

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2013/15204
Term/Cashier: CASH4/Ashley Aufleser
03/27/2013 3:16PM
Tran: 231542
Total Fees: \$125.00

~~Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2013/66923
Term/Cashier: CASH4/Ashley Aufleser
03/27/2013 3:12PM
Tran: 231542
Total Fees: \$30.00~~

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FAIRWAY VALLEY SUBDIVISION**

This Declaration is made on the date hereinafter set forth by NW Land Development, LLC, hereinafter referred to as "Declarant".

KNOW ALL MEN BY THESE PRESENTS:

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Recorded in the Above
DEED Book & Page
03/27/2013

Declarant is the owner of certain property in Cave Springs, Benton County, Arkansas, which has been or will be platted and subdivided into a subdivision known as Fairway Valley Subdivision, hereinafter referred to as "Development".

Declarant desires to develop Development as a residential subdivision and subject it to this Declaration and to provide and adopt a uniform plan of development, including assessments, conditions, covenants, easements, reservations, and restrictions designed to govern, control, and preserve the values and amenities of this land for the development, improvement, sale, use, and enjoyment of the Property as a subdivision for the benefit of this land and each owner of any part of this land. The land subject to this Declaration is referred to as the "Property".

The Property subject to this Declaration includes all Lots in the Fairway Valley Subdivision in the City of Cave Springs, Arkansas, and which Subdivision is filed at Record No. 158206 of the Plat Records of Benton County, Arkansas, in the office of the Circuit Clerk and Ex-officio Recorder of Benton County, Arkansas and more particularly described in Exhibit "A" which is attached hereto and made a part hereof. Additional plats of new phases of this Development may be, at the sole discretion of Declarant, filed from time to time hereafter.

It has been deemed desirable, for the efficient preservation of values and amenities in the Property, to create an Association to which shall be delegated and assigned powers of administering and enforcing the provisions of this Declaration including, without limitation, levying, collecting, and disbursing the assessments.

To exercise these functions, the Fairway Valley Homeowners Association, Inc., a non-profit corporation created under the laws of the State of Arkansas, has been incorporated. The directors of the Association will establish By-Laws by which the Association shall be governed.

Declarant declares that the Property shall be developed, improved, sold, used, and enjoyed in accordance with and subject to the following plan of development, including the assessments, conditions, covenants, easements, reservations, and restrictions of this Declaration, all of which are adopted for and placed upon the Property, shall run with the Property and be binding on all parties who now or hereafter have or claim any right, title, or interest in the Property or any part of the Property, and on the heirs, executors, administrators, successors, and

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assigns of such parties, regardless of the source of or the manner in which any such right, title, or interest is or may be acquired; and shall inure to the benefit of each owner of any part of the Property.

ARTICLE I DEFINITIONS

Section 1. "Association" **shall mean and refer to Fairway Valley Homeowners Association, Inc., a non-profit corporation incorporated under the laws of the State of Arkansas, and its successors and assigns.**

Section 2. "Board of Directors" and "Board" shall mean and refer to the duly elected Board of Directors of the Association.

Section 3. "Common Area" and "Common Areas" shall mean all real property now owned or in which an interest is hereafter acquired by the Association or which is designated as "Common Area" and/or "Common Areas" on any recorded Plat of the Development and shall include any improvements thereon. Such areas shall be devoted to the common and private use and enjoyment of Members.

Section 4. "Lot" and "Lots" shall mean and refer to (a) any parcel of land shown upon any recorded Plat of the Property upon which there has been or may be constructed a detached single-family residence.

Section 5. "Declarant" shall mean and refer to NW Land Development, LLC, or its successors or assigns.

Section 6. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and any Amendments hereto applicable to the Property recorded in the Office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas.

Section 7. "Development Period" shall mean and refer to that period of time in which Declarant is the Owner of any Lot of the plat of the Property or any additional plats of new phases of this Development.

Section 8. "Dwelling" shall mean and refer to a structure constructed on a Lot for residential purposes.

Section 9. "Member" shall mean and refer to those persons entitled to membership as provided in Article IV of this Declaration.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more

persons or entities, of the fee simple title in any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Plat" shall mean any Plat of the Development recorded in the Real Estate Records of Benton County, Arkansas, in the Office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas and any other plats to additional phases subsequently filed by Declarant to be under the jurisdiction of this Declaration.

