his lot to a deed of trust, mortgage or other security instrument.

The failure of or refusal by the RCSPOA Board to exercise the right to purchase will not constitute or be deemed to be a waiver of that right to purchase when any heir or devisee dies leaving the property to another heir or devisee.

This right of first refusal in this Subsection C will not apply to a transfer of the property or any interest in the property to a spouse of the Donor.

(D) MORTGAGES NOT AFFECTED BY RIGHT OF FIRST REFUSAL: In the event of any default on the part of any owner under any mortgage made in good faith and for value, which entitled the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Article II, Section 2.20, and the purchaser (or grantee under such deed in lieu of foreclosure) of such lot shall thereupon and thereafter subject to the provisions of this Declaration of Covenants and Restrictions For Rocky Creek Subdivision. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the apartment free and clear of the provisions of Article II, Section 2.20, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased tenant's interest to a devisee by will or his heirs at law under intestacy laws shall not be subject to the provisions of Article II, Section 2.20.

If an owner of a lot can establish to the satisfaction of the RCSPOA Board that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of Article II, Section 2.20.

(E) CERTIFICATE OF SATISFACTION OF RIGHT OF FIRST REFUSAL: Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any apartment, the RCSPOA Board shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

- (i) With respect to a proposed lease or sale under Article II, Section 2.20(A), that proper notice was given by the selling or leasing owner and that the remaining owners did not elect to exercise their option to purchase or lease;
- (ii) With respect to either a proposed gift or a death under Article II, Section 2.20 (B) and (C), that proper notice was given by the owner or the personal representative of the owner's estate and that the remaining owners did not elect to exercise their option to purchase;
- (iii) With respect to a deed to a mortgagee or its nominee in lieu of foreclosure, and a deed from such mortgagee or first nominee, pursuant to Article II, Section 2.20 (D), that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Article II, Section 2.20; and
- (iv) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer is not or will not be subject to the provisions of Article II, Section 2.20. Such a certificate shall be conclusive evidence of the facts contained therein.

(F) For purposes of this Article II, Section 2.20, unless and until the RCSPOA shall be formed and by-laws adopted, all references to the RCSPOA or the RSCPOA Board or the Notice Officer in this Article II, Section 2.20 shall mean the Developer.

ARTICLE III
COMMON PROPERTIES

- 3.01 **Common Properties Defined.** "Common Properties" shall mean and refer to those tracts of land and any improvement thereon which are deeded to RCSPOA and designated in said deed as "Common Properties" and any personal property acquired by the RCSPOA if said property is designated as "Common Property". All Common Properties are intended for and are to be devoted to the common benefit of the owners of ROCKY CREEK SUBDIVISION properties. The Common Properties shall include, but not be limited to, the entries to the Development.

ARTICLE IV
ASSESSMENTS

- 4.01 **Amount of Annual Assessments.** On or before the first day of December of each year, RCSPOA Board will adopt a budget for the upcoming year. The budget will establish the total amount of annual assessments on all lots in the Development. The amount of annual assessment for the individual lots will be the same for the Developer, Developer approved builders and lot owners; and shall equal to the amount of the annual assessments on all lots in the Development divided by the number of lots in the Development. Annual assessments may be approved at the annual or called meeting of the RSCPOA.
- 4.02 **Changes in Annual Assessments.** The amount of the annual assessments on all lots may be increased or decreased at an annual or special meeting of the RCSPOA scheduled or called to include such a purpose. At any such meeting, the owners of each lot shall be allocated one vote regardless of the number of owners of the lot. Owners of the lots may vote in person or by proxy. The annual assessments of all lots shall be increased or decreased upon an affirmative vote of the owners representing 75% of the lots for which votes are cast.
- 4.03 **Commencement or Assessment.** For the year 2006, the annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the developer to be the date of commencement, but not earlier than April 1, 2006. Thereafter, for all subsequent years, assessments shall be established by the RCSPOA for each calendar year, and shall be due on January 1 of the year of the assessment, and payable without lots fee until the first business day in March of the same year. (Due Date).

