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**Declaration of Covenants, Conditions and
Restrictions for Shenandoah Hills Subdivision
City of Springdale, Benton County, Arkansas**

THIS Declaration of Covenants, Conditions and Restrictions, referred to herein as the "Declaration", is made this 1ST day of OCTOBER, 2004, by Atlas Construction of Arkansas, LLC, an Arkansas limited liability company, sometimes referred to herein as "Developer", concerning the residential subdivision known as Shenandoah Hills Subdivision, referred to as "the Subdivision".

WITNESSETH

WHEREAS, the Developer is the Owner of real property located in Benton County, Arkansas, being more fully described in Exhibit A attached to this Declaration and incorporated herein by reference, sometimes referred to herein as the "Property"; and

WHEREAS, the Developer has developed and platted the aforesaid Property into a residential community, and subdivided such Property into individual, quality, single-family Residential Lots; and

WHEREAS, the Developer desires that the entire Subdivision constitute a single-family residential community, with rights and obligations toward the Ownership and maintenance of landscaped common areas at or near the entries to the Subdivision, as well as the signs identifying the Subdivision and any other common areas or amenities; and

WHEREAS, the total development of the Subdivision residential community will take several years; and

WHEREAS, the Developer desires to provide for building and use restrictions to promote and insure that the Subdivision is a quality residential community, to protect the property values of all Owners within the Subdivision, to insure that all homes are constructed of quality materials and workmanship, and are compatible with other homes in the Subdivision.

NOW THEREFORE, in consideration of the foregoing and for the purpose of enhancing and protecting the value and desirability thereof, the Developer hereby declares and subjects all of the Property described in Exhibit A, now known as Shenandoah Hills Subdivision, to the covenants, charges, assessments, conditions and restrictions set forth in this Declaration, all of which shall run with said Property and shall benefit and be binding upon all parties and all persons owning all or any part thereof, and their heirs, personal representatives, successors and assigns. Any and all contracts, purchase agreements, or Deeds affecting any of the Property or Lots therein shall be deemed to have these covenants and restrictions incorporated therein by reference, and any and all such contracts, purchase agreements, or Deeds affecting any of the Property or Lots therein shall be conclusively held to have been executed, delivered, and accepted with full knowledge of all covenants and restrictions contained herein. Furthermore, it is expressly declared and agreed that these covenants also benefit the Developer and future Owners of the Property because of the interest of the Developer and such future Owners in having the entire Property maintained in an attractive manner for the benefit of all Owners of any portion of the Property.

**SECTION I
CONCEPTS AND DEFINITIONS**

The following words, whether or not capitalized, when used in this Declaration or in any amended or supplementary Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

"Amended Declaration" shall mean and refer to each and every instrument recorded in the Records which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Declaration.

"Architectural Control Committee" or **"ACC"** shall mean and refer to that particular committee which may be from time to time appointed or selected pursuant to Section II hereof.

"Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be from time to time duly amended or modified.

"Assessments" shall mean any charge levied against a Lot, Owner, etc. pursuant to this Declaration.

"Association" shall mean and refer to the Shenandoah Hills Property Owners Association, which shall be formed as an Arkansas non profit corporation which has the power, duty and responsibility of maintaining and administering certain portions of the Subdivision and all of the Common Properties, administering and enforcing the Declaration and otherwise maintaining and enhancing the quality of life within the Subdivision.

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

"Building Contractor" shall mean a general contractor, building contractor, construction manager, architect, or Owner, provided that such person meets the criteria established by the ACC under the provisions of Section II.

"By-Laws" shall mean and refer to the Bylaws of the Association, as adopted and amended from time to time in accordance with the provisions of this Declaration and the Arkansas Non Profit Corporation Act of 1993 or other applicable laws promulgated by the State of Arkansas.

"Class A Member" shall mean each Owner of a Residential Lot.

"Class B Member" shall mean the Declarant.

"City" shall mean and refer to the City of Springdale, Benton County, Arkansas.

"Common Properties" shall mean and refer to any and all areas of land within the Subdivision which are known, described or designated as green areas, common areas, the Streets, any controlled access areas and monitoring devices, Street lighting and signs (and all elements thereof), detention ponds, entryways, monuments, perimeter fences and walls, off-site monuments and directional signs, landscape easements, and any greenbelt and the like, including, without limitation, those shown on any Plat, as well as those not shown on a Plat but which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The **"Common Properties"** shall also include any and all public right-of-way lands for which the City has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as, but not limited to, Street medians or park areas.

"Covenants" shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration or any Amended Declaration.

"Days" as used herein shall mean calendar days, with the exception of "business days" which term shall mean each day except for any Saturday, Sunday or legal holiday under the laws of the State of Arkansas or the United States of America.

"Declarant" (sometimes referred to as the "Developer") shall mean and refer to Atlas Construction of Arkansas, LLC, an Arkansas limited liability company, and any or all successors and assigns thereof with respect to the voluntary disposition of all (or substantially all) of the right, title and interest of Atlas Construction of Arkansas, LLC in and to the Subdivision; provided however, no Person merely purchasing one or more Lots from Atlas Construction of Arkansas, LLC or its successors or assigns in the ordinary course of business shall be considered a "Declarant."

"Declaration" shall mean and refer to this particular instrument entitled: "Declaration of Covenants, Conditions and Restrictions for Shenandoah Hills Subdivision, City of Springdale, Benton County, Arkansas," together with any and all amendments or supplements hereto.

"Deed" shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

"Development Period" shall mean a period commencing on the date of the recording of the original Declaration in the Records and continuing thereafter until and ending on the earlier of (a) the date of the completion of construction of Dwelling Units on more than seventy-five percent (75%) of the Residential Lots in the Subdivision, or (b) the date the Declarant voluntarily terminates its Class B Member status by recording a written notice of such termination in the Records.

"Director" shall mean and refer to any duly appointed or elected member of the Board.

"Dwelling Unit" shall mean and refer to any building or portion of a building situated upon any Residential Lot that is designed and intended for Residential Use.

"Front Yard" shall mean and refer to (a) as to interior Lots, the front yard area of the residence between the Street (on the one hand) and the dwelling exterior and fence (on the other hand) and (b) as to corner Lots, the front yard area of the residence between the Street (on the one hand) and the dwelling exterior and fence (on the other hand), and that portion of the side yard area exposed to the Street, between the Street (on the one hand) and the dwelling exterior and fence (on the other hand), but excluding patios, courtyards and fenced areas, unless otherwise defined by the Board.