Section 12. "Property" shall mean all that real estate described on the plat and that is subject to the Declaration and any additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 13. "Architectural Review Committee" and "ARC" shall mean and refer to the Declarant, a committee of Association members, and/or others designated by the Declarant or Board, for the purpose of reviewing plans and specifications required to be reviewed and approved by the ARC as may herein be provided.

ARTICLE II RESERVATIONS, EXCEPTIONS, DEDICATIONS AND CONDEMNATION

Section 1. Incorporation of Plat . Any recorded Plat of Development dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such Plat further establishes certain dedications, limitations, reservations and restrictions applicable to the Property. All dedications, limitations, restrictions and reservations shown on any recorded Plat, to the extent they apply to the Property, are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each contract, deed and conveyance executed or to be executed by or on behalf of Declarant, conveying each Lot within the Property.

Section 2. Declarant's Reservation . It is expressly agreed and understood that the title conveyed by Declarant to any Lot within the Property by contract, deed, or other conveyance shall not be held or construed in any event to include the title to any roadway or any drainage structure; water, gas, sewer, storm sewer structures, lines or pipes; electric light pole, electric power structure or line; telegraph, telephone, audio, video, security or communication facility, system line, or structure; or any pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto constructed by or under Declarant or its agents through, along or upon the Property or any part of them to serve the Property, and the right to maintain, repair, sell, or lease such appurtenances to any municipality, or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant; provided Declarant shall not be required to maintain such appurtenances.

Section 3. Condemnation. If all or any part of Common Area is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association shall be entitled to participate in proceedings incident thereto. The expense of participation in such proceedings by the Association shall be borne by the Association and paid for out of assessments collected pursuant to Article V hereof. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings.

All damages or awards for such taking shall be deposited with the Association, and such damages or awards shall be applied as follows. If an action in eminent domain is brought to condemn a portion of the Common Areas, the Association, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto; or to convey such portion of the Property to the condemning authority in lieu of such condemnation proceeding. With respect to any such taking, all damages and awards shall be determined for such taking as a whole and not for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to the Association. The Association, if it deems advisable, may call a meeting of the Owners, at which meeting the Owners, by a majority of votes entitled to be cast, shall decide whether to replace or restore as far as possible, the Common Areas so taken or damaged. In the event it is determined that such Common Areas should be replaced or restored by obtaining other land, this Declaration shall be duly amended by instrument executed by the Association on behalf of the Owners. If it is determined that the Common Area should not be replaced, the funds received shall be donated to the Association.

Section 4. Jurisdiction of State and Local Governments. Notwithstanding anything to contrary contained herein, Declarant acknowledges that the property is subject to certain laws, rules, regulations, and ordinances of certain state and local governments having jurisdiction over it, and any construction of improvements within the Property shall be subject to such certain laws, rules, regulations, and ordinances of such state and local governments having jurisdiction over it in addition to the dedications, limitations, reservations and restrictions contained herein.

ARTICLE III PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Except as otherwise set forth herein, every Lot Owner who owns an interest in the Property shall have a right to an easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to grant or dedicate easements in, on, under or above

the Common Areas or any part thereof to any public or governmental agency or authority or to any utility company for any service to the Property or any part thereof;

(b) the right of the Association to prevent an Owner from planting, placing, fixing, installing or constructing any vegetation, hedge, tree, shrub, fence, wall, structure, sign or improvement or storing any personal property on the Common Areas or any part thereof without the prior written consent of the Association. The Association shall have the right to remove anything placed on the Common Areas in violation of the provisions of this subsection and to assess a fine and the cost of such removal against the Owner responsible;

(c) the right of Declarant (and its sales agents and representatives) and its assigns to the non-exclusive use of the Common Areas and the facilities thereof, for display and exhibit purposes in connection with the sale of Lots within the Property, which right Declarant hereby reserves; provided, however, that such use shall not continue for a period of more than fifteen (15) years after conveyance of the Common Areas within the Property to the Association; provided, further, that no such use by Declarant or its sales agents or representatives shall otherwise unreasonably restrict the Members in their use and enjoyment of the Common Areas;