- 4.04 Pro Rata Assessments. The amount of the first annual assessment shall be based pro rata upon the balance of the calendar year and shall become due and payable by the Developer approved builders and lot owners on the closing of the lot.
- 4.05 Statements. On the first business day after adoption of the budget for the upcoming year (or as soon as practicable thereafter), RCSPOA shall mail a statement to each owner informing him or her of their annual assessment and the last date for payment thereof without late fee.
- 4.06 Late Fees. The RCSPOA shall be authorized to charge an administrative late fee of \$150.00 to any lot owner who fails to pay any assessment on or before the Due Date. In the event of failure to pay the same promptly when the same become due, such dues shall constitute a lien upon the property owned by such owner in the Addition and the same may be enforced in equity as in the case of any lien foreclosure authorized in the State of Arkansas. All delinquent assessments shall bear interest at the rate of ten percent (10%) per annum from the Due Date until they are paid, and the association shall be entitled to a reasonable fee for its attorneys when their services become necessary to collect any delinquent assessments, all of which shall be a part of the lien. The liens herein created or retained for unpaid assessments to the ROCKY CREEK SUBDIVISION Property Owners Association are hereby made expressly inferior and subordinate to valid and bona fide mortgages and deeds of trust or retained for unpaid vendor's liens securing obligations of owners of any of the lots in the addition up to the time of sale at foreclosure of any such mortgage, deed of trust or vendor's lien. This subordination shall be construed to apply not only to the original, but to all successive, mortgages, deeds of trust, and vendor's liens given by property owners to secure obligations, together with all extensions and renewals thereof.

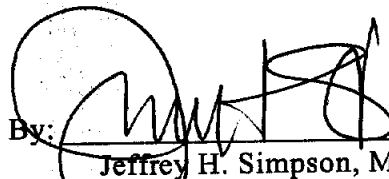
ARTICLE V
GENERAL PROVISIONS

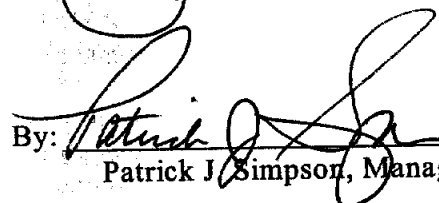
- 5.01 Duration of Covenants. These Covenants shall run with and bind the land and shall inure to the benefit of and be enforceable by RCSPOA, the Developer or lot owners, their respective legal representatives, and successors and assigns, and shall be effective for a period of twenty (20) years following the recordation date hereof, and thereafter shall be automatically extended for successive periods of 10 years each, unless otherwise amended pursuant to Sub-Section 5.02.

- 5.02 Amendments. These Covenants may be amended at any time with approval of the owners of at least 75% of the lots. The amendment shall be effective upon recording of the amendment with the Circuit Clerk of Benton County, Arkansas. The Covenants may be amended at any annual or special meeting of RCSPOA scheduled or called to include such a purpose or by a written document signed by the owners of at least 75% of the lots in the Development.
- 5.03 Severability. Invalidation of any restriction set forth herein or any part thereof, by any order, judgment, or decree or any court, or otherwise, shall not invalidate or affect any of the other restrictions, or any part thereof, as set forth herein, but they shall remain in full force and effect.
- 5.04 Violations. In the event of any violation or attempt to violate any of the Covenants herein, it shall be lawful for any person, persons, or entity owning any lot in ROCKY CREEK SUBDIVISION including the Developer and RCSPOA, to prosecute and proceedings at law or in equity against a person or persons violating or attempting to violate such Covenants, and either prevent him or them from so doing and/or to recover damages for such violations. Provided further, however, that the lot owner, Developer or RCSPOA shall first advise any violator of said violations prior to legal action being taken. The Developer or RSCPOA shall receive from residents any complaints as to violations of the Covenants, and shall reasonably notify any violator prior to legal actions being taken.

Signed and delivered this 4 day of MARCH, 2006.

DINERO LAND LLC

By: 
Jeffrey H. Simpson, Managing Member

By: 
Patrick J. Simpson, Managing Member

State of Arkansas)
)
County of Benton)

ACKNOWLEDGMENT

On this 14th day of March, 2006, came before the undersigned, a Notary Public within and for the State and County aforesaid, duly commissioned and acting, Jeffrey H. Simpson, Managing Member and Patrick J. Simpson, Managing Member of Dinero Land LLC, to me well known, and executed the above foregoing Declaration of Covenants and Restrictions for ROCKY CREEK SUBDIVISION on behalf of the corporation.

WITNESS my hand and seal this 14th day of March, 2006.