"Improvement" shall mean any physical change to raw land or to an existing Structure which alters the physical appearance, characteristics or properties of the land or Structure, including but not limited to the new construction of a Structure or Structures and related amenities, adding or removing square footage area or space to or from a Structure, painting or repainting a Structure, or in any way altering the size, shape or physical appearance of any Structure or any building or other improvement, temporary or permanent, located on any Lot.

"Lot" or **"Lots"** shall mean and refer to a Residential Lot or any other type of Lot reflected on any Plat or all of the Residential Lots.

"Member" shall mean and refer to each Owner, who is in good standing with the Association, who has filed a proper statement of residency with the Association, who has complied

with all directives and requirements of the Association, and who otherwise satisfies the requirements set forth in Section II. B. hereof. Membership shall consist of two (2) classes, the Class A Members and the Class B Member.

"Owner" shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot, excluding those having any such interest merely as security for the performance of an obligation.

"Person" shall mean an individual, partnership, joint venture, corporation, limited liability company, joint stock company, trust (including a business trust), unincorporated association or other entity, or a government or any political subdivision or agency thereof.

"Plat" or **"Plats"** shall mean and refer to the final Subdivision Plat or plats of the Subdivisions, which have been approved by the City and filed and recorded in the Records.

"Property" shall mean the real property, together with all improvements, easements, rights and appurtenances thereto, located in Springdale, Benton County, Arkansas, being more fully described in Exhibit A attached to this Declaration and incorporated herein by reference.

"Records" shall mean the Public Real Estate Records as maintained in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, including the map and Plat Records of Benton County, Arkansas.

"Resident" shall mean and refer to:

- (a) each Owner of the fee simple title to any Lot within the Subdivision; and
- (b) each Person residing within any part of the Subdivision who is a bond-fide lessee pursuant to a legally cognizable lease agreement with an Owner; and
- (c) each individual lawfully domiciled in a Dwelling Unit other than an Owner or bona-fide lessee.

"Residential Lot" shall mean and refer to each separately identifiable portion of the Subdivision which is (a) platted into individual Lots and becomes a part of the Subdivision pursuant to a Plat filed and recorded in the Records, (b) assessed by any one or more of the applicable governmental or other taxing authorities, (c) to be used solely for a Residential Use and (d) not intended to constitute any portion of the Common Properties.

"Residential Use" shall mean and refer to any use and/or occupancy of any Residential Lot as a residence by a single person, a couple, a single family or a permitted family size group of persons approved by the Board.

"Streets" shall mean the right-of-way of all private Streets, sidewalks and other rights-of-way situated within, and shown on the Plats, together with all pavement, curbs, Street lights, signs and related facilities thereon.

"Structure" shall mean and refer to: (a) any thing or device, other than trees, shrubbery (less than two (2) feet high if in the form of a hedge in respect to a Lot) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot), including but not limited, to any building, improvement, parking facility or area, garage, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, fence, curbing, paving, wall or hedge (more than two (2) feet high if in the form of a hedge in respect to a Lot), signboard or other living quarters or any temporary or permanent improvement to any Lot;

(b) any excavation, fill or ditch; (c) with respect to Lots and, any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and (d) any change in the grade of any Lot which involves a change of more than three (3) inches from the existing grade initially approved by the applicable ACC.

"Subdivision" or **"Subdivisions"** shall mean and refer to a subdivision or subdivisions of all or a portion of the Property, in accordance with a Plat or Plats thereof heretofore or hereafter filed of record in the Records, as well as any and all revisions, modifications, corrections or clarifications thereto.

"Violations Committee" shall mean and refer to that particular committee which may be from time to time appointed or selected pursuant to Section II. D hereof.

"Yard" shall mean and refer to the area of the Lot located between the dwelling exterior and the streets and/or property lines for each Lot.

SECTION II GOVERNING BODIES

A. **GENERALLY.** These Covenants shall be implemented by the Association, the Board of Directors of the Association and the Association's Architectural Control Committee and Violations Committee, as established herein.

B. **PROPERTY OWNERS ASSOCIATION.**

1. **Membership.**

a. Each and every Owner of each and every Lot within the Subdivision shall automatically be, and must at all times remain, a Member of the Association in good standing, and shall be bound by the terms and conditions of this Declaration, the Articles and By-Laws of the Association, and such rules and regulations as may be promulgated and adopted by the Association under such Articles and By-Laws. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a non-voting Member of the Association. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to any portion of a Lot. Ownership of any Lot shall be the sole qualification for being a Member; however a Member's privileges to use the Common Properties may be regulated or suspended as provided in this Declaration, the Bylaws or the rules and regulations promulgated by the Board. Any Person who holds an interest in and to all or any part of a Lot merely as security for the performance of an obligation shall not be a Member.

b. During the Development Period, the Association shall have two (2) classes of Members:

Class A: The Class A Members, shall include all Owners (other than the Declarant) of Lots.

Class B: The Class B Member shall be the Declarant.

c. Except as provided in this Declaration, the Association shall be the sole judge of the qualifications of its membership and of the right to participate in and vote at its meetings, and shall have the right to prescribe the procedure to be followed concerning all such meetings and votes.

2. **Transfers.** The membership of an Owner may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale, assignment or transfer of such Owner's interest in all or any part of such Owner's Lot and then only to the purchaser, assignee or transferee as the new Owner of the Lot in question. Each Owner shall notify the Association of any transfer or assignment of the fee title to his/her/its Lot and the name and address of the transferee or purchaser. Such transfer shall automatically operate to transfer the membership to the new Owner thereof. On transfer, conveyance, or sale by any Owner of all of his or her interest in any Lot, such Owner's membership in the Association shall thereon cease and terminate. An Owner of a Lot, by contracting to sell his Lot on an installment basis, shall be deemed to have transferred his membership to the contract purchaser upon execution of the contract for sale. When an Owner sells his Lot by traditional offer and acceptance providing for a closing of the sale to occur at which time the purchaser will pay the purchase price to the seller or deliver to the seller a promissory note for the purchase price in exchange for a conveyance by deed of the property, the transfer of membership shall be deemed to occur upon delivery of the deed. For purposes of this Declaration, the "Owner" shall be deemed to include the purchaser under an installment contract, regardless of whether a deed has been executed to be held in escrow or whether the deed will be executed and delivered upon payment in full of the installment payments. The Articles of Incorporation and By-Laws of the Association, as may be amended from time to time, are incorporated by this reference to the same effect as if set forth word for word herein.