(d) the right of the Association to establish uniform rules and regulations pertaining to the use of any Common Areas owned by the Association; and

(e) the right of the Association to suspend the voting rights of an Owner and the Owner's right to use any Common Areas of the Association during the period the Owner is in default in excess of thirty (30) days in the payment of any maintenance charge assessment against a Lot and to suspend such rights for any infraction of its published rules and regulations. The aforesaid rights of the Association shall not be exclusive but shall be cumulative of and in addition to all other rights and remedies which the Association may have by virtue of this Declaration or its By-Laws or at law or in equity on account of any such default or infraction.

Section 2. Delegation of Use. Owners having an easement of enjoyment in and to the Common Areas may delegate, in accordance with the By-Laws, their right to or enjoyment of the Common Areas to members of their families, tenants, or contract purchasers who reside in Owner's residential dwelling.

Section 3. Waiver of Use. No Owner may be exempt from personal liability for assessments duly levied by the Association, nor release a Lot owned from the liens and charges hereof, by waiver of or suspension of the Owner's rights (pursuant to this Declaration or any By-Law of the Association) with regard to the use and enjoyment of the Common Areas thereon or by abandonment of Owner's Lot.

Section 4. Maintenance Right of Entry. The Declarant and the Association shall have the right of ingress and egress over the entire Property (on any Lot or other property subject

to the easement) to provide access to allow Declarant, the Association, or their agents and assigns to perform the purposes and matters set forth in this Declaration.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Each person or entity who is a record Owner of any of the Property which is subject to assessment by the Association shall be a Member of the Association. Declarant shall be considered a member so long as it owns any Lot or Lots in the Property. The foregoing is not intended to and does not include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association.

Section 2. Voting Classes. The Association shall initially have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant (except as hereinafter provided) and shall be entitled to one vote for each Lot owned. When more than one person owns an interest in any Lot all such persons shall be members. The vote of such Lot shall be exercised as the persons among themselves determine, but in no event shall more than one vote be cast with respect to each Lot owned. Tenants who are also not owners of a Lot shall not be members and shall not be entitled to any votes.

Class B. The Class B member shall be the Declarant and shall be entitled to 4 votes for each Lot owned including Lots of any Lots in additional phases that may hereafter be made a part of the Development. Class B membership shall cease and be converted to Class A membership at such time as Declarant has conveyed 100 lots to Owners other than the Declarant.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Annual assessments and special assessments are to be established as hereinafter provided. For each Lot owned by an Owner, Owner by acceptance of deed for said Lot is deemed to covenant and agrees to pay annual and special assessments to the Association, whether or not it shall be so expressed in such deed. Declarant shall not pay annual assessments or special assessments to the Association, except on a voluntary basis; provided, however, Declarant shall be responsible for the cost and expense of maintenance and upkeep of any Common Areas until 50% of the lots of

that Phase of the Development have been sold. There shall be no assessment against any Common Areas.

The regular and special assessments, together with interest, penalties, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing and contractual lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, penalty, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the community, civic and social welfare and benefit of the Property and the Owners, for the purposes determined by the Association to be appropriate in accordance with its Articles of Incorporation and By-Laws, which may include, but is not required to include: municipal services; recreational services and facilities; improvement and maintenance of the Common Areas; maintenance and lighting of streets within the Development; police and security service; garbage and refuse removal and collection; mosquito abatement; and other services, facilities, and activities that may be in the Association's interest, including, but not limited to, costs associated with enforcing this Declaration.

Section 3. Amount of Annual Assessment. The amount of the annual assessment shall be \$100 per Lot which shall be payable on January 1 of each year or at such other time or times as may be designated by the Board. On any sale of a Lot by Declarant, the Owner shall pay such assessment in advance on the date of conveyance to such Owner with the amount to be prorated based upon the number of months from the month of the conveyance to January 1. Prior to the initial sale of a particular Lot, Declarant may establish an annual assessment in excess of the above amount which additional assessment shall be evidenced by the filing of supplementary declarations of covenants, conditions and restrictions. The maximum annual assessment may be increased above the rate specified above by a vote of a majority of the votes of members entitled to vote in person or by proxy, at a meeting duly called for such purpose.

