

**BYLAWS
OF
BILTMORE PROPERTY OWNERS ASSOCIATION
An Arkansas Nonprofit Corporation**

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**ARTICLE I.
OFFICES**

1.1 Registered Office and Agent. The registered office and registered agent of Biltmore Property Owners Association (the "Association") shall be as designated with the Office of the Secretary of the State of Arkansas, as it may be changed from time to time.

1.2 Other Offices. The Association may also have offices at such other places both within and without the State of Arkansas as the Board of Directors may from time to time determine or as the business of the Association may require.

**ARTICLE II.
MEMBERS**

2.1 Members. Each and every person, persons or legal entity who shall own any Lot, situated in the real property covered by that certain Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision, a subdivision in the City of Rogers, Benton County, Arkansas (the "Subdivision"), prepared by Pennington Developments, Inc., (the "Declarant"), dated and filed for record on May 23, 2007 in Book 2007 at Pages 20826-20847 in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, as amended from time to time (the "Covenants"), shall automatically be a Member of the Association, provided that any person or entity who holds an interest merely as security for the performance of any obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot in the Subdivision. Ownership of such Lot shall be the sole qualification for Membership in the Association; however, a Member's privileges may be regulated or suspended as provided in the Covenants or the rules and regulations promulgated by the Association's Board of Directors. During the Development Period, Membership shall consist of two classes, the Class A Members and the Class B Member, as defined in the Covenants.

2.2 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) The Biltmore Property Owners Association shall not be a voting Member of the Association by virtue of its ownership of any Lot, or other tract or parcel of land situated on the real property covered by the Covenants or by any amendment or supplementary declaration thereto.

2.1 Transfers of Membership Interests. All transfers of Membership interest shall be governed by and in accordance with the Covenants. Except as set forth herein, or in the Covenants or the Association's Articles of Incorporation, as amended from time to time, no Member of the Association may transfer his, her or its Membership or any right arising therefrom separate and apart from a transfer of his, her or its ownership interest in the Lot in the Subdivision giving rise to said Membership. Each Owner shall notify the Association of any transfer or assignment of the fee title to his, her or 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.

ARTICLE III. MEETINGS OF MEMBERS

3.1 Annual Meeting. An annual meeting of the Members shall be held at such time and place as the Board of Directors may determine, for the transaction of such business as may come before the meeting. If the date specified for a meeting shall be a legal holiday in the State of Arkansas, then the annual meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Members as soon thereafter as conveniently may be.

3.2 Special Meetings. Special meetings of the Members may be called by the President, a Member of the Board of Directors, or the Members holding at least five percent (5%) of the voting power of the Association on their signing, dating and delivering to any officer of the Association one (1) or more written demands for such meeting describing the purpose or purposes for which it is to be held. The close of business on the 30th day before delivery of the demand or demands for a special meeting to any officer of the Association is the record date for the purposes of determining whether the five percent (5%) requirement herein has been met. In the event that notice of a special meeting demanded by the Members holding five percent (5%) of the voting power of the Association is not given within 30 days after the date the written demand or demands are delivered to the officer of the Association, any Member signing the demand or demands may set the time and place of the meeting and give the notice pursuant to the notice provisions set forth in these Bylaws.

3.3 Place of Meeting. The Board of Directors may designate any place, either within or without the State of Arkansas as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the Association in the State of Arkansas; but if all the Members shall meet at any time and place, either within or without the State of Arkansas, and consent to the holding of a meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

3.4 Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of Members shall be delivered, either personally, by facsimile transmission or by mail, to each Member entitled to vote at such meeting, not less than ten (10) (or if notice is mailed by other than first class or registered mail, thirty (30)) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President or the Secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute or by these bylaws, the purpose or purposes for which the meeting is called shall be stated in

the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid. If sent by facsimile, the notice of the meeting shall be deemed delivered upon successful transmission of such facsimile. Any Member may waive notice of any meeting. Such waiver must be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes or filing with the Association's records. The attendance of a Member at any meeting shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully convened or called. Such objection must be made at the beginning of any such meeting.

3.5 Record Dates. The Board of Directors may establish a record date for determining the Members entitled to notice of a meeting and entitled to vote or exercise any other lawful rights at the meeting. If the Board of Directors does not establish a record date (a) Members at the close of business on the business day preceding the date on which notice is given are entitled to notice of the meeting and (b) Members on the date of the meeting who are otherwise eligible to vote shall be entitled to vote at the meeting. A record date established by the Board of Director may not be more than seventy (70) days before the date of the meeting. A determination of Members entitled to notice of or to vote at a meeting of the Members shall be effective for any adjournment of the meeting unless the Board fixes a new record date. The Board must fix a new record date if the meeting is adjourned to a date more than seventy (70) days after the original record date for the meeting.

3.6 Informal Action by Members. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of Members, may be taken without a meeting if one (1) or more consents in writing, setting forth the action so taken, shall be signed by those Members representing at least eighty percent (80%) of the voting power of the Association, and delivered to the Association for inclusion in the minutes or for filing with the Association's records. The record date for determining Members entitled to take action without a meeting is the date the first Member signs the consent referred to herein. The Association shall provide written notice of Member approval pursuant to this Section, to all Members who have not signed the written consent referred to herein. If written notice is required, Member approval pursuant to this Section shall be effective ten (10) days after such written notice is given.

3.7 Quorum. The Members holding one-half of the total eligible votes which may be cast at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of Members, a majority of the Members present may adjourn the meeting from time to time without further notice.

3.8 Majority Vote. When a quorum is present at any meeting, the vote of the Members holding a majority of all votes held by the Members, present in person or represented by proxy at the meeting, shall decide all matters brought before the meeting, unless the matter is one which, by express provision of law or the Covenants or the articles of incorporation or bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

3.9 Proxies. At any meeting of Members, a Member entitled to vote may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

ARTICLE IV. DIRECTORS

4.1 General Powers. The affairs of the Association shall be managed by its Board of Directors. Directors shall be individuals who are Members of the Association or the designated representative of an entity that is a Member of the Association. All the corporate powers, except as otherwise provided by law or the articles of incorporation or bylaws of the Association, shall be vested in and exercised by the Board of Directors.