3. **Voting Rights.**

- a. During the Development Period only the Class B Member shall constitute the voting Members of the Association. The Class B Member shall be entitled to cast one (1) vote for each Lot located within the Subdivision. All votes relating to the Ownership of a Lot shall be cast by the Declarant to the exclusion of the Class A Members.
- b. Following the expiration of the Development Period the Class A and Class B Members shall constitute the voting Members of the Association. The Owners of each Lot in good standing shall be entitled to one (1) vote per Lot. Where more than one Owner owns and holds a record fee interest in a Lot, either as joint tenants, tenants in common, or tenants by the entirety, for the purposes of voting at meetings of the Association or on issues submitted to the Members, said multiple Owners shall cast one vote collectively for each Lot owned.
- c. Any Owner or Member shall not be in "good standing" if such Person is: (i) in violation of any portion of these Covenants or any rule or regulation promulgated by the Board or any portion of applicable laws, rules, regulations and ordinances; or (ii) delinquent in the full, complete and timely payment of any assessments or charge which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board. The Board may suspend the voting rights of any Member who is not in good standing for any period during which such Member remains not in good standing. The preceding clause shall control over any provision of this Declaration to the contrary.
- d. The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable, for: (i) any meeting of Members; (ii) proof of membership in the Association; (iii) the status of good standing; (iv) evidence of right to vote; (v) the appointment and duties of examiners and inspectors of votes; (vi) the procedures for actual voting in person or by proxy; (vii) registration of Members for voting purposes; and (viii) such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

4. **Notice; Voting Procedures; Meeting.** Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and/or Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Arkansas law. During the Development Period, from time to time, as and when determined necessary by the Board, the Board may call and schedule a meeting of the Members. From and after the expiration of the Development Period, the Members shall meet annually to deal with and vote on matters relating to the business of the Association, as directed by the Board, including the election of the Directors.
5. **Matters Generally Subject of the Vote of Members.** Additionally, to the extent that the Board desires to encumber any portion of the Common Properties as security for payment of indebtedness incurred in respect to improvements to the Common Properties, the Board shall obtain the prior approval of the Members.
6. **Registration with the Association.**
 - a. In order that the Declarant and the Association can properly acquaint every Lot purchaser and every Owner, Member and Resident with these Covenants and the day-to-day matters within the Association's jurisdiction, no acquisition of any Lot within the Subdivision shall become effective until and unless all directives by, and all obligations to, the Association and the Declarant have been properly and timely satisfied.
 - b. Each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as: (a) the full name and address of each Owner, Member and Resident; (b) the full name of each individual family member who resides within the Dwelling Unit of the Lot Owner in question; (c) the business address, occupation and telephone numbers of each Resident; (d) the name, address and telephone numbers of other local individuals who can be contacted (in the event the Resident cannot be located) in case of an emergency; and (e) such other information as may be reasonably requested from time to time by the Association. Failure to provide the Association with a name and proper mailing address shall constitute a waiver of any notice otherwise required hereunder.
7. **Other Matters.**
 - a. The official address of the Association is to be provided to all Members by the Board of Directors of the Association, and shall remain so until changed by a majority of the Board of Directors of the Association, at which time the Association shall notify each Member thereon of the change in address.
 - b. The Association shall, at all times, observe all of the laws, regulations, ordinances, and the like of all governmental authorities recognized in the City, the State of Arkansas, and of the United States of America, and if, at any time, any of the provisions of this Declaration shall be found to be in conflict with such laws, regulations, ordinances, and the like, the same shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby.
 - c. By written consent of a majority of the Owners of all the Lots within the Subdivision (one per Lot), the Association may be given such additional powers and duties as may be deemed necessary and reasonable, and by such vote, this Declaration may be modified or amended in any manner.

- d. Subject to the limitations set forth in this Declaration, the Association shall have the right to make such reasonable rules and regulations and to provide such means and to employ such agents as will enable it adequately and properly to carry out the provisions of this Declaration.

- C. **PROPERTY OWNERS ASSOCIATION BOARD OF DIRECTORS.** The Board of Directors of the Association shall consist initially of two (2) directors, as follows:

Francis Ferguson
Dan Ferguson

The initial directors shall each serve a single ten (10) year term. In the event of the death or resignation of any initial director prior to the expiration of his or her term, the vacancy shall be filled by an appointment of the remaining director. After the expiration of the terms of the initial directors, the number of directors shall be increased to 3 directors and elections shall be held to fill each of the 3 seats, with each director to thereafter serve five (5) year terms. These subsequent directors shall be residents of the Subdivision. These elections will be held at called meetings upon giving ten (10) days' written notice to all Lot Owners, who may cast one vote for each platted Lot owned. The Board of Directors of the Association shall have the power to enforce these covenants and to review all violations of these covenants for proper action.

- D. **ARCHITECTURAL CONTROL COMMITTEE.**

1. **Purpose and Composition.** To insure that all Dwelling Units, Structures, Improvements and accessory or other buildings constructed in the Subdivision have good quality materials and workmanship and are compatible with other Dwelling Units, Structures, Improvements and accessory or other buildings constructed or to be constructed in the Subdivision, there is hereby established an Architectural Control Committee. Upon its initial formation, the ACC shall be composed of two (2) members, to be appointed by the Developer, who shall serve during the Development Period, following which time the Board of Directors of the Association shall assume its authority to designate no more than five (5) total members. Members, other than those initially appointed by the Developer, shall serve three (3) year terms. No absentee Owner, other than the Developer's appointed representative, may serve on the ACC. In the event of the death or resignation of any member of the ACC during the Development Period, the Developer shall appoint a successor. After the Development Period ends, in the event of the death or resignation of any member prior to the expiration of his or her term, the Board of Directors of the Association shall appoint a successor to complete the term of the deceased or resigning member.
2. **Authority and Duties.**
 - a. Any Owner seeking to construct a new home or other pertinent Structure, or to add or to modify any portion of the exterior of an existing home, shall submit the plans and written specifications to the ACC for review. Submittals shall include building elevations and materials, building location or plat plan, finished lot elevation and grades, and exterior color scheme. All specifications of the home exterior shall include, but shall not be limited to, decks, hot tubs, patios, pools, additions to or deletions of planted or landscaped areas, equipment and material storage buildings, dog runs, gazebos, arbors, roofing material, exterior lighting, exterior building materials, and other similar construction.
 - b. No construction, change, modification or alteration shall commence until the plans and specifications detailing the nature, kind, shape, height, construction materials, and location of the Improvements on the Lot, and a landscaping plan for the Lot, shall have

been submitted to, and approved in writing by, the ACC. In the event the ACC fails to approve or disapprove said specifications within ten (10) days after written confirmation by the ACC that sufficiently complete plans and specifications have been submitted to it, approval will not be required and full compliance with this section of the Declaration will be deemed to have occurred. It shall be the responsibility of the Lot Owner to obtain the written confirmation that sufficiently complete plans and specifications have been submitted.