From and after January 1, 2013, the maximum annual assessment may be increased each year by an amount no greater than fifteen percent (15%) above the maximum assessment for the previous year pursuant to a majority vote of the Board. The Board may, upon a majority vote thereof, after consideration of then current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

Section 4. Special Assessments. In addition to the annual assessments authorized above, in any year after the calendar year 2013, the Association may levy a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost for necessary purposes of the Association, such as the construction, reconstruction, maintenance, repair or replacement of a capital improvement in the Common Areas, including fixtures and personal

property related thereto, or for counsel fees or the fees of other retained experts provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members entitled to vote in person or by proxy, at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4 .

Written notice of any meeting called for the purpose of taking any such action authorized under Section 3 or 4 hereof shall be sent to all Members not less thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Subsequent meetings can continue to be called in the aforesaid manner with the required quorum at any subsequent meeting(s) being one-half (1/2) of the required quorum at the preceding meeting until a quorum is present and votes are cast. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association .

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum lawful rate. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot.

Section 7. Subordination of the Lien to Mortgage .

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the proceeds from any such sale, to the extent they exceed the first mortgage shall be used to satisfy the lien for assessments. No sale or transfer shall relieve such Lot from liability of any assessments which thereafter become due or from the lien thereof.

Section 8. Suspension of Rights of Membership .

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

address of the said Member, and a copy of the notice shall be posted on any or all of the Common Areas during said suspension.

Section 9. Cancellation and Hearing. The said Board of Directors may elect to permanently cancel the membership and all membership rights of any Member who is delinquent in any payment due to the Association for more than 90 days or when such Member, family of the Member, or guest of the Member are guilty of repeated or flagrant violation after a hearing conducted by said Board of Directors, with notice of such hearing mailed to such Member at least 30 days in advance of said hearing date, and further provided that such Member may appeal any such decision of said Board of Directors to the membership of the Association by such affected Member calling a special meeting of the membership of the Association by notice mailed to each Member at least ten days in advance of the desired special meeting date, and said notice setting forth the time, date, place and purpose of said meeting. A majority of votes entitled to be cast of the Members of the Association attending such special meeting shall be necessary to override the decision of the Board of Directors, and all votes shall be by secret ballot. Notice shall be mailed by the Member via U. S. Certified Mail, postage prepaid, return receipt requested.

ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Architectural Approval. The overall plan for the Development contemplates centralization of architectural control to enhance, insure and protect the attractiveness, beauty and desirability of the area as a whole while at the same time permitting compatible distinctiveness of individual developments within the area. For this purpose, Declarant shall have the right and responsibility to review and approve plans and specifications for all new construction on the Property. Further, all contractors constructing any improvements on the Lots must be approved by the Declarant and must provide proof of adequate and appropriate insurance to the Declarant. Declarant also reserves the right to delegate to the Architectural Review Committee or to another party all or any part of its rights and responsibilities to create, administer, review and/or approve plans and specifications for new construction and to approve contractors on any part or all of the Property. At any time after ten years from the date of this Declaration, or the date upon which Declarant is no longer the Owner of any Lot, whichever occurs first, Declarant shall relinquish to the Association all its rights and responsibilities pertaining to the review and approval of plans and specifications for construction on the Property provided that the Association has an Architectural Review Committee designated for the purpose of reviewing and approving the plans and specifications for construction on the property; provided, that Declarant shall have the option of relinquishing such control at any earlier time Declarant elects.

It is accordingly covenanted and agreed that, in addition to any other ARC approval which may be required herein and subject to other provisions hereof, no building, fence, wall, or

other structure shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or change or alteration to such structures or the color thereof (including, without limitation, site landscaping visible from any part of the Property and grading plans, reroofing materials, patio covers and trellises, plans for off-street parking of vehicles and utility layout), be made until the plans and specifications of such showing, among other things, the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Declarant or any Architectural Review Committee established by it or by any person or entity to which Declarant has delegated such authority and responsibility. In the event said ARC fails to approve or disapprove any such design or location within forty-five (45) days after said plans and specifications have been received by it, approval will not be required, and this Article will be deemed to have been fully complied with. All plans and specifications shall be submitted in writing over the signature of the Owner of the Lot or the Owner's authorized agent. The ARC shall have the right to require any Owner to remove or alter any structure which has not received approval or is built other than in accordance with the approved plans and to receive reimbursement from Owner for any costs expended in this effort. The requirement of this Article is in addition to any approvals or permits required by any appropriate governmental entity.