Carla Holloway
NOTARY PUBLIC

My Commission Expires:

August 20, 2012

Carla Holloway
Notary Public
Arkansas, Benton County
My Comm. Expires August 20, 2012

2006 18091

Recorded in the Above
Deed Book & Page
04-06-2006 03:56:46 PM
Brenda DeShields-Circuit Clerk
Benton County, AR

Benton County, AR
I certify this instrument was filed on
04-06-2006 03:56:46 PM
and recorded in Deed Book
2006 at pages 18078 - 18091
Brenda DeShields-Circuit Clerk

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2009/18865
Term/Cashier: CASH4/SJOHNSON
04/28/2009 9:37:50AM
Total Fees: \$60.00

**FIRST AMENDED AND RESTATED DECLARATION OF
COVENANTS AND RESTRICTIONS FOR
ROCKY CREEK SUBDIVISION**

THIS First Amended and Restated Declaration made this 5 day of April, 2007, by Dinero Land LLC herein "Developer", being the sole and only property owner in the Rocky Creek Subdivision.

WITNESETH:

WHEREAS, Developer, as owner of certain real property located in Rogers, Arkansas, created a development known as ROCKY CREEK SUBDIVISION ("Development") as more particularly described on the recorded Plat of said subdivision as found at Book 2006 at Page 354 of the real estate records of Benton County, Arkansas; and

WHEREAS, Developer caused a Declaration of Covenants and Restrictions for Rocky Creek Subdivision to be executed and also recorded in the real estate records of Benton County, Arkansas on April 6, 2006 at Book 2006 beginning at page 18078, to provide for the preservation and enhancement of value when and as the property is improved and desires to subject the development to certain covenants and restrictions as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development and each and every owner of any and all parts thereof; and

WHEREAS, Developer deemed it desirable, for the efficient preservation of the values and amenities in the Development, 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 Properties (as hereinafter defined) and 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 as hereinafter created; and

WHEREAS, Developer has caused or will cause to be incorporated under the law, of the State of Arkansas, ROCKY CREEK SUBDIVISION PROPERTY OWNER' ASSOCIATION, INC., (herein RCSPOA), an Arkansas nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter;

WHEREAS, Developer is the sole and only owner of any property within the Development, and desires to amend and restate the Declaration by the execution and recording of this First Amended and Restated Declaration of Covenants and Restrictions for Rocky Creek Subdivision (Amended and Restated Declaration) as contained herein;

Book 2009 Page 18865
Recorded in the Above
DEED Book & Page
04/28/2009

NOW, THEREFORE, the Declaration of Covenants and Restrictions for Rocky Creek Subdivision is hereby amended and restated, subjecting the Development property to the terms of this Amended and Restated Declaration and declares that the same is and shall be held, transferred, sold, conveyed, occupied and used, subject to the covenants and restrictions ("Covenants") hereinafter set forth. These Covenants shall touch and concern and run with the property and each lot thereof.

ARTICLE I
ARCHITECTURAL CONTROL

- 1.01 **Architectural and Design Review.** In order to establish and preserve a harmonious design for the Development, to promote and protect the property values, to insure that all dwellings and accessory buildings constructed or erected shall have good quality materials and workmanship and are compatible with other dwellings and accessory buildings constructed or to be constructed in the Development, the Developer or the Architectural Control Committee (herein "RCSACC") of the RCSPOA shall approve the details of construction plans including dwelling placements. The Developer shall have sole architectural and design reviewing authority for the Development until the RCSACC has been established and Developer has sold 75% of the lots in the Development. The Developer shall transfer all reviewing authority to RCSACC when 75% of the lots in the Development have been sold. (The entity with architectural and design reviewing authority shall hereinafter be referred to as the "Review Approver" regardless of whether referring to Developer or RCSACC.)
- 1.02 **Approval Requirements.** No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure on the Lot and a finished floor elevation (FFE) relative to the street curb have been approved by the Review Approver. If the FFE is not at least one (1) foot higher than the street curb elevation, the building plans shall include a drainage plan. Such plans shall be delivered to Review Approver approval at least 15 days prior to the planned commencement of any construction, and the written approval of the Review Approver shall be required before construction commences. A satisfactory FFE relationship, or a satisfactory drainage plan will be required for the Review Approver's approval. Should any plan submitted hereunder fail to be approved or disapproved within 15 days of delivery to the Review Approver, no further approval will be required, and the related Covenants shall be deemed to have been fully complied with.
- 1.03 **Approval Guidelines and Limitation.** Approval of any proposed plans submitted shall be rejected unless such plans and specifications comply with the applicable Covenants. Approval of plans and specifications by the Review Approver is for the

mutual benefit of all property owners and is not intended to be, and shall not be construed as, an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural viewpoint. Each property owner shall be individually responsible for the technical aspect of the plans and specifications.