- c. Without limiting the factors to be considered in the approval or disapproval of any plans and specifications submitted to it, the ACC shall apply the building restrictions set forth below under Section III of this Declaration
- d. Notwithstanding the foregoing provisions, the ACC and the Association shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in the Declaration, and no member of the ACC or the Association and its Board of Directors shall have any liability, responsibility or obligation whatsoever for any action or decision, or lack thereof. The ACC and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the Lot Owner. Each Lot Owner agrees to save, defend, and hold harmless the ACC and the Association and its members on account of any activities of the ACC relating to such Lot Owners' property or Improvements to be constructed.
- e. Only Building Contractors who have been approved by the ACC shall be allowed to construct any improvements within the Subdivision. The ACC shall, from time to time establish such criteria, as it may deem appropriate for the approval of Building Contractors. Such criteria may include, but shall not be limited to, a current certificate of workmen's compensation insurance, a current certificate of general liability insurance, and current appropriate licensing, if applicable.

E. VIOLATIONS COMMITTEE.

1. **Purpose and Structure.** A Violations Committee is hereby created to receive grievances and form complaints for submission to the Board of Directors. The Violations Committee shall be composed of three (3) members, who shall be appointed by the Board of Directors; and the terms of such members shall be three (3) years. In the event of the death or resignation of a member, the Board shall have the authority to appoint a successor to complete the term of the deceased or resigning member.
2. **Procedure.** Any Lot Owner may file a written grievance with the Violations committee regarding a violation, or attempted violation, of these Covenants. The identity of the reporting Owner may, at the reporting Owner's election, remain anonymous, and in that case, no governing body of the Subdivision may disclose the identity of the reporting Owner. If the Violations Committee substantiates the violation, the Committee shall draft a formal complaint and forward it to the Board of Directors for action not inconsistent with this section. All Owners and Residents consent to be bound by this Committee's decision.
3. **Enforcement.** Upon receipt of a formal complaint from the Violations Committee, the Board of Directors shall notify the offending party of the violation and request that it be rectified within ten (10) days. If the violation is not corrected within that time, after proper notice of the violation having been given, the Board of Directors may proceed with reasonable diligence to seek judicial enforcement of its decision. In the event the Board seeks judicial enforcement, the offending Owner shall be held liable to the Board for payment of all costs incurred by it in seeking the enforcement of the Covenants, including attorney's fees.

**SECTION III
BUILDING AND USE RESTRICTIONS**

- A. **BUILDING SITE.** A "building site" shall consist of one or more numbered Lots as shown on the face of the Plat or any modifications or adjustments thereto. No individual Lot may be split to create two or more Lots.
- B. **CONSRUCTION AND GRADING.** No Dwelling Units, or other buildings, Improvements or Structures shall be erected, constructed, maintained, or permitted on such Residential Lots, except on a "building site" as defined above. Further, all Lot grading and drainage shall be approved by the ACC and will conform to the approved subdivision-grading plan.
- C. **OUTBUILDINGS.** No building, except a single-family residential Dwelling Unit, together with such other accessory or outbuildings as may be permitted by local land use rules, regulations or ordinances, and as may be approved by the ACC, shall be permitted. All such accessory or outbuildings must be approved in advance by the ACC, and all building materials used for such accessory or outbuildings must match the dwelling unit. Any approved accessory or outbuilding shall be no larger than ten feet by twelve fees (10' x 12') and shall not be used for or in connection with multi-family living, and each Lot or building site shall be used for no more than one family, together with attendants or domestic servants of that family.
- D. **BUILDING TYPE.**
1. No residence shall be constructed that is more than two (2) stories in height or less than two thousand four hundred square feet (2,400 sq. ft.) of heated area, exclusive of carports, garages, basements and storage rooms. Of the total heated area, at least one thousand two hundred square feet (1,200 sq. ft.) must be on the main level, unless otherwise approved by the ACC. Particular architectural styles, features, appointments and details may not be approved, at the discretion of the ACC, if deemed to be incompatible or non-conforming to the standard of quality or aesthetics promoted within the Subdivision. Additionally, "minimum code" specifications shall not be the standard by which the ACC shall be bound, but rather by any level above that is deemed appropriate minimums for consistency of quality within the Subdivision.
 2. A minimum of one (1) attached two-car garage, measuring at least twenty feet by twenty feet (20' x 20') will be required for each dwelling and must be kept and maintained as part of the house. Garage doors must be kept closed when not in use for the purpose of ingress or egress of automobiles. All garage doors utilized must be compatible and approved by the ACC.
 3. Any limitations in this Declaration to the contrary notwithstanding, until Dwelling Units have been constructed on all Lots in the Subdivision, the Developer shall be entitled to use any Lot owned by Developer for construction of model homes, sales offices, construction sheds or for storage of materials. Revisions to approved architectural plans are discouraged; however, any revision to any previously approved plan should be for upgrade purposes only. All revisions must be submitted to the ACC as set forth herein prior to commencing construction.
- E. **BUILDING MATERIALS.** The exterior wall of each building constructed or placed on a Lot shall be at least (90%) brick or stone. The balance of the exterior wall materials must be stucco, hardy board or cedar siding. The exterior portion of any fireplace chimney shall be stone, brick, stucco, siding or such other material as approved by the ACC. All concrete blocks and concrete foundations shall be

covered with a decorative masonry material. All siding or other non-masonry material shall require ACC approval. All exterior colors of any material must be compatible and approved by the ACC.