Section 2. Approval Required in Writing. All approvals shall be granted only in writing and by Declarant or Architectural Review Committee as applicable.

Section 3. No Liability. Neither Declarant and its assigns, the Association, its Board of Directors, nor the ARC or the Members thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of a Lot affected by these restrictions by reason of mistake in judgment, negligence, or disapproval or failure to approve or disapprove any such plans or specifications and no approval or required modification of plans submitted shall be considered a warranty of any nature whatsoever pertaining to the suitability of such plans and specifications. Every person who submits plans or specifications to the ARC for approval agrees, that no action or suit for damage will be brought against Declarant, the Association, its Board of Directors, the ARC, or any of the members thereof.

Section 4. Rules and Regulations. Declarant may, in its sole discretion, adopt, promulgate, amend and repeal rules and regulations interpreting and implementing the provisions of this Article VI.

Section 5. Variances. The ARC may recommend to the Board, and the Board may, by the vote or written consent of a majority of the members thereof, allow reasonable variances as to the covenants, conditions or restrictions contained in and Article IX of this Declaration under the jurisdiction of ARC pursuant to this Article VI, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with

the general plan for the improvement and development of the Property.

**ARTICLE VII
DUTIES AND MANAGEMENT OF THE ASSOCIATION**

Section 1. Duties and Powers. In addition to the duties and powers enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Own, have an interest in, maintain and otherwise manage all Common Areas, improvements and landscaping thereon, and all other property acquired by the Association.
- (b) Pay any real and personal property taxes and other charges assessed against the Common Areas unless such areas come into private ownership by some Owner other than the Association or Declarant.
- (c) Have the authority to obtain, for the benefit of all of the Common Areas, all water, gas and electric and other utility services and refuse collection.
- (d) Grant easements where necessary for utilities, drainage, and sewer facilities over the Common Areas, to serve the Common Areas and the Property in general.
- (e) Maintain such policy or policies of insurance as the Board of Directors of the Association may deem necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.
- (f) Have the authority to contract for the performance of maintenance and repair and for conducting other activities on behalf of the Association; provided, no such contract shall exceed one year without Board approval.
- (g) Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association.
- (h) Have the power to establish and charge fines or penalties for violations of any restrictions, conditions, or covenants.
- (i) Have the duty to landscape and maintain the improvements, landscaping and entry markers upon the Common Areas and that hereafter may be further determined by Supplementary Declaration(s) of Covenants, Conditions and Restrictions.
- (j) Have the duty to maintain the perimeter walls or fences, if any, located at

entrances to the Property, Common Areas, greenbelt buffers, and fencing and walls located on the Common Areas and portions of Lots that hereafter may be further determined by Supplementary Declaration(s) of Covenants, Conditions and Restrictions.

(k) Have the duty to maintain all brick or concrete pavers located in the streets and sidewalks; all street lights and poles (other than the standard street lights and poles provided by the electric company); all parks in Common Areas; all landscaping located within street islands or within street right of ways; all street and regulatory signs and post (other than the standard street and regulatory signs and post).

ARTICLE VIII UTILITY BILLS, TAXES AND INSURANCE

Section 1. Obligations of Owners .

(a) Each Owner shall have separate electric, gas and water meters and shall directly pay for all electricity, gas, water, sanitary sewer service, telephone service, security systems, cable television and other utilities used or consumed by Owner.

(b) Each Owner shall directly render for taxation Owner's Lot and improvements thereon, and shall at Owner's own cost and expense directly pay all taxes levied or assessed against or upon Owner's Lot.

Section 2. Obligations of the Association .

(a) In addition to that as otherwise may be provided for herein, the Association shall pay, as a common expense of all Owners, for all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Areas or any part thereof.

(b) The Association may render for taxation and, as part of the common expenses of all Owners, shall pay all taxes levied or assessed against or upon the Common Areas and the improvements and the property appertaining thereto.