4.2 Number, Election, Tenure and Qualifications. The Declarant shall serve as the sole Director of the Association for the duration of the Development Period, or until such time during the Development Period that the Declarant appoints a Board of Directors of the Association. The Board of Directors shall consist of no more than three (3) directors; except that during the Development Period the Declarant shall determine the number of directors. The tenure, qualifications and all other matters not specifically provided for herein in regard to the directors of the Association shall be as specified in the Covenants. Any election of Directors shall be by plurality of the votes cast by the Members of the Association entitled to vote in the election of directors present, in person or by proxy, at a meeting of the Members at which a quorum is present. Cumulative voting shall not be permitted. Each director shall hold office until the expiration of his term and until his successor shall have been elected and qualified. Any director may resign at any time by giving written notice of such resignation to the Board of Directors of the Association. The resignation shall be effective when the notice is effective, unless said notice specifies a later effective date.

4.3 Regular Meetings. A regular annual meeting of the Board of Directors shall be held without other notice than this bylaw, immediately after, and at the same place as, the annual meeting of Members, unless changed or otherwise designated by the Board of Directors. The Board of Directors may provide by resolution the time and place, either within or without the State of Arkansas, for the holding of additional regular meetings of the Board without other notice than such resolution.

4.4 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President, the Chairman of the Board of Directors, or a majority of the Board of Directors. The person or persons authorized to call special meetings of the Board may fix any place, either within or without the State of Arkansas, as the place for holding any special meeting of the Board called by them.

4.5 Notice. Notice of any special meeting of the Board of Directors shall state the date, time and place of said meeting, and shall be given at least two (2) days before such meeting by written notice delivered personally or sent by mail or facsimile to each director at the address of such director as shown by the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice is given by facsimile, such notice shall be deemed to be delivered upon successful transmission of the facsimile. A copy of any notice sent to the Board of Directors by facsimile must also be sent to each director on the same business day by mail or by personal delivery. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully convened or called. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board

need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these bylaws. Members of the Board of Directors may participate in such meetings by means of conference telephone or similar communications equipment by reason of which all persons participating in the meeting can hear each other and participation in a meeting in such manner shall constitute presence in person at such meeting except where a director so participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

4.6 Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than a majority of the directors are present at any meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

4.7 Manner of Acting. The act of a majority of the directors present in person at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these bylaws.

4.8 Vacancies. Any vacancy occurring in the Board of Directors shall be filled by the Board of Directors even if the remaining directors constitute less than a quorum; provided, however, that in the event of a vacancy a director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of any increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of the Members called for that purpose. In the event of a resignation with a notice specifying a later effective date, the Board may fill the pending vacancy prior to the effective date so long as it specifies that the successor shall not take office until the effective date.

4.9 Compensation. Directors as such shall not receive any stated salaries for their services, but, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board; but nothing herein contained shall be construed to preclude any director from serving the Association in any other capacity and receiving compensation therefor.

4.10 Informal Action by Directors. Any action required by law to be taken at a meeting of directors, or any action which may be taken at a meeting of directors, may be taken without a meeting if the action is taken by all Members of the Board and evidenced by a consent in writing, setting forth the action so taken, signed by all of the directors. The written consent shall be filed with and included in the minutes filed with the corporate records of the Association. Any action so taken shall be effective when the last director has signed such a consent, unless a different effective date is specified.

ARTICLE V. OFFICERS

5.1 Officers. The officers of the Association shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board of Directors), a Secretary, a Treasurer, and such other officers as may be elected in accordance with the provisions of this Article. The Board of Directors may elect or appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the Board

of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary.

5.2 Election and Term of Office. The officers of the Association shall be elected annually by the Board of Directors at the regular annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and shall have qualified.

5.3 Removal. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors at any time, with or without cause, whenever in its judgment the best interests of the Association would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer shall not, of itself, create any contract rights.

5.4 Resignation. Any officer may resign as any time by delivering a written notice of resignation to the Association. The resignation is effective when the notice is effective, unless the notice specifies a future effective date. If a written resignation specifies a future effective date, and the Association accepts the future effective date, the Board of Directors may fill the pending vacancy before the effective date, so long as the Board provides that the successor shall not take office until the effective date.

5.5 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

5.6 President. The President shall be the principal executive officer of the Association and shall in general supervise, manage and control all of the business and affairs of the Association. He shall preside at all meetings of the Members and, if the Chairman of the Board is absent, of the Board of Directors. He may sign, with or without the Secretary or any other proper officer of the Association authorized by the Board of Directors, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these bylaws or by statute to some other officer or agent of the Association. Additionally, he shall see that all orders and resolutions of the Board of Directors are carried into effect. In general, he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

5.7 Vice President. In the absence of the President or in the event of his inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order of their election) shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

5.8 Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be

selected by the Board of Directors. He shall keep full and accurate records and accounts of all receipts and disbursements of the Association; disburse funds of the Association as ordered by the Board of Directors, and prepare financial statements as directed by the Board of Directors. In general, he shall perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

5.9 Secretary. The Secretary shall attend and keep the minutes of the meetings of the Members and of the Board of Directors in one or more books provided for that purpose, record all votes/actions of such meetings, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law, be custodian of the Corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents as necessary, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

ARTICLE VI. COMMITTEES

6.1 Architectural Control Committee. The Association shall have an Architectural Control Committee, to be established and governed in accordance with the terms of the Covenants, these bylaws, as applicable, and by the Board of Directors to the extent provided in the Covenants. Upon its initial formation, the Architectural Control Committee shall be composed of the number of members established by the Covenants, to be appointed by the Declarant, who shall serve during the Development Period, following which time the Board of Directors of the Association shall assume its authority to designate such members. Members, other than those initially appointed by the Declarant, shall serve the terms established by the Covenants. No absentee Owner, other than the Declarant's appointed representative, may serve on the Architectural Control Committee. Nothing contained herein shall be construed to preclude any member of this committee from serving the Association in any other capacity. Removal of members of the committee shall be governed by the Covenants; however, if the Covenants make no provision therefor, then such committee members may be removed at any time by the Board of Directors with or without cause. Unless otherwise provided by the Covenants, the Board of Directors shall have the exclusive right and power at any time and from time to time to appoint additional Members and fill vacancies on such committee. The committee's function, powers and duties shall be governed by the terms of the Covenants; however, if no provision is made in the Covenants, then the Board of Directors shall establish the same.

6.2 Other Committees. The Board of Directors, by resolution adopted by a majority of the Directors, may create one or more committees (in addition to the Architectural Control Committee) as determined to be necessary. Except as otherwise provided in such resolution, members of such committee or committees shall be Members of the Association or designated representatives of entities that are Members of the Association, and the President of the Association shall appoint the members thereof subject to approval by the Board of Directors. Members of a committee as such shall not receive any stated salaries for their services, but, by

resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each meeting thereof; but nothing herein contained shall be construed to preclude any committee member from serving the Association in any other capacity and receiving compensation therefor.