- F. **ROOFS.** All roofing material shall be approved by the ACC prior to the installation of such materials. Such materials shall be architectural shingle or better and shall be otherwise in compliance in all respects with applicable City ordinances. The roof pitch of any structure shall be ten feet by twelve feet (10" x 12") minimum.
- G. **COUNTER TOPS.** 2 cm granite counter tops shall be installed in all kitchens.
- H. **EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved on each Lot as reflected on the recorded Plat. Within these easements, no Structure, planting or other material (except driveways across any Lot) shall be placed or permitted to remain which may interfere with the operation, installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water toward or through drainage in the easement. Driveways permitted within the easement shall be constructed so as not to prevent any flow of water or change the flow in the area of each Lot and all improvements for which a public authority, the Association, or any utility company is responsible.
- I. **UTILITIES.** All permanent utilities shall be located underground. No overhead wires shall be allowed within the subdivision.
- J. **EXTERIOR MECHANICAL DEVICES.** Air conditioning units, heat pumps, solar devices, chimney flues, hot tub pumps, swimming pool pumps and filtration systems, satellite dishes, and similar mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety concerns. The location of such devices and the shielding to be used shall all be reviewed and approved by the ACC prior to installation.
- K. **YARDS AND LANDSCAPING REQUIREMENTS.** All Structures, landscape plans and additions must first be approved by the ACC. No approval is necessary for the planting of flowers, shrubs, or trees, except where it may affect easements or drainage onto adjacent Lots. The initial landscape plans and designs to be submitted to the ACC shall include a \$1,500.00 minimum for plants and shrubs. All newly constructed Dwelling Units must meet minimum landscape requirements as set by the ACC within six (6) months of completion of construction, provided that each Owner, within ninety (90) days of the completion of a Dwelling Unit shall sod the entire Yard and plant one (1) tree of a type approved by the ACC of a 2" caliper, to be 40' high at maturity in the Front Yard. The refund of any clean-up deposit secured from any approved building contractor will not be returned unless the conditions of this paragraph have been completed, in addition to any further clean-up which may be necessary. All toys, newspapers, etc., must be picked up so as not to accumulate in an unsightly manner in view of any Street. Only porch furniture, flower pots, etc., are permissible in front yards. Front Yard grass is to be kept mowed so as to never be above six inches (6"). Sprinkler systems shall be installed for the entire yard of each Lot in accordance with ACC requirements. The ACC must approve all sprinkler systems.
- L. **FENCING.** Fencing of Front Yards is prohibited, except that decorative wood, iron or masonry fencing not exceeding three (3) feet in height may be constructed upon approval by the ACC. Any fence located on any Lot must be approved by the ACC as to material, location, height and quality prior to the commencement of construction. Any fence erected around the rear perimeter of a Lot must contain a gate or gates of adequate size, according to City requirements for City utility vehicles to have access to the utility easement for ingress and egress, if applicable. Fencing in of access/drainage easements is prohibited. Any necessary alteration to fences to maintain utilities will be done at the Owner's expense. Dog pens, property screened as required by the ACC, must be in rear yard portions and kept so as not to be a nuisance or obnoxious to any adjoining Lot Owner.

- M. **SWIMMING POOLS.** Any swimming pool located on any Lot must be approved by the ACC as to material, location, and quality prior to the commencement of any construction. Above-ground pools are prohibited. All swimming pools shall be kept in a good state of repair at all times and shall be properly fenced in, with said fencing to be subject to the requirements hereof and approval of the ACC.
- N. **SIDEWALKS.** Sidewalks shall be installed on each Lot by the Owner as required by the City and code specifications, and shall be installed prior to the issuance of a certificate of occupancy by the City.
- O. **MAILBOXES.** All mailboxes shall be constructed entirely of wrought iron (Hearth & Home Durable Barcelona in Black) and must be approved by the ACC as to design and location, solely at the Owner's expense. Additionally, all mailboxes must be of a type approved by the United States Postal Service, and shall be kept in a good state of repair at all times.
- P. **ANTENNAS AND SIGNALS.** No exterior antenna, aerial wires or other device (including, without limitation, radio or television transmitting or receiving antennae and satellite dishes) for the transmission or reception of any form of electromagnetic radiation shall be erected, installed, used or maintained on any Lot, unless the same is expressly approved and permitted by the ACC and appropriately screened so as to not be visible from the front of any other Lot or any public Street. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of television or radio signals on any other Lot. No satellite dish antenna shall be erected unless the same is approved by the ACC and appropriately screened so as to not be visible from the front of any other Lot or any public Street.
- Q. **GENERAL MAINTENANCE.** Each Owner shall maintain and care for all improvements and all trees, foliage, plants and lawns on his or her Lot and otherwise keep his or her Lot and all improvements thereon in a neat manner and prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot, and otherwise keep his or her Lot in conformity with the general character and quality of properties in the immediate area. In addition, by acceptance of a Deed to any Lot, the Owner thereof covenants and agrees to mow weeds and grass and to keep and maintain said Lot in a neat and clean condition at all times.
- R. **COMMENCEMENT OF CONSTRUCTION.** Construction of a Dwelling Unit must commence within six (6) months after the deed to the Lot has been transferred and delivered to the Owner. This time can be extended up to a total of twelve (12) months if just cause can be shown to the ACC for such extension, and their approval is obtained in advance and prior to the expiration of the initial six (6) month period.
- S. **BRICK AND DESIGN REQUIREMENTS.** Brick, color and design for each Dwelling Unit must be approved by the ACC. The use of the same brick color or design on more than one (1) Dwelling Unit on a street is prohibited, unless said Dwelling Units are separated by at least four (4) other dissimilar Dwelling Units on said street.
- T. **YARD LIGHTS.** Gas yard lights will be installed on each Lot in accordance with the requirements of the ACC and must be approved by the ACC. The property/street address shall be displaced under said lights in accordance with the ACC requirements.