ARTICLE II
COVENANTS, USES AND RESTRICTIONS

- 2.01 **Residential Use.** The use of all lots within the Development shall be governed by the provisions of the City of Rogers codes and regulations governing single-family residences on the date the subdivision plan was approved.
- 2.02 **Building Limitations.** The building codes of the City of Rogers, as they presently exist or are hereinafter amended, shall be and are hereby made applicable to all lots in the Development. 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 these Covenants shall be resolved in favor of the more restrictive provisions. No dwelling structure shall be constructed on any lot within the Development of a size less than 1800 square feet of heated and cooled living space, without the approval of the Review Approver. All dwellings shall have at least a two (2)-car garage with a wooden or metal garage door approved by the Review Approver, and with a concrete driveway at least 16 feet wide. All building exteriors must be at least 75% brick, stucco or other material specifically approved by the Review Approver. All roofs must have a pitch of at least 8/12 and be architectural roofing shingles or other roofing material specifically approved by the Review Approver. No standard 3-tab roofing material will be allowed.
- 2.03 **Home Occupations.** Home occupations as defined by the City of Rogers shall be prohibited.
- 2.04 **Setbacks.** No building shall be erected on any lot in the Development nearer than (1) 25 feet to the front lot line of a corner lot; (2) 20 feet to the rear lot line; (3) 25 feet to the exterior side of any corner lot line; (4) 7-1/2 feet to the interior side lot line. For the purposes at these covenants, eaves, steps and open porches shall not be considered as part of the building, providing, 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 ROCKY CREEK SUBDIVISION plat vary from the setback requirements required herein, the building setback line shown upon said 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 of Rogers shall take precedence and be controlling over any other provision continued herein.

- 2.05 Fences. The approval requirements outlined in subsection 1.02 for buildings shall also apply to fences. Fencing of front yards is prohibited. Fencing on corner lots may extend to, but not beyond, the exterior side setback lines established in section 2.04. No fences shall exceed 6 feet in height. Except for common sections of fence installed by the owners of adjoining lots when the fence is not visible to other lot owners, all fences shall be installed with the finished side facing out. All fencing materials shall be approved by the Review Approver prior to commencement of any construction. Chain link and other forms of wire fencing are specifically prohibited.
- 2.06 Vehicle Parking. All vehicles, except recreational vehicles and equipment owned by lot owners, 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, may not be parked or stored within 30 feet, of the front lot line for more than 3 days in any calendar month. Recreational vehicles and equipment may be parked on hard surface areas in backyards for any length of time so long as those hard surface areas are screened by proper fencing, or a hedge composed of shrubs, so as to reasonably screen the sight of the recreational vehicle or equipment from the sight of neighbors and public view. Except for guest of lot owners parking for short-term social visits, no vehicle shall be parked in any Development street.
- 2.07 Signs. No sign in excess of 6 square feet in areas may be placed or erected on any lot. No sign advertising any business or commercial activity may be placed or erected on any lot, except that the Developer, builders, real estate companies and financiers may place or erect temporary signs on lots to advertise the construction, financing or offer for sale of real property on the particular lot.
- 2.08 Temporary Structures. No trailer, tent, shack, garage, barn or other outbuilding or structure erected on a building site within the Development shall be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used to human habitation. This restriction does not prohibit the storing of recreational vehicles or equipment on the lots when done in accordance with the subsection 2.06. This restriction does not prohibit the Developer or approved builders from placing temporary construction trailers and/or storage facilities on lots as deemed necessary.
- 2.09 Accessory Structures. Subject to the approval of Review Approver, accessory buildings, in-ground swimming pools, cabana structures and gazebos may be built

within the building area on any lot. The approval requirements outlined in subsection 1.02 for buildings; shall apply to these structures. Accessory buildings shall be restricted to one per lot, the size shall be specifically approved by the Review Approver and the design shall be compatible with the main dwelling. In-ground swimming pools, cabana structures, gazebos shall be restricted to one each per lot and designs that are compatible with the main dwelling. The interior area of outbuildings and cabana structures shall not be included in the determination of the minimum dwelling sizes. Above ground and semi permanent swimming pools shall be prohibited.