6.3 Term of Office. Each member of a committee shall continue as such until the next annual meeting of the Members of the Association or until the successor to such member is appointed unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof. This shall not apply to Section 6.1 of these bylaws concerning the Architectural Control Committee.

6.4 Chair. One member of each committee shall be appointed as the Chair of such committee by the President, subject to approval by the Board of Directors.

6.5 Vacancies. Vacancies in the Membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments. This shall not apply to Section 6.1 of these bylaws concerning the Architectural Control Committee.

6.6 Quorum. Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the Members present at a meeting at which a quorum is present shall be the act of the committee.

6.7 Rules. Each committee may adopt rules for its own government not inconsistent with these bylaws, the articles of incorporation of the Association, the Covenants, or with rules adopted by the Board of Directors.

ARTICLE VII. ASSESSMENTS

7.1 Annual Assessment. Each owner of any Lot or part of any property covered by the Covenants, or any supplementary declaration thereto filed in accordance with the provisions thereof, except the Association itself, shall pay to the Association an annual assessment to be determined by the Association's Board of Directors in accordance with the Covenants or any supplementary declaration thereto. The Board of Directors shall follow the provisions of the Covenants, or any supplementary declaration thereto, in fixing the annual assessment and in the determination of how and when said assessments shall be paid; however, if no such provisions are set forth in the Covenants, then the Board of the Directors shall be responsible for establishing these matters. In connection therewith, the Board of Directors of the Association should consider maintenance costs and future needs of the Associations in the determination of the actual assessment amounts. Unless otherwise provided in the Covenants, or any supplementary declaration thereto, the Association may not accumulate a surplus at the end of the year which is more than two (2) times the maximum permissible annual assessments for the year.

7.2 Special Assessments. In addition to the annual assessments authorized by Section 7.1 hereof, the Association may, by vote of its Members as set out in Section 7.5 hereof, levy in any assessment year or years a special assessment for such purposes as

determined necessary. All special assessments shall be governed by and in accordance with the terms of the Covenants or any supplementary declaration thereto.

7.3 Purpose of Assessments. The assessments levied by the Association shall be used for the purposes set forth in the Covenants, or any supplementary declaration thereto. Subject to the provision of the Covenants, or any supplementary declaration thereto, the assessments shall be used for the purpose of promoting the comfort, health, safety and welfare of the owners of the Lots or property covered by the Covenants, or any supplementary declaration thereto, and for carrying out the purposes of the Association as stated in its Articles of Incorporation.

7.4 Increase in Rate of Annual Assessment. Any increase in the maximum rate of the annual assessment as authorized by Section 7.1 hereof must be made in accordance with the provisions of the Covenants, or any supplementary declaration thereto. Unless otherwise provided in the Covenants, the increase must be approved by a majority vote of the Members of the Association as specified in these bylaws, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

7.5 Voting Requirements for Special Assessment. Any special assessment authorized by Section 7.2 hereof must be approved in accordance with the terms and provisions of the Covenants, or any supplementary declaration thereto. In the absence of any specifications in the Covenants, special assessments must be approved by a majority of the total eligible votes of the Membership of the Association pursuant to these bylaws, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

7.6 Due Date of Assessments. The assessments for any year shall become due and payable at such times as shall be specified in the Covenants, or any supplementary declaration thereto; however, if no provision is made therein, then the due date and any delinquent date shall be determined by the Board of Directors. The due date and delinquent date of any special assessment shall be established in the same manner as the annual assessments.

7.7 Owner's Personal Obligation for Payment of Assessments. Except as otherwise provided by the Covenants, or any supplementary declaration thereto, the following shall be applicable to all annual and special assessments:

- (a) The annual and special assessments provided for herein shall be the personal and individual debt of the owner of the Lot or property covered by such assessment;
- (b) No owner may exempt himself, herself or itself from any liability for such assessment; and
- (c) In the event of a default in the payment of any such assessment, the owner of the Lot or property shall be obligated to pay interest at the maximum lawful rate on the amount of the assessment from the due date thereof, together with all costs and expenses, including attorneys' fees.

7.8 Assessment Lien and Foreclosure. The establishment of any liens and charges on the Lots or other property covered by the Covenants, and any supplementary declarations thereto, and the assessments provided herein and therein, shall be governed by and in accordance with the terms of the Covenants, and any supplementary declaration thereto.

However, to the extent not provided for in the Covenants, or any supplementary declaration thereto, the provisions of this Section 7.8 shall be applicable to the establishment and enforcement of such lien. Therefor, all sums assessed in a manner provided by the Covenants and this Article, together with all applicable interest and the cost of collection, including attorneys' fees as hereinafter provided, shall thereupon become a continuing lien and charge on the Lots and property covered by such assessment, which shall bind such property in the hands of the owner, and the owner's heirs, devisees, personal representatives and assigns. The aforesaid lien shall be superior to all other liens and charges against the said property, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust lien of record, securing in either instance sums borrowed for the improvement of the property in question. The Association shall have the power to subordinate the aforesaid assessment lien to any other lien. Such power shall be entirely discretionary with the Association. To evidence the aforesaid assessment lien, the Association shall prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the owner of the property covered by such lien and a description of the property. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent as set forth in Section 7.7 above and may be enforced by the foreclosure of the defaulting owner's property by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of assessment lien as provided above, or the Association may institute suit against the owner personally obligated to pay the assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any mortgagee holding a prior lien on any part of any property being assessed, the Association shall report to said mortgagee any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due.

7.9 Common Properties Exempt. All Common Properties or Common Areas as defined in the Covenants, or any supplementary declaration thereto, and all portions of any of the property covered by such Covenants, or any supplementary declaration thereto, that is owned by or otherwise dedicated to any political subdivision shall be exempted from the assessments and liens created herein.

ARTICLE VIII. MAINTENANCE

8.1 Duty of Maintenance. Except as otherwise provided in the Covenants, or any supplementary declaration thereto, all Owners and occupants (including lessees) of any part of any Lot or any other part of the property covered by the Covenants, or supplementary declaration thereto, shall jointly and severally have the duty and responsibility at their sole cost and expense, to keep their Lot or that part of such property so owned or occupied, including buildings, improvements and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and wastes;
- (b) Lawn mowing;
- (c) Tree and shrub pruning;

- (d) Watering;
- (e) Keeping exterior lighting and mechanical facilities in working order;
- (f) Keeping landscape areas alive, free of weeds and attractive;
- (g) Keeping parking areas, driveways and roads in good repair;
- (h) Complying with all government health and police requirements;
- (i) Repainting of improvements;
- (j) Repair of exterior damages to improvements; and
- (k) Such other maintenance as determined to be appropriate by the Board of Directors.