**SECTION IV
ADDITIONAL BUILDING USE AND GENERAL RESTRICTIONS**

- A. **OFFENSIVE ACTIVITIES.** No noxious or offensive activity shall be carried on or permitted upon any Lot or on any Street or sidewalk adjacent thereto, nor shall anything be done thereon which may be or may become an annoyance or nuisance to adjacent Lot Owners or to the Subdivision. Any Lot Owner violating this paragraph shall be required to indemnify and hold harmless the ACC for any expense it incurs in alleviating the noxious or offensive activity, annoyance or nuisance.
- B. **OIL AND MINING OPERATIONS.** No oil drilling, oil refining, quarrying, or mining operation of any kind whatsoever shall be permitted upon, about, or in any Lot, nor shall any oil well, tank tunnels, mineral excavations or shafts be permitted upon or in any Lot, except that one (1) storm shelter may be constructed with proper ACC approval.
- C. **MAINTENANCE OF SURFACE.** Earth or gravel shall not be removed from the surface of any Lot, except for improvement or leveling of the Lot involved. Landfill on any Lot shall be earth only, and shall not include trash, refuse, junk, construction debris or similar materials. Stable conditions of the soil and vegetation shall not be destroyed or disturbed, nor shall the surface drainage patterns be changed, except in a fully engineered manner, which will provide adequate recognition of soil conservation requirements. All damage to soil and vegetation shall be immediately restored to a stable condition. Any removal, fill or change in soil or surface conditions must be approved, in advance, by the ACC.
- D. **SIGNAGE.** No signage shall be permitted on any Lot or any Dwelling Unit after it is initially sold; provided, however, that one "For Sale" sign may be placed in front of the Lot within ten (10) feet of the curb, and such sign shall be no larger than 28" x 38". Any such "For Sale" sign must be removed within ten (10) days of the date of the sale of the Lot. However, Developer hereby reserves the right to erect construction site signs, Lot signs, and signs to designate the name of the addition and the advertisement thereof, without regard to the above restriction. The Developer or the ACC reserves the right to remove any sign which it deems to be obnoxious or non-compliant or unsightly due to shape, color, size, etc. Contractors may display only one contractor's sign and building permit. No other advertising signs shall be permitted.
- E. **SIGHT DISTANCES AT INTERSECTIONS.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the Streets shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the Street if property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a Street property line with the edge of the driveway.
- F. **CURBS AND STREET.** All Street cuts are specifically prohibited unless a waiver is granted by the Developer. No curb cut for driveways shall be closer than three (3) feet to the side property line. All curbs are to be neatly blended into driveway radius.
- G. **PARKING.** All Dwelling Units must have off-Street parking only, and shall not be permitted to park off of designated driveways or parking pads. The ACC shall have the right to have vehicles in violation of this provision towed at the Owner's expense. No parking of any type of vehicle, boat, RV, camper, etc., will be permitted on grass, Yards, landscape areas, sidewalks, or on Streets at any time. Any vehicles referred to herein shall be in violation of this provision when the vehicle is located within a prohibited area for more than 24 hours.
- H. **VEHICLES.** Any automobiles, boats, trailers, campers, recreational vehicles, motorcycles, buses, untagged or off-road vehicle must have a separate, concealed concrete parking pad and may not be parked or stored at any time on any Street, Yard, or driveways, and must be permanently screened

from view, with such screening to be approved by the ACC. Likewise, no vehicle repairs or maintenance is to be performed other than in garages or in concealed areas to the rear of building lines. No inoperative vehicles of any kind shall be left on any Lot or easement. No eighteen (18) wheel vehicle or other similar large van or flatbed type vehicle may be parked or stored on any Street, Yard or driveway, except to deliver merchandise or other materials to residents or construction sites. Any vehicles referred to herein shall be in violation of this provision when the vehicle is located within a prohibited area for more than twenty-four (24) hours.

- I. **LOT AND GROUND MAINTENANCE.** No Lot or easement or any part of the Property shall be used or maintained as a dumping ground. Rubbish, leaves, grass, trash, garbage and/or other wastes shall be kept in non-corrosive/non-breakable trash containers. All equipment for the storage and/or disposal of such rubbish, trash, garbage or other wastes shall be kept in a clean and sanitary condition. No garbage or trash containers are to be kept in view of the Street unless it is to be picked up within 24 hours.
- J. **ANIMALS.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other domestic pets may be kept and maintained, provided that they are registered with the City and/or county, if required. Household pets shall be maintained in a clean and sanitary condition and shall not be obnoxious or a nuisance to the surrounding Owners. Any Owners with pets are required to provide containment or backyard fencing in accordance with the ACC specified acceptable fence requirements. No more than two (2) dogs or two (2) cats, or a total of two (2) pets shall be kept and maintained as part of any Lot. Litters of any of the foregoing animals may be maintained only until the age of three (3) months is reached, at which time disposition must be made of the excess animals. Pet Owners shall be liable for all damages caused by their pets.
- K. **OTHER STRUCTURES.** The inhabiting of any structure or vehicle such as a boat, trailer, basement, tent, shack, garage, camper, modular, mobile or manufactured home or other outbuilding shall not be permitted on any Residential Lot, whether temporarily or permanently.
- L. **BASKETBALL GOALS.** No basketball goals, courts, backboards or other sports equipment may be attached, erected or constructed on the front of any house, or facing the front Street, unless approved by the ACC. Free-standing basketball goals, backboards, courts or other similar sports equipment, may be permitted, subject to the approval of the ACC, so long as the same is maintained in an operative and attractive manner in accordance with the use thereof.
- M. **CLOTHING LINES.** No outdoor clotheslines shall be permitted.
- N. **TEMPORARY TOILET FACILITIES.** Each builder, during the construction period of a Dwelling Unit on the Lot, must have at least one temporary toilet facility located on each Lot upon which they are building. If a builder is simultaneously building on two or more Lots, the builder must obtain the approval of the ACC to vary this requirement.
- O. **CLEANING DEPOSIT.** The clean up of each lot upon which a residential dwelling unit is constructed is entirely the responsibility of the builder. Each builder will deposit the sum of \$500.00 with the Developer upon the closing of the sale of a lot. This sum shall be held by the Developer without liability for interest thereon, to secure the performance by the builder and the appropriate cleanup of each lot upon completion of construction of the residential dwelling thereon. Upon completion of construction of the residential dwelling unit on a lot, the Developer shall deduct from the cleaning deposit any expenses necessary to appropriately clean up the premises as the Developer sees fit. If any cleaning deposit funds remain after said expenses have been deducted, Developer will return said funds to the builder, without interest. If expenses exceed the balance of the cleaning deposit, the builder shall remain liable for all expenses in excess of the cleaning deposit.

**SECTION V
COMMON SPACE AND AMENITIES**

- A. There shall be created, as shown on the face of the Plat of the Subdivision and identified as "Common Properties", such common tracts as the Developer shall create for landscaping and signage for the Subdivision. Such tracts shall be for the benefit of all Lots and properties in the Subdivision and the landscaping and signage thereon shall be maintained by the Association as provided in this Declaration.
- B. Upon the filing of the final Subdivision Plat, the mentioned Common Properties located in the Subdivision shall be conveyed to and accepted by the Association. In addition, any property or amenity may be deeded/sold to the Association by the Developer if deemed to be for the common good of the Subdivision by the Developer.
- C. Maintenance of the Common Properties and landscaping and signage thereon shall be at the cost and expense of the Members of the Association (Lot Owners) within the Subdivision. All of such costs, including, but not limited to, maintenance expenses, insurance, and real property taxes, shall be borne by the Lot Owners based on the ratio of the total number of Lots they own to the total number of Lots that have been created by the filing of the final Plat and any amendments thereto.
- D. The Board of Directors of the Association shall have the authority to promulgate such rules and regulations and amendments thereto regarding the use of the Common Properties and amenities as it from time to time deems appropriate. Additionally, the Board reserves the right to make such Common Properties and amenities available to non-residents by membership subject to such terms and conditions as the Board may deem appropriate.