(c) The Association shall have authority to obtain and continue in effect, as a common expense of all Owners, a blanket property insurance policy or policies to insure the structures and facilities in the Common Areas and the contents thereof, and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such amounts as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive public liability insurance in such amounts as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Owners is available) from and

against liability in connection with the activities and obligations of the Association.

(d) All costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid as a common expense of all Owners and shall be paid out of the assessments.

ARTICLE IX RESTRICTIONS OF USE FOR RESIDENTIAL LOTS

Section 1. Single Family Residential Construction. There shall be no Dwellings erected on any Lot other than a single family dwelling having at least a two-car enclosed garage with entrances from the front or side. No prefabricated, manufactured, mobile or modular housing shall be placed on any Lot. Each Lot shall be used only for single-family residence purposes, except as otherwise may be provided herein. No garage shall be converted to livable, occupied space without the approval of the ARC.

Section 2. Minimum Square Footage. All Dwellings in the Subdivision shall have a minimum of one thousand six hundred (1,650) square feet of heated area. All dwellings of more than one story shall have a minimum of one thousand (1,000) square feet of heated area on the first floor. The minimum square footage requirements are exclusive of garages, porches, patios and decks.

Section 3. Prohibition of Offensive or Commercial Use. No activity which may become an annoyance or nuisance to the neighborhood or which shall in any way unreasonably interfere with the quiet enjoyment of each Owner of such Owner's Lot or which shall degrade property values or distract from the aesthetic beauty of the Property, shall be conducted thereon. No repair work, dismantling, or assembling of boats, motor vehicles or other machinery shall be done in any driveway or adjoining street. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes.

Notwithstanding the above, Declarant, its successors and assigns, may use the Property for model homes display and sales offices during the Development Period, during construction or until all new homes on the Property have been sold.

Section 4. Building Materials. The exterior of all Dwellings erected on the Lots shall be of a masonry veneer construction (such veneer may include rock veneer) to the extent that the exterior of each such Dwelling is at least seventy percent (70%) masonry veneer, excluding windows and doors. Stucco-like, EIFS materials may be used on dwellings below the plate line if approved by the ARC. All roof pitches shall be a minimum of 8/12 pitch. Any composition roof on any dwelling in the subdivision shall be a 25 year architectural shingle roof.

Section 5. Location of Improvements Upon the Lots . No building shall be located on any Lot nearer to the front line, nor nearer to the side street line than the minimum building set back distances shown on any recorded Plat. Declarant shall have the right to modify these setback criteria for any additional land annexed into the Association and made subject to this Declaration, and Declarant shall establish building setback criteria for uses other than single-family residential on a case-by-case basis.

Section 6. Deviations . Declarant, or the person or entity to whom it delegates such authority (e.g., ARC), at its sole discretion, is hereby permitted to approve deviations in these restrictions on building area, location of improvements and building materials in instances where in its judgment, such deviation will not adversely affect the development of the Property as a whole. Such approvals must be granted in writing and when given will automatically amend these restrictions for that Lot only.

Section 7. No Lot Split . No Lot shall be split, divided or replatted without the express written approval of Declarant or the ARC, which approval may be granted or withheld in the sole discretion of Declarant or the ARC. Any such approved lot split shall still be subject to applicable regulations and ordinances.

Section 8. Utility Easement . Easements for installation and maintenance of utilities are reserved as shown on the recorded Plat, and no structure shall be erected on any of such easements. Declarant shall not be liable for any damage done by it or its assigns, agents, employees or contractors to shrubbery, trees, flowers or improvements located on the land covered by such easements.

Utility companies shall not be liable for such damage unless they have agreed in writing to be responsible for such damage or an easement granted to them conditions such grant upon such responsibility.

Section 9. Audio and Video Communication Service . In the event that audio and video communication services and facilities are made available to any Lot by means of an underground coaxial cable system, there is hereby reserved to the company furnishing such services and facilities a two feet wide easement along and centered on the underground wire or cable when and as installed by the company furnishing the service from the utility easement nearest to the point of connection on the permanent improvement of structure constructed, or to be constructed, upon the Lot and in a direct line from the nearest utility easement to the point of connection.