8.2 Enforcement. Except as otherwise provided in the Covenants, or any supplementary declaration thereto, if, in the opinion of the Association, any such owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the care and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The owners and occupants (including lessees) of any part of the property on which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse the Association for such cost. If such owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all of said persons jointly and severally, and shall constitute a lien against that portion of the property on which said work was performed. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in Section 7.8 of these bylaws, which provisions are incorporated herein by reference, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

ARTICLE IX. INDEMNIFICATION

9.1 General. For purposes of these bylaws and this Article, the term "Association" shall have the same meaning as the term "Corporation" as defined in the Arkansas Nonprofit Corporation Act of 1993 (the "Act"). Additionally, the terms "Director", "Expenses", "Liability", "Official Capacity", "Party" and "Proceeding", as well as any other applicable terms, shall have the same definitions as assigned to them pursuant to the Act. It is the goal of this article, as well as these bylaws, to be in compliance with the Act at all times.

9.2 Indemnification Rights. Every person who was or is a party or is threatened to be a party to, or is involved in any action, suit, or proceedings, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, officer, employee, or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee, or agent of another corporation, or as its representative in a partnership, joint venture, trust, or other enterprise, shall be indemnified and held harmless to the fullest extent legally permissible under and pursuant to any procedure specified in the Act, or the laws of the State of Arkansas, as amended from time to time, against all expenses, liabilities, and losses (including attorneys' fees, judgments, fines and amount paid or to be paid in settlement) reasonably incurred or suffered by him in connection therewith. Such right of indemnification shall be a contract right that may be enforced in any lawful manner by such person. Such right of indemnification shall not be exclusive of any other right, which such

directors, officers, employees, or agents may have or hereafter acquire, and, without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any agreement, vote of members, provision of law, or otherwise, as well as their rights under this paragraph.

9.3 Advance Payment of Expenses. Expenses incurred by a director, officer, employee, or agent of the Association in defending a civil or criminal action, suit or proceeding by reason of the fact that he is or was a director, officer, employee, or agent of the Association (or was serving at the Association's request as a director, officer, employee, or agent of another corporation, or as its representative in a partnership, joint venture, trust, or other enterprise) shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by relevant sections of the Act or Arkansas law.

9.4 Insurance. The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Association, or who, while a director, officer, employee or agent of the Association is or was serving at the request of the Association as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against such person or incurred by such person in such a capacity or arising out of the status as such a person, whether or not the Association would have the power to indemnify such person against that liability under this Article or the Act.

9.5 Report to Members. Any indemnification of or advance of expenses to a director in accordance with this Article shall be reported in writing to the members of the Association with or before the notice or waiver of notice of the next meeting of members or with or before the next submission to members of a consent to action without a meeting pursuant to the Act and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

ARTICLE X. GENERAL PROVISIONS

10.1 Books and Records. The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Members, Board of Directors and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the Members entitled to vote. All books and records of the Association may be inspected by any Member, or his agent or attorney for any proper purpose at any reasonable time.

10.2 Checks and Notes. All checks or demands for money and notes of the Association shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

10.3 Fiscal Year. The fiscal year of the Association shall be as determined by the Board of Directors.

10.4 Seal. The Association seal shall have inscribed thereon the name of the Association and shall be in such form as the Board of Directors may prescribe.

10.5 Dedicated Property. The Association shall have power to dedicate any of its property to an appropriate public authority for public use; provided that any such dedication shall have the approval of a majority of the total eligible votes of the Membership of the Association as defined in Section 2.2 of these bylaws voting, in person or by proxy, at a meeting duly called for such purpose; written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

10.6 Protective or Restrictive Covenants. The Protective or Restrictive Covenants set out in the Covenants or any supplementary declaration referred to in Section 2.1 of these bylaws are binding on the Members of the Association. The Association shall have the right (but not the duty) to enforce any of the covenants and restrictions set out in any such Covenants or supplementary declaration. Enforcement of the covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

10.7 Waiver of Notice. Whenever any notice is required to be given under the provisions of the Arkansas Non-Profit Corporation Act of 1993 or under the provisions of these bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

10.8 Resignation. Any director, officer or agent may resign by giving written notice to the President or the Secretary. The resignation shall take effect at the time specified therein, or immediately if no time is specified. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

10.9 Amendments to Bylaws. These bylaws may only be amended, altered, repealed or readopted by the Class B Member, until such time as the Development Period, as defined in the Covenants, ends. Thereafter, these bylaws may only be altered, amended or repealed, and new bylaws may be adopted at a meeting of the Members at which a quorum is present, by an affirmative vote of two-thirds (2/3) of the Members of the Association entitled to vote thereon. In the event that the Board of Directors or the Members of the Association seek an amendment to these bylaws, to be approved by the Members at a Membership meeting, the Association shall give notice to its Members of the proposed Membership meeting, in writing, in accordance with Section 3.4 of these bylaws concerning notice of Member meetings. The notice must state that one of the purposes of the meeting is to consider the proposed amendment, and the notice must also contain or be accompanied by a copy or summary of the proposed amendment. In the event that approval by the Members is sought in accordance with Section 3.6 of these bylaws for informal action by the Members, by a written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the proposed amendment.

10.10 Table of Contents and Headings. The table of contents and headings used in these bylaws have been inserted for organization and convenience only and do not constitute matters to be construed in interpretation.

10.11 Construction. Whenever the context so requires, the masculine shall include the feminine and neuter, and the singular shall include the plural, and conversely. If any portion of these bylaws shall be, invalid or inoperative, then, so far as is reasonable and possible, the remainder of these bylaws shall be considered valid and operative and effect shall be given to the intent manifested by the portion held invalid or inoperative.

10.12 Covenants. Nothing contained in these Bylaws shall constitute an amendment to the Covenants which can only be amended by the Members in the manner specified by the Covenants. However, these Bylaws are intended to implement certain provisions of the Covenants and otherwise, together with the Articles of Incorporation, specify the organization and governance of the Association.

10.13 Loans or Guarantees for Directors or Officers. The Association may not lend money to nor guarantee the obligation of any director or officer of the Association.

10.14 Definitions. All words or terms used in these bylaws that are defined in the Covenants shall have the meaning given and assigned to them in said Covenants.