**SECTION VI
REGULAR AND SPECIAL ASSESSMENTS FOR ASSOCIATION**

- A. By acceptance of the Deed or other instrument of conveyance for his or her Lot within the Subdivision, each Lot Owner shall be deemed to covenant and agree to pay the Association annually or monthly (to be determined by the Board) regular assessments and special assessments for operating expenses incurred by the Association and for maintenance and care of the Common Properties and hereby consents to the imposition of any liens provided herein in connection therewith without further notice. There shall be a preliminary assessment due and payable at the time any Lot is transferred from the Developer to a Builder in the amount of \$60.00, which shall be paid by the Builder at closing. Said sum represents an assessment of \$10.00 per month for the first six (6) months following the transfer of the Lot to the Builder. Said preliminary assessment shall be adjusted at such time as the Lot is sold by the Builder, based on an assessment amount of \$10.00 per month, with any unused portion to be refunded to the Builder, or any additional sums due to be paid by the Builder at that time. Once a Dwelling Unit is constructed on a Lot and the Lot is sold by the builder, the Lot shall be subject to regular annual assessments. The initial regular assessment for each Residential Lot shall be an amount equal to \$900.00 per year, per Lot. Thereafter, such assessments shall be fixed, established, and collected from time to time as provided in this Declaration and by the Association. The regular and special assessments, together with such interest thereon and costs of collection as provided below, shall be a continuing lien on the property affected and shall also be a personal obligation of the Owner of such property from the date when the assessment is due and payable until paid in full. Such personal obligation shall not pass to successors in title to the affected Lot or property unless expressly assumed by such successors. Unless changed by a majority vote of the Lot Owners casting votes, the annual, monthly or regular assessment for any Lot in the Subdivision shall be that amount last approved by the Board on the question of such assessment. On vote of the Board of Directors of the Association in the manner set forth in the Articles of Incorporation and By-Laws of the Association, the assessments may be changed from time to time for the purpose of defraying, in whole or in part, the cost of

reconstruction, repair or replacement of the landscaping and signage on the Common Properties in the Subdivision, as well as any common amenity owned by the Association, including fixtures and appurtenances related thereto. The Board of Directors of the Association must approve any special assessments or change in annual or monthly assessments.

- B. It shall be the duty of the Association to notify all Owners or contract purchasers of Lots within the Subdivision, whose addresses shall be supplied by the Owner or contract purchaser to the Association, by sending written notice to each of such Owners within fifteen (15) days after the date on which the assessment has been fixed or levied, giving the amount of the charge or assessment for the current year, when the same shall be due, and the amount due for each Lot. Failure of the Association to levy an assessment due to lack of address for the Owner of any particular Lot within the Subdivision or for any other reason, shall not discharge the obligation of any such Owner from paying such assessment, and it shall be the obligation of any such Owner to notify the Association of such Owner's current address.
- C. Any regular or special assessment levied as set forth in this Declaration shall become a lien on the affected Lot or property as soon as such assessment is due and payable as set forth above. In the event any Owner fails to pay the assessment when due, then the assessment shall bear interest at the maximum legal rate permitted by the State of Arkansas on the date when such assessment is due and shall continue to accrue at that rate, until it is paid in full. Forty-five (45) days after the date of any such assessment has been fixed and levied, the assessment, if not paid, shall become delinquent and the payment of both principal and interest may be enforced as in the case of a laborer's lien on the affected real estate, and notice of such lien may be filed with the Circuit Clerk and E-Officio Recorder of Benton County, Arkansas, and venue shall be laid in the appropriate Court of competent jurisdiction in Benton County, Arkansas. It shall be the duty of the Board of Directors of the Association, as provided below, to bring actions to enforce such liens before they expire. For each notice of lien so filed, or for any lien so filed, the Association shall be entitled to collect from the Lot Owner or Owners of the Lot described in such notice of lien a fee of \$50.00, and shall be collectible in the same manner as the original assessment provided for in this Declaration. Any such lien shall continue for a period of five (5) years from the date of delinquency and no longer, unless within such time period legal proceedings shall be instituted to collect such assessments, in which event, the lien shall continue therewith, the non-paying Owner or Owners shall be obligated to pay all costs incurred, plus reasonable attorney fees, which costs and fees shall become a portion of the lien and may be foreclosed on in the same manner as the assessment provided above.
- D. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety, enjoyment, and welfare of the residents of the Subdivision, and, in particular, for the improvement and maintenance of property, services and facilities devoted to the above stated purpose and related to the use and enjoyment of the Common Properties and of the Dwelling Units situated in the Subdivision. Without limiting the generality of the foregoing statement of purpose, such assessments shall be applied by the Association to the payment of the costs of the following:
1. To enforce any and all building and land-use restrictions that exist as of the date of this Declaration or which may be lawfully imposed hereafter on or against any of the Property in the Subdivision.
 2. To maintain the Common Properties and amenities and improvements thereon as provided in this Declaration.
 3. To pay expenses to carry out the above, such as attorney's fees, manager's fees, expenses of liability, fire and other insurance, bookkeeping and accounting expenses, and any and all other expenses that may from time to time be deemed necessary to carry out the intent of this Declaration by the Association.

4. To protect property values in the Subdivision by promoting pride in and enthusiasm for it; to work for improved transportation, schools, libraries, and recreation facilities within the community in which the Subdivision is located, and to do all lawful things and tasks that the Association, in its discretion, may deem to be in the best interest of the Subdivision and the Owners of the Lots in the Subdivision.
- E. Individual builders and/or Owners shall be responsible for reimbursements billed to the Declarant of any and all maintenance, repair or utilities as necessary to protect the common properties, until the Association is organized and formed.

SECTION VII ENFORCEMENT

- A. Any dispute between an Owner and the Association, including its ACC or Violation Committee, shall be resolved by a Committee of three (3) Arbiters, with one Arbiter to be designated by the Owner and one to be designated by the Association. The two (2) Arbiters so appointed shall agree on the selection of a third Arbiter, and if agreement cannot be reached within fifteen (15) days after their appointment, the two shall request appointment of a third Arbiter by a Court of competent jurisdiction in Benton County, Arkansas, or its successor.
- B. The arbitration shall generally follow the procedure prescribed in Arkansas Code Annotated §16-1018-201, et seq., and the decision of the Committee of Arbiters, which shall be made in writing and signed by at least two Arbiters, shall be final and binding on all interested persons.
- C. In the event a party fails to comply with the decision of the Arbiters within the time period specified in the decision, any Owner or the Association may seek confirmation of the decision in a Court of competent jurisdiction in Benton County, Arkansas, as provided in the above-referenced Arkansas Code provisions.