- 2.10 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 Development without the approval of the Review Approver; nor shall the radio, television signals, nor 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. EXCEPTION: Digital satellite system receivers not more than 18 inches in diameter shall be allowed provided they are not visible from the street.
- 2.11 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 manner and shall not create any nuisance to any lot. Each household shall be limited to not more than 3 dogs and/or cats. Dogs must be considered tame and no Rotweillers, Doberman Pincers, Pit Bulldogs or other breeds of dogs commonly recognized as "vicious" shall be raised, bred or kept on any lot. No reptiles shall be kept as pets on any lot. All lot owners shall comply with all applicable law regarding the housing and maintenance of animals.
- 2.12 Easements. Perpetual easements have been reserved, as shown on the approved plat, for the construction and maintenance of utilities and drainage, and no permanent structure of any kind shall be erected or maintained upon or over said easements.
- 2.13 Nuisances. No noxious or offensive activity shall be carried upon any lot, nor shall anything be done thereupon which may be or may become an annoyance or a nuisance to the neighborhood. 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. Should any owner fail to comply with this subsection, the Review

Approver 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.

- 2.14 **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 material shall not be placed or stored in the street or between the curb and property lines. Upon completion of the improvements requiring such material, any remaining building materials and refuse shall be removed from the subdivision, and the lot restored to a clear and aesthetically pleasing appearance.
- 2.15 **Inoperative Vehicles.** Any inoperative vehicle, bus, tractor, or other conveyance or rig must be stored within the lot owner's garage and must not be left in public view.
- 2.16 **Sight Distance at Intersection.** No fence, wall, hedge or shrub, which obstructs sight lines at intersections within the subdivision, shall be permitted.
- 2.17 **Sound Devices.** No exterior speaker, horn, whistle, bell or other sound device except security devices used exclusively for security purposes, shall be located, used or placed upon lots in the subdivision. The playing of loud noise from porches, decks, swimming pools areas or yards shall be considered offensive, obnoxious activity constituting a nuisance.
- 2.18 **Laundry.** The hanging of laundry from any area within or outside a residence, which places the laundry within public view, is prohibited.
- 2.18 **Landscaping. Weather Conditions.** The front and side yards will be sodded within 90 days after completion of construction, weather conditions permitting; however, if weather conditions have not permitted seed sodding within 90 days after completion of construction, then the lot owner shall be allowed such time to complete the sodding as is reasonably necessary.
- 2.19 **Mailboxes.** All mailboxes will meet the requirements of the United States Postal Service and the Review Approver for size, quality and location of placement. Generally, all mailboxes for each street will be located on the same side of the street. RCSACC will supply the Builder of the initial construction on each lot with a decorative mailbox for the lot. The builder will be responsible for installing the mailbox at the location and the manner required by the Review Approver. All subsequent mailboxes will be supplied and paid by the respective lot owner, but must

meet the requirements of the Review Approver as to decoration, size, and quality, as well as placement.

- 2.20 Paragraph 2.20 of the Declaration of Covenants and Restrictions for Rocky Creek Subdivision recorded in Deed Book 206 at Page 18078, is hereby deleted in its entirety by this Amended and Restated Declaration.

ARTICLE III
COMMON PROPERTIES

- 3.01 **Common Properties Defined.** "Common Properties" shall mean and refer to those tracts of land and any improvement thereon which are deeded to RCSPOA and designated in said deed as "Common Properties" and any personal property acquired by the RCSPOA if said property is designated as "Common Property". All Common Properties are intended for and are to be devoted to the common benefit of the owners of ROCKY CREEK SUBDIVISION properties. The Common Properties shall include, but not be limited to, the entries to the Development.

ARTICLE IV
ASSESSMENTS

- 4.01 **Amount of Annual Assessments.** On or before the first day of December of each year, RCSPOA Board will adopt a budget for the upcoming year. The budget will establish the total amount of annual assessments on all lots in the Development. The amount of annual assessment for the individual lots will be the same for the Developer, Developer approved builders and lot owners; and shall equal to the amount of the annual assessments on all lots in the Development divided by the number of lots in the Development. Annual assessments maybe approved at the annual or called meeting of the RSCPOA.
- 4.02 **Changes in Annual Assessments.** The amount of the annual assessments on all lots may be increased or decreased at an annual or special meeting of the RCSPOA scheduled or called to include such a purpose. At any such meeting, the owners of each lot shall be allocated one vote regardless of the number of owners of the lot. Owners of the lots may vote in person or by proxy. The annual assessments of all lots shall be increased or decreased upon an affirmative vote of the owners representing 75% of the lots for which votes are cast.
- 4.03 **Commencement or Assessment.** For the year 2006, the annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the developer to be the date of commencement, but not earlier than April 1, 2006.