10.15 Governing Law. These bylaws shall be governed by and construed in accordance with the laws of the State of Arkansas applicable thereto, including without limitation the Arkansas Nonprofit Corporation Act of 1993, without regards to the conflicts of laws provisions thereof. 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 in relation hereto, whether in law or in equity. All Members, Directors, officers and agents of the Association expressly agree, consent, and stipulate that venue shall be exclusively within said courts. Further, the Members, Directors, officers and agents expressly agree, consent and stipulate to the exercise of personal jurisdiction over them and subject matter jurisdiction over any such controversy arising in relation hereto being only in the courts listed herein.

APPROVED, ADOPTED AND EFFECTIVE as of the filing of the Articles of Incorporation of Biltmore Property Owners Association on July 2, 2007.

SOLE INCORPORATOR:

PENNINGTON DEVELOPMENTS, INC.
an Arkansas corporation

By:


Michael T. Pennington, President

Prepared by: Harrington, Miller, Neihouse & Kieklak, P.O. Box 687, Springdale, Arkansas
72765.

Benton County, AR
I certify this instrument was filed on
05/15/2012 8:13AM
and recorded in DEED Book
2012 at pages 17518 - 17531
Brenda DeShields-Circuit Clerk

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2007/20826
Term/Cashier: CASH/KJACKSON
05/23/2007 9:40:22AM
Tran: 2613
Total Fees: \$71.00

Book 2007 Page 20826
Recorded in the Above
DEED Book & Page
05/23/2007

**Declaration of Covenants, Conditions and
Restrictions for Biltmore Subdivision
City of Rogers, Benton County, Arkansas**

THIS Declaration of Covenants, Conditions and Restrictions, referred to herein as the "Declaration", is made this 23 day of May, 2007, by **Pennington Developments, Inc.**, an Arkansas corporation, referred to collectively herein as "Declarant", and **Pennington Developments, Inc. Retirement Trust**, a trust, and **Skee Smith Builders, Inc.**, an Arkansas corporation, and **Travis D. Gilmore and Sarah E. Gilmore**, husband and wife, and **Ken Sauer and Betty Sauer**, husband and wife, the undersigned, concerning the residential subdivision known as Biltmore Subdivision, referred to as "the Subdivision".

WITNESSETH

WHEREAS, the Declarant and the other parties hereto are the Owners 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 aforesaid Property has been platted into a residential community, and subdivided into individual, quality, single-family Residential Lots, and, in addition, certain tracts of land have been set aside for drainage, for common landscaped areas, for signs identifying the Subdivision and other matters; and

WHEREAS, the Declarant and the other undersigned parties hereto desire that the entire Subdivision constitute a single-family residential community, with rights and obligation 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

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

WHEREAS, the Declarant and the other undersigned parties hereto desire 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 Declarant hereby and the other undersigned parties hereto declare and subject all of the Property described in Exhibit A, now known as Biltmore 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 Declarant, the other parties hereto, and future Owners of the Property because of the interest of the Declarant, the other parties hereto, 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 Biltmore 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 and each resident (other than an Owner) of a Residential Lot.

"Class B Member" shall mean the Declarant.

"City" shall mean and refer to the City of Rogers, 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" shall mean and refer to Pennington Developments, Inc., an Arkansas corporation, 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 Pennington Developments, Inc. in and to the Subdivision; provided however, no Person merely purchasing one or more Lots from Pennington Developments, Inc. 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 Biltmore Subdivision, City of Rogers, 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 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, corporation, 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 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.

"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.

"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, 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. 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. 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 be 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 or 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 Member 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, 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 this Declaration 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 this Declaration, 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. **Registration with the Association.**

- a. In order that the Declarant and the Association can properly acquaint every Lot purchaser and every Owner and Member 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 and Member 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 and Member; (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 Owner or Member; (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.

6. **Other Matters.**

- a. 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.
- b. 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 Declarant shall serve as the sole Director of the Association for the duration of the Development Period, or until such time during the Development Period that the Declarant appoints a Board of Directors of the Association. The Board of Directors shall consist of no more than three (3) directors; except that during the Development Period the Declarant shall determine the number of directors. During the Development Period the directors shall be appointed by the Declarant, with each director to serve a term of one (1) year. During the Development Period, upon the expiration of a director's term or in the event of the death or resignation of any director, the vacancy shall be filled by an appointment of the Declarant. After the expiration of the Development Period, elections of the members shall be held to fill each of the three (3) seats, and each of the directors shall thereafter serve a three (3) year term. These subsequent directors shall be members and reside in the Subdivision. These elections will be held at called meetings upon giving ten (10) days' written notice to all Lot Owners. 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. The Declarant shall be the sole member of the ACC for the duration of the Development Period, or until such time during the Development Period that the Declarant appoints persons to act as members of the ACC. The ACC shall be composed of at least three (3) members; except that during the Development Period the Declarant shall determine the number of members. During the Development Period, members of the ACC shall be appointed by the Declarant, with each member to serve a term of one (1) year. Following the expiration of the Development Period, the Board of Directors of the Association shall assume its authority to designate no more than five (5) total members to the ACC, from time to time. The members of the ACC, other than those initially appointed by the Declarant, shall serve three (3) year terms. No absentee Owner, other than the Declarant's appointments, may serve on the ACC. During the Development Period, upon the expiration of a member's term or in the event of the death or resignation of any member of the ACC, the Declarant 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 Structure, or to add or to modify any portion of the exterior of an existing home, shall first submit the plans and written specifications to the ACC for review and approval. Submittals shall include building elevations and materials, building location or plat plan, finished lot elevation and grades, and exterior color schemes. 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, 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 in an amount of not less than \$1 million, and current appropriate licensing, if applicable. Any Building Contractor approved by the ACC impliedly consents to the authority of the ACC to set forth additional requirements or restrictions as may be deemed appropriate.
- f. No lots in the Subdivision shall be further subdivided and no boundaries between Lots shall be adjusted or relocated without the prior review and written consent of the ACC. In connection therewith, all information relating thereto as requested by the ACC shall be submitted to the ACC for review.