SECTION VIII DURATION AND AMENDMENT

- A. **DURATION.** The Covenants of this Declaration shall run with and bind the Property subject to this Declaration, and shall be binding on and inure to the benefit of and be enforceable by the Association and/or the Owners and Residents of any Lot or any of the Property subject to this Declaration, their respective legal representatives, heirs, devisees, personal representatives, successors and assigns, for an original fifteen (15) year term expiring on the fifteenth (15th) anniversary of the date of recordation of this Declaration, after which time these Covenants shall be automatically extended for successive periods of five (5) years unless an instrument is signed by the Owners of at least seventy-five percent (75%) of all Lots within this Subdivision and recorded in the Records, which contains and sets forth an agreement to abolish these Covenants.
- B. **AMENDMENT OR MODIFICATION.** The Covenants, restrictions and other terms contained herein may be altered, amended or modified by written declaration, signed and acknowledged by the Owners of 75% or more of the Lots and recorded in the Records. Notwithstanding the above, no alteration or modification of the Covenants or the provisions of this Declaration may be made prior to expiration of the Development Period without the express written consent of the Developer. Notwithstanding any provisions hereof to the contrary, the Developer may at its sole discretion and without notice or consent being required of anyone: (i) modify, amend, or repeal any one or more of these Covenants or the provisions of this Declaration at any time prior to the expiration of the Development Period, provided said amendment, modification or repeal is in writing and properly recorded in the Records; and/or (ii) amend these Covenants or the provisions of this Declaration to cause these covenants and restrictions to be in compliance with any and all applicable laws, rules

and regulations (including without limitation any and all applicable laws, rules and regulations of the Federal Housing Administration and/or the Veterans Administration).

SECTION IX MISCELLANEOUS

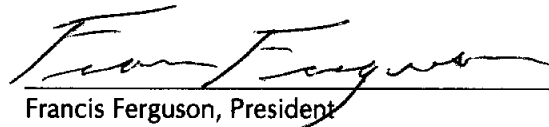
- A. The consent to any act or the waiver of breach of any provision of this Declaration, shall not operate or be construed as a consent or waiver of act or breach by any party, or as a waiver or modification of the provisions of this Declaration.
- B. In the event any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Declaration and this Declaration shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.
- C. The captions, headings and arrangements used in this Declaration are for convenience only and do not in any way limit or amplify the terms and provisions hereof. The use of the singular form of pronouns shall be construed to include the plural, and the plural the singular where the number of the parties and in the context indicates that intent. Likewise, the use of the masculine gender shall include the feminine and vice versa.

SECTION X GOVERNING LAW CHOICE OF FORUM, VENUE, AND CONSENT TO JURISDICTION

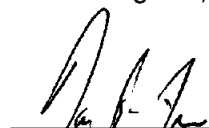
- A. This Declaration and the Covenants, terms and provisions hereof shall be construed in accordance with and governed by the laws of the State of Arkansas in the same manner as any other similar instruments or agreements that are made and to be performed wholly within such jurisdiction, without regard to the conflicts of laws provisions thereof.
- B. Any and all claims or causes of action shall and must be filed only in the courts of the State of Arkansas for Benton County or the United States District Court for the Western District of Arkansas, which shall have exclusive jurisdiction over any and all disputes which arise between the parties under this Agreement, whether in law or in equity. Each of the parties mentioned herein, including the Developer, Board, Committees, Owners, Residents and Members, expressly agrees, consents, and stipulates that venue shall be exclusively within said courts. Each of the parties mentioned herein expressly agrees, consents and stipulates to the exercise of personal jurisdiction over them or it and subject matter jurisdiction over any such controversy arising between the parties being only in the courts listed herein.

Atlas Construction of Arkansas, LLC
an Arkansas limited liability company

By:


Francis Ferguson, President

By:


Dan P. Ferguson, Vice President

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF WASHINGTON)

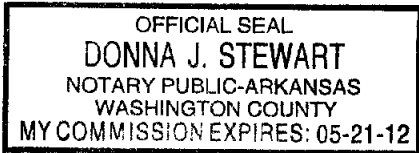
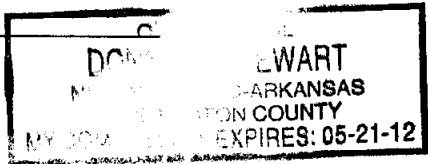
BE IT REMEMBERED that on this day came before me, the undersigned, a Notary Public duly commissioned, qualified and acting, within and for the said County and State, the within named **Francis Ferguson and Dan P. Ferguson**, being the persons who executed the foregoing instrument, to me personally known, who stated that they were the **President and Vice President**, respectively, of **Atlas Construction of Arkansas, LLC**, an Arkansas limited liability company, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said company, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 1st day of October, 2004.

My Commission Expires:



Notary Public



2004 46292
Recorded in the Above
Deed Book & Page
10-05-2004 11:19:03 AM
Brenda DeShields-Circuit Clerk
Benton County, AR

EXHIBIT "A"
to Declaration of Covenants, Conditions and
Restrictions for Shenandoah Hills Subdivision
City of Springdale, Benton County, Arkansas

Legal Description

PART OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 23, TOWNSHIP 18 NORTH, RANGE 30 WEST, BENTON COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SE1/4 OF THE NE1/4; THENCE N02°31'04"E 1293.53 FEET; THENCE S87°05'25"E 659.02 FEET; THENCE S02°31'04"W 989.79 FEET; THENCE S84°36'23"E 4.34 FEET; THENCE S02°27'14"W 308.51 FEET; THENCE N86°39'44"W 663.75 FEET TO THE POINT OF BEGINNING, CONTAINING 19.64 ACRES, MORE OR LESS, SUBJECT TO ANY EASEMENTS, COVENANTS OR RESTRICTIONS OF RECORD OR FACT.

Benton County, AR
I certify this instrument was filed on
10-05-2004 11:19:03 AM
and recorded in Deed Book
2004 at pages 46273 - 46292
Brenda DeShields-Circuit Clerk