Thereafter, for all subsequent years, assessments shall be established by the RCSPOA for each calendar year, and shall be due on January 1 of the year of the assessment, and payable without lots fee until the first business day in March of the same year. (Due Date).

- 4.04 Pro Rata Assessments. The amount of the first annual assessment shall be based pro rata upon the balance of the calendar year and shall become due and payable by the Developer approved builders and lot owners on the closing of the lot.
- 4.05 Statements. On the first business day after adoption of the budget for the upcoming year (or as soon as practicable thereafter), RCSPOA shall mail a statement to each owner informing him or her of their annual assessment and the last date for payment thereof without late fee.
- 4.06 Late Fees. The RCSPOA shall be authorized to charge an administrative late fee of \$150.00 to any lot owner who fails to pay any assessment on or before the Due Date. In the event of failure to pay the same promptly when the same become due, such dues shall constitute a lien upon the property owned by such owner in the Addition and the same may be enforced in equity as in the case of any lien foreclosure authorized in the State of Arkansas. All delinquent assessments shall bear interest at the rate of ten percent (10%) per annum from the Due Date until they are paid, and the association shall be entitled to a reasonable fee for its attorneys when their services become necessary to collect any delinquent assessments, all of which shall be a part of the lien. The liens herein created or retained for unpaid assessments to the ROCKY CREEK SUBDIVISION Property Owners Association are hereby made expressly inferior and subordinate to valid and bona fide mortgages and deeds of trust or retained for unpaid vendor's liens securing obligations of owners of any of the lots in the addition up to the time of sale at foreclosure of any such mortgage, deed of trust or vendor's lien. This subordination shall be construed to apply not only to the original, but to all successive, mortgages, deeds of trust, and vendor's liens given by property owners to secure obligations, together with all extensions and renewals thereof.

ARTICLE V **GENERAL PROVISIONS**

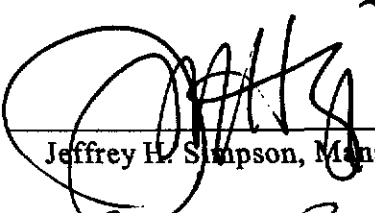
- 5.01 Duration of Covenants. These Covenants shall run with and bind the land and shall inure to the benefit of and be enforceable by RCSPOA, the Developer or lot owners, their respective legal representatives, and successors and assigns, and shall be effective for a period of twenty (20) years following the recordation date hereof, and

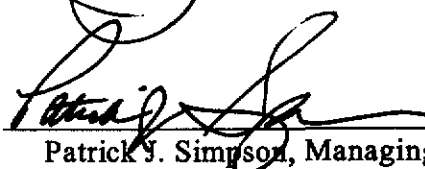
thereafter shall be automatically extended for successive periods of 10 years each, unless otherwise amended pursuant to Sub-Section 5.02.

- 5.02 Amendments. These Covenants may be amended at any time with approval of the owners of at least 75% of the lots. The amendment shall be effective upon recording of the amendment with the Circuit Clerk of Benton County, Arkansas. The Covenants may be amended at any annual or special meeting of RCSPOA scheduled or called to include such a purpose or by a written document signed by the owners of at least 75% of the lots in the Development.
- 5.03 Severability. Invalidation of any restriction set forth herein or any part thereof, by any order, judgment, or decree or any court, or otherwise, shall not invalidate or affect any of the other restrictions, or any part thereof, as set forth herein, but they shall remain in full force and effect.
- 5.04 Violations. In the event of any violation or attempt to violate any of the Covenants herein, it shall be lawful for any person, persons, or entity owning any lot in ROCKY CREEK SUBDIVISION including the Developer and RCSPOA, to prosecute and proceedings at law or in equity against a person or persons violating or attempting to violate such Covenants, and either prevent him or them from so doing and/or to recover damages for such violations. Provided further, however, that the lot owner, Developer or RCSPOA shall first advise any violator of said violations prior to legal action being taken. The Developer or RSCPOA shall receive from residents any complaints as to violations of the Covenants, and shall reasonably notify any violator prior to legal actions being taken.

Signed and delivered this 5 day of April, 2007.

DINERO LAND LLC

By: 
Jeffrey H. Simpson, Managing Member

By: 
Patrick J. Simpson, Managing Member