**SECTION III
BUILDING AND USE RESTRICTIONS**

- A. 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. 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 reviewed by the ACC and will conform to the approved subdivision-grading plan.
- C. No building, except a single-family residential Dwelling Units, and/or such other accessory buildings as may be permitted by local land use rules, regulations or ordinances, and as may be approved by the ACC, shall be permitted. Such accessory buildings shall not be used for or in connection with multi-family living, and each 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 square feet (2,000 sq. ft.) of heated area, exclusive of carports, garages, porches, basements and storage rooms. Of the total heated area of any residence, at least one thousand five hundred square feet (1,500 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) two-car garage 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. No garage shall be changed, altered, reconstructed or otherwise converted for any use or purpose inconsistent with the garaging of automobiles. The Owner of each Lot shall construct a concrete drive connecting the garage of the Dwelling Unit to the Street, with the same to be 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 Declarant shall be entitled to use any Lot owned by Declarant 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 walls of each building constructed or placed on a Lot shall be one hundred percent (100%) brick, stone, rock, hardy board/cement board or approved masonry material. 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. All fascia boards will be a minimum of 2" x 6".
- F. **ROOFS.** All roofing material shall be approved by the ACC prior to the installation of such materials. Such materials shall be a minimum of twenty-five (25) year architectural shingle or better and shall be otherwise in compliance in all respects with applicable City ordinances. The roof pitch of any

Dwelling Unit, Structure or other Improvement, must be approved in advance by the ACC. For the front elevation of any Dwelling Unit, a roof pitch of ten feet by twelve feet (10' x 12') is recommended; however, a roof pitch of eight feet by twelve feet (8' x 12') minimum shall be required. For the rear elevations of any Dwelling Unit, a roof pitch of six feet by twelve feet (6' x 12') minimum shall be required.

- G. **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.
- H. **UTILITIES.** All permanent utilities shall be located underground. No overhead wires shall be allowed within the subdivision.
- I. **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.
- J. **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. 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 all Front Yards and Side Yards. 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"). An irrigation system shall be installed to water at least the Front Yard.
- K. **FENCING.** Fencing of Front Yards is prohibited. 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. The goal of the ACC is to insure that all new fencing is uniform with existing fencing. Any fence erected around the rear perimeter of a Lot must be a wood privacy fence of a specific type and stain as determined by the ACC and 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. Lots 23 through 41 may have a different type of wood privacy fence than other Lots, as determined by the ACC. 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.
- L. **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.

- M. **SIDEWALKS.** Sidewalks shall be installed along the front on each Lot by the Owner and shall be built based upon the requirements of the City and code specifications, and shall be installed prior to the issuance of a certificate of occupancy by the City.
- N. **MAILBOXES.** All mailboxes must be approved by the ACC as to type, design and location. 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.
- O. **ANTENNAS AND SIGNALS.** No exterior antenna, aerial wires or other device (including, without limitation, radio or television transmitting or receiving antennae) 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.
- P. **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.

**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 five (5) square feet. Any such "For Sale" sign must be

removed within ten (10) days of the date of the sale of the Lot. However, Declarant 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 Declarant 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 Declarant. 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 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, landscape, sidewalks, or on Streets at any time. All Owners shall use their best efforts to insure that all automobiles are parked and stored within the garage.
- H. **VEHICLES.** Any boat, RV, camper, untagged or off-road vehicle must have a separate, concealed concrete parking pad and may not be parked at any time in front of the front building line 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 commercial vehicles, commercial or heavy tractors, or semi-tractor or trailer trucks shall be allowed to park in the Subdivision, whether on Streets or Lots.
- 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. No dogs, cats or other domestic pets may be kept, bred or maintained for commercial purposes on any Lot. 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. 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. **CLOTHING LINES.** No outdoor clotheslines shall be permitted.

**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 Declarant shall create for landscaping and signage for the Subdivision. The common Properties shall include:
- i) Any wall or fence that runs along Rainbow Road and Wallis Road;
 - ii) All green space including Lots 27 and 22 (Detention Ponds);
 - iii) Landscaped areas at all entrances; and
 - iv) All electrical and plumbing items that are associated with the entrances, such as lighting or irrigations systems.

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. 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 Declarant if deemed to be for the common good of the Subdivision by the Declarant.
- 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 as it from time to time deems 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 Owner, except the Declarant and Pennington Development, Inc. Retirement Trust, is hereby and shall hereafter be deemed to covenant and agree to pay the Association any annual, monthly or other assessments and any 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. Such assessments shall be fixed, established, and collected from time to time by the Board as provided in this Declaration and by the Association. The annual 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. In the event of the sale of any Lot, all amounts due or past due hereunder, including any late fees, interest or other costs and amounts provided herein, shall be collected and paid at the closing of the sale thereof. Unless changed by the Board, the annual, monthly or other 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 shall be set 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, including fixtures and appurtenances related thereto. The Board of Directors of the Association must approve any special assessments or change in annual, monthly or other 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 notify an Owner of the levy of 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 general 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 Ex-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 exclusively 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 improvements thereon as provided in this Declaration.
 3. To pay expenses to carry out the above, such as taxes, 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.

SECTION VII 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 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 twenty-five (25) year term expiring on the twenty-fifth (25th) 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.** During the Development Period, the Covenants, restrictions and other terms contained herein may be altered, amended or modified by a written declaration, signed and acknowledged by the Owners of 100% of the Lots and recorded in the Records; except, no alteration, amendment or modification may be made that would reduce the minimum square footage requirement of any Dwelling Unit below the 2,000 square foot minimum provided herein. Following the expiration of the Development Period, the Covenants, restrictions and other terms contained herein may be altered, amended or modified by a written declaration, signed and acknowledged by the Owners of no less than 75% of the Lots and recorded in the Records; except, no alteration, amendment or modification may be made that would reduce the minimum square footage requirement of any Dwelling Unit below the 2,000 square foot minimum provided herein. Notwithstanding any provisions hereof to the contrary, during the Development Period, the Declarant, Pennington Developments, Inc., 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, except no alteration, amendment or modification may be made that would reduce the minimum square footage requirement of any Dwelling Unit below the 2,000 square foot minimum provided herein; 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 VIII 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.

**SECTION IX
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 Declarant, Board, Committees, Owners, 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.

IN WITNESS WHEREOF, this Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision, City of Rogers, Benton County, Arkansas has been executed by the undersigned owners of the noted Lots on the dates set forth below.

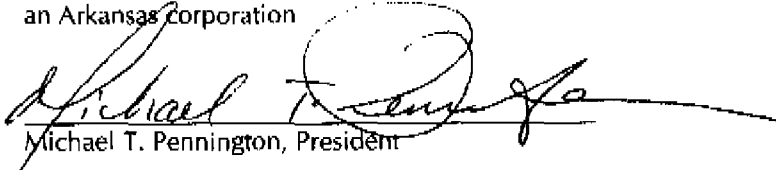
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AND THE SIGNATURES HERETO ARE ON THE FOLLOWING PAGES]**

The undersigned, being the Declarant and the owner of the following described property situated in Benton County, Arkansas:

Lots 1-6, 8-22, 24-34, 36-39, 41, 42, 53-63, 65-74, 78, 84-89, 91-101, 107-112, Biltmore Subdivision to the City of Rogers, Arkansas, as shown on plat of record in Plat Book 2006 at Page 180 & 181, plat records of Benton County, Arkansas.

do hereby approve, adopt, affirm and ratify the Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision as set forth in the foregoing document to which this signature page is attached.