Section 10. Temporary Structures and Out Buildings . No structures of temporary character, nor any mobile home, trailer, tent, shack, garage, barn, playhouse or other outbuilding shall be constructed, erected, altered, placed or permitted to remain on any Lot at any time,

provided, however, that it is permissible to have a permanent storage building in the rear yard of a Lot provided that the square footage of such storage building does not exceed 250 square feet and is constructed of materials that complement the Dwelling which it accompanies. Temporary structures may be used as sales offices or as construction offices and for other related purposes by Declarant during the construction and sales period. Such structures shall be maintained and shall be removed at completion and sale of all construction of this Development.

Section 11. Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats and other common household pets (not to exceed two of each category) provided they are not kept, bred or maintained for commercial purposes. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious to residents in the vicinity. Animals are not permitted to roam the Property and must be controlled on a leash if they are not on a Lot. No dog runs shall be allowed except with the permission of the ARC.

Section 12. Walls, Fences and Hedges. Before any fence or wall may be constructed on any residential Lot, plans must be submitted to the ARC showing the materials to be used and the location of the fence or wall and such plans must be approved by the ARC. All fences or walls shall be constructed so that the framing shall be toward the inside of the Owner's Lot and shall be constructed at a height of six (6) feet to maintain uniformity. Privacy fences and walls shall be constructed of wood, wrought iron or masonry; provided, however, any portion of a fence or wall facing the street must be constructed of wood fence and fencing is required at least on the front sides of the house from the house to the property line in an effort to hide all utilities and the location of such fence must be approved by the ARC prior to construction. There shall be no chain link or cyclone fences allowed. Further, construction of fences, walls and hedges are prohibited in or on the front lawn of any Lot.

Section 13. Antennae and Satellite Dishes. No communications mast, antenna, tower or other similar structure may be installed on any Lot, except that satellite dishes may be installed only on the rear roof of a dwelling and shall not exceed the height of the lowest roof ridge line of such dwelling.

Section 14. Heating and Cooling Devices. No detached single-family dwelling, private garage or any other structure located on the Property shall be permitted to have a heating or cooling device located in a window or any other opening which can be viewed from any portion of the Property. Heating and cooling devices may be used in windows or other openings of any structure used by Declarant during the construction and sale of all structures of this subdivision.

Section 15. Visual Screening. All equipment, garbage cans, service yards,

woodpiles, refuse containers, or storage piles and household projects such as equipment repair and construction projects shall be screened by adequate planting or fencing so as to conceal them from view of neighboring lots, streets, parks and public areas. All rubbish, trash, and garbage shall be kept in sanitary refuse containers with tightly fitting lids and shall be regularly removed from the Lots and not allowed to accumulate thereon. No basketball goals or other items of a similar nature shall be installed permanently in the front yard of any Lot nor shall any clothes line be permitted on the outside of any Dwelling.

Section 16. Visual Obstructions at the Intersections of Public Streets. No object or thing which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways within the triangular area formed by the junction of street curb lines and a line connecting them at points twenty-five (25) feet from the junction of the street curb lines (or extensions thereof) shall be placed, planted or permitted to remain on any corner lots.

Section 17. Lot Maintenance. All Lots shall be kept at all times in a sanitary, healthful and attractive condition, and the Owner or occupant of all Lots shall keep all weeds and grass thereon cut and neatly maintained and shall in no event use any Lot for storage of material and equipment except for normal residential purposes or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish. All Owners shall be required to have mandatory trash pick up as provided by the City of Cave Springs, Arkansas. Further, upon the completion of construction of a Dwelling, the Owner shall sod the lawn area of the Lot from the back of such dwelling to the curb line.

Section 18. Storage of Automobiles, Boats, Trailers, Other Vehicles and Equipment. No automobiles, boats, trailers, campers, recreational vehicles, motorcycles, buses, inoperative vehicles of any kind, camp rigs off truck, or boat rigging shall be parked or stored permanently or semi-permanently on any public street right-of-way, front yard area, back-yard area, or on driveways. However, such vehicles may be stored in Dwelling garages or approved out-buildings. For the purposes of these restrictions, the words "semi-permanent" shall be defined as remaining in the same location without movement for forty-eight (48) or more consecutive hours, provided, however, that no vehicle of any type may be parked overnight in or on the streets of the Development. No eighteen-wheel vehicles and other similar large van or flat-bed type vehicles may be parked on any public street right-of-way, front yard area or on driveways except to deliver merchandise or other materials to residents or construction sites.