PENNINGTON DEVELOPMENTS, INC.
an Arkansas corporation

By: 
Michael T. Pennington, President

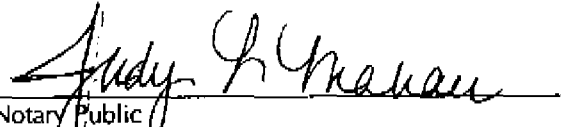
CORPORATE ACKNOWLEDGMENT

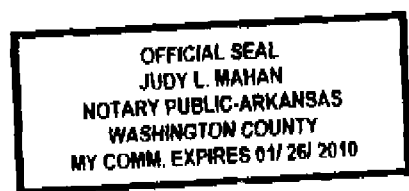
STATE OF ARKANSAS)
COUNTY OF Washington)

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 **Michael T. Pennington**, being the person authorized by said corporation to execute such instrument, stating his capacity in that behalf, to me personally known, who stated that he was the **President of Pennington Developments, Inc.**, an Arkansas corporation, and was duly authorized in said capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he 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 23 day of May, 2007.

My Commission Expires:
01-24-2010

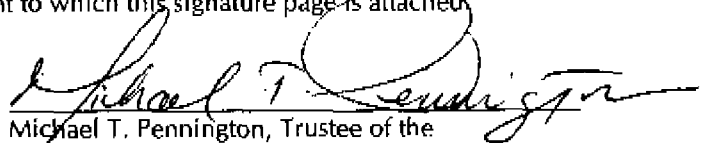

Notary Public



The undersigned, being the owner of the following described property situated in Benton County, Arkansas:

Lots 79-83, 102-106, Biltmore Subdivision to the City of Rogers, Arkansas, as shown on plat of record in Plat Book 2006 at Page 180 & 181, plat records of Benton County, Arkansas.

do hereby approve, adopt, affirm and ratify the Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision as set forth in the foregoing document to which this signature page is attached


Michael T. Pennington, Trustee of the
Pennington Developments, Inc. Retirement Trust

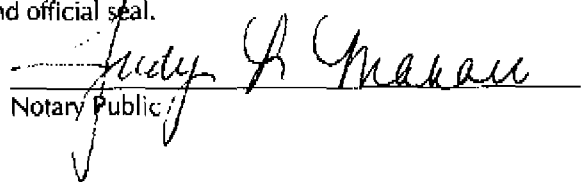
ACKNOWLEDGMENT

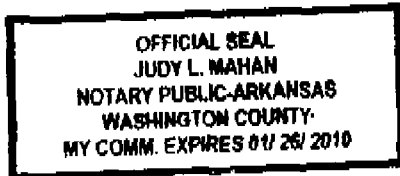
STATE OF ARKANSAS)
) ss.
COUNTY OF Washington)

BE IT REMEMBERED that on this 23 day of May, 2007, came before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, Michael T. Pennington, Trustee of the Pennington Developments, Inc. Retirement Trust, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument and acknowledged that he had executed the same for the purposes therein set forth.

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

My Commission Expires:
01-26-2010


Notary Public



The undersigned, being the owner of the following described property situated in Benton County, Arkansas:

Lot 40, Biltmore Subdivision, to the City of Rogers, Arkansas, as shown on plat of record in plat book 2006, at page 180 & 181, plat records of Benton County, Arkansas.

do hereby approve, adopt, affirm and ratify the Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision as set forth in the foregoing document to which this signature page is attached.

[Handwritten Signature]

Kenneth F. Sauer
[Handwritten Signature]

Betty A. Sauer

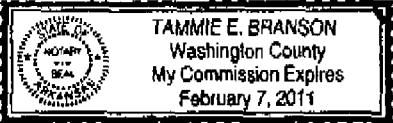
ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF Washington)

BE IT REMEMBERED that on this 23rd day of April, 2007, came before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, **Kenneth F. Sauer and Betty A. Sauer, husband and wife**, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they had executed the same for the purposes therein set forth.

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

My Commission Expires:
Feb 7, 2011



[Handwritten Signature]

Notary Public

The undersigned, being the owner of the following described property situated in Benton County, Arkansas:

Lot 7, Lot 35, Lot 64, Lots 75, 76 & 77, Biltmore Subdivision, to the City of Rogers, Arkansas, as shown on plat of record in plat book 2006, at page 180 & 181, plat records of Benton County, Arkansas.

do hereby approve, adopt, affirm and ratify the Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision as set forth in the foregoing document to which this signature page is attached.

SKEE SMITH BUILDERS, INC.

By: [Signature]
Name: SKEE SMITH
Title: PRESIDENT

ACKNOWLEDGMENT

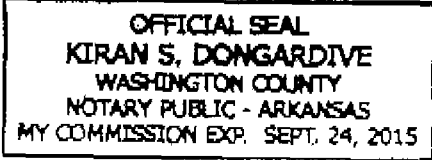
STATE OF ARKANSAS)
COUNTY OF Washington) ss.

BE IT REMEMBERED that on this 24th day of April, 2007, came before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, the within named Kiran S. Dongardive - SKEE SMITH, being the person authorized by said corporation to execute such instrument, stating his capacity in that behalf, to me personally known, who stated that he was the PRESIDENT of **Skee Smith Builders, Inc.**, an Arkansas corporation, and was duly authorized in said capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

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

My Commission Expires:
24th Sept 2015

Kiran S. Dongardive
Notary Public



The undersigned, being the owner of the following described property situated in Benton County, Arkansas:

Lot 90, Biltmore Subdivision, Rogers, Benton County, Arkansas, as shown in Plat Record 2006, Page 181.

do hereby approve, adopt, affirm and ratify the Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision as set forth in the foregoing document to which this signature page is attached.



Travis D. Gilmore



Sarah E. Gilmore

ACKNOWLEDGMENT

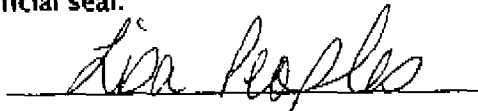
STATE OF ARKANSAS)
) ss.
COUNTY OF Benton)

BE IT REMEMBERED that on this 30 day of April, 2007, came before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, Travis D. Gilmore and Sarah E. Gilmore, husband and wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they had executed the same for the purposes therein set forth.

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

My Commission Expires:

Dec 1, 2015



Notary Public

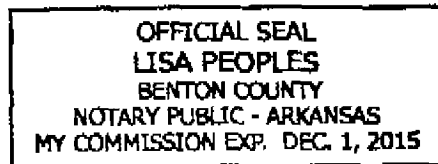


EXHIBIT "A"
to Declaration of Covenants, Conditions and
Restrictions for Biltmore Subdivision
City of Rogers, Benton County, Arkansas

The East Half (E 1/2) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) and the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 31, Township 19 North, Range 30 West, subject to roadways and easements of record, if any, being more particularly described as follows: Commencing at an existing nail at the Southeast corner of said Section 31; thence N 02°30'33" E along the East line of said Section 31 a distance of 1321.04 feet for the Point of Beginning, said point being the Southeast corner of the Northeast Quarter of the Southeast Quarter of said Section 31; thence N 86°53'31" W along the South line of said Northeast Quarter of the Southeast Quarter a distance of 659.89 feet; thence N 02°30'47" E a distance of 2637.05 feet to a point on the North line of the Southeast Quarter of the Northeast Quarter of said Section 3; thence S 87°19'44" E along the North line of the Southeast Quarter of the Northeast Quarter a distance of 659.68 feet to the Northeast corner of the Southeast Quarter of the Northeast Quarter; thence S 02°30'33" W along the East line of the Southeast Quarter of the Northeast Quarter a distance of 2642.08 feet to the Point of Beginning, said tract of land contains 39.98 acres (1,741,528 sq. ft.) more or less, being subject to any and all easements and rights of way of record.

(Also known as Biltmore Subdivision to the City of Rogers, Arkansas, as described on the Final Plat of said Subdivision filed for record in Plat Book 2006 and Page 180 & 181 in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas.)

LESS AND EXCEPT: Lots 23, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52 of Biltmore Subdivision to the City of Rogers, Arkansas, as shown on plat of record in Plat Book 2006 at Page 180 & 181, plat records of Benton County, Arkansas.

Benton County, AR
I certify this instrument was filed on
05/23/2007 9:41:33AM
and recorded in DEED Book
2007 at pages 0020826 - 0020847
Brenda DeShields-Circuit Clerk

TO CORRECT 2008

1532

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2008/1733
Term/Cashier: CASH5/BSTUBBS
01/15/2008 12:20:40PM
Tran: 24018
Total Fees: \$25.00

**CORRECTED
FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR BILTMORE SUBDIVISION
CITY OF ROGERS, BENTON COUNTY, ARKANSAS**

Book 2008 Page 1733
Recorded in the Above
DEED Book & Page
01/15/2008

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Pennington Developments, Inc., an Arkansas corporation, herein called "Declarant", and the other Owners of the Lots in the addition known as Biltmore Subdivision in Benton County, Arkansas, a copy of said plat appearing of record in the office of the Recorder of Benton County, Arkansas, have prepared the Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision in Benton County, Arkansas (herein the "Covenants"), said Covenants dated May 23, 2007 and filed of record on May 23, 2007 in Book 2007 at Page 20826 in the Real Estate Records of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas; and

WHEREAS, pursuant to the Covenants for Biltmore Subdivision, the Declarant has imposed upon the above-referenced property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of portions of the property; and

WHEREAS, Section VII, Duration and Amendment, subsection B., of the Covenants for Biltmore Subdivision provides that during the Development Period, the Declarant, Pennington Developments, Inc., may in its sole discretion and without notice or consent being required of anyone: (i) modify, amend, or repeal any one or more of the Covenants or the provisions of the Covenants 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, except no alteration, amendment or modification may be made that would reduce the minimum square footage requirement of any Dwelling Unit below the 2,000 square foot minimum provided herein; and

WHEREAS, the Development Period, as defined in the Covenants, has not expired and the undersigned Declarant, in order to protect and preserve the quality of Biltmore Subdivision, desires that the Covenants for Biltmore Subdivision be amended as set forth herein.

NOW, THEREFORE, the undersigned hereby amend the Covenants for Biltmore Subdivision in the City of Rogers, Benton County, Arkansas, as follows:

1. **Subsection E. BUILDING MATERIALS, and Subsection J. YARDS AND LANDSCAPING REQUIREMENTS, of SECTION III, BUILDING AND USE RESTRICTIONS,** of the Declaration are hereby each amended to read, in their entirety, as follows:

**SECTION III
BUILDING AND USE RESTRICTION**

...

E. BUILDING MATERIALS. The exterior walls up to the plate line of each building constructed or placed on a Lot shall be one hundred percent (100%) brick, stone, rock, hardy board/cement board or approved masonry material. The area of the exterior walls above the plate line of each building constructed or placed on a Lot shall be one hundred percent (100%) brick, stone, rock, hardy board/cement board, or approved masonry

material, cedar, wood or synthetic shake product. The use of straight siding shall not be permitted. 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. All fascia boards will be a minimum of 2" x 6".

...

J. 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. 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 all Front Yards and Side Yards. 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"). The installation of an irrigation system to water at least the Front Yard is recommended, but not mandatory.

2. All words or terms used herein that are defined in the Covenants shall have the meaning given and assigned to them in said Covenants.

3. This Corrected First Amendment to Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision in Benton County, Arkansas, shall be deemed effective immediately as of the execution hereof.

4. Except as specifically amended herein, the Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision in Benton County, Arkansas, shall remain unchanged in all other respects and shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Corrected First Amendment to Declaration of Covenants, Conditions and Restrictions for Biltmore Subdivision in Benton County, Arkansas, on this 15 day of January, 2008.

DECLARANT:

PENNINGTON DEVELOPMENTS, INC.
an Arkansas corporation

By:


Michael T. Pennington, President

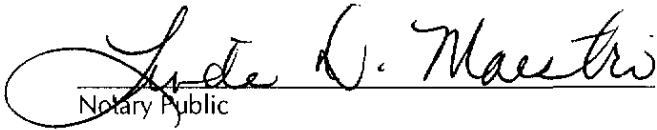
CORPORATE ACKNOWLEDGMENT

STATE OF ARKANSAS)
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 **Michael T. Pennington**, being the person authorized by said corporation to execute such instrument, stating his capacity in that behalf, to me personally known, who stated that he was the **President of Pennington Developments, Inc.**, an Arkansas corporation, and was duly authorized in said capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he 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 15th day of January, 2008.

My Commission Expires:


Notary Public

LINDA D. MAESTRI
NOTARY PUBLIC
WASHINGTON COUNTY ARKANSAS
MY COMMISSION EXPIRES 06-16-2012

Benton County, AR
I certify this instrument was filed on
01/15/2008 12:20:54PM
and recorded in DEED Book
2008 at pages 0001733 - 0001735
Brenda DeShields-Circuit Clerk