Section 19. Limited Access and Driveways. There shall be no access to any Lot on the perimeter except from designated streets or roads within the Development. No curb cut for such access shall be closer than five (5) feet to the side property line of any Lot. All curbs are to be neatly blended into the driveway radius.

Section 20. Sidewalks. Sidewalks shall be installed on each Lot in the manner required by applicable ordinances and regulations and shall be installed prior to the issuance of a certificate of occupancy for the Dwelling by the applicable governmental authority.

Section 21. Mail Receptacles. In order to ensure a uniform and complementary look, only mailboxes and receptacles approved by the ARC may be installed and used by Owners.

Section 22. Signs, Advertisements and Billboards. No sign, advertisement, billboard or advertising structure of any kind shall be displayed to the public view on any portion of a Lot or Common Areas except for one sign for each Lot of not more than 28 inches by 38 inches solely advertising the Lot for sale or rent, and except signs used by Declarant to advertise the Lot during the construction and sales period. The Declarant and the Association shall have the right to remove any signs, advertisements or billboard or structure which is placed on Lots or Common Areas, in violation of this section and in so doing shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

Section 23. Removal of Soil. The digging of soil or the removal of soil from any Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on said Lot.

Section 24. Lot Drainage. Each Owner of a Lot agrees for himself, his heirs, or successors in interest that he will not in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots in said tract; he will make adequate provisions for the proper drainage in the event it becomes necessary to change the established drainage over his Lot. For the purpose hereof, "established drainage" is defined as the drainage which occurred at the time that the overall grading of said tract, including landscaping of any Lots, and said tract was completed by Declarant.

Section 25. Water and Mineral Operations and Wind Generators. No oil or water drilling, oil or water development operations, oil refinery, quarry or mining operations or any kind shall be permitted on any Lot, nor shall oil or water wells, tanks, pumps, derricks, structures, mineral excavations or shafts be permitted on any Lot. No wind generators shall be erected or maintained on any Lot.

Section 26. Solar Collectors. No solar collectors shall be installed without written approval from the ARC. Such installation shall be in harmony with the design of the Dwelling. When reasonably possible, solar collectors shall be installed in a location not visible from the public street in front of the residence.

Section 27. Enforcement. In the event of default on the part of the Owner or occupant of any Lot in observing any or all of the requirements herein set forth, such default continuing

after ten (10) days written notice thereof, the Declarant or the Association may, without liability to the Owner or occupant, in trespass or otherwise, enter upon said Lot, cut, or cause to be cut, such weeds and grass, and remove or cause to be removed, such garbage, trash or rubbish or do any other thing necessary to secure compliance with these restrictions, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or the occupation of the Lot to pay such statement immediately upon receipt thereof. To secure the payment of such charges in the event of nonpayment by the Owner, a vendor's and continuing contractual lien shall be retained by Declarant at the time of conveyance of each Lot in favor of Declarant or Association, but inferior to a purchase money lien or mortgage. Such vendor's and continuing contractual lien shall be applicable and effective whether mentioned specifically or omitted in each conveyance of a Lot by Declarant.

**ARTICLE X
RESERVE FUNDS; LEASES**

Section 1. Reserve Fund. Association budgets shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Areas and Common Facilities and to insure any and all obligations of the Association that will be payable in installments as part of the common assessment.

Section 2. Leases. Any lease agreement between an Owner and a lessee shall be subject in all respects to the provisions of this Declaration, the By-Laws and Articles of Incorporation of the Association whether or not reference is made to the Declaration, By-Laws and Articles of Incorporation in the lease.

**ARTICLE XI
GENERAL PROVISIONS**

Section 1. Enforcement. The Association and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions shall not affect any other provision, which shall remain in full force and effect.

Section 3. Duration; Amendment. The provisions of this Declaration shall run with and bind the Property for a term of twenty-five years from this date, after which time they shall be automatically extended for successive periods of ten years.

Deeds of conveyance of Lots or any part thereof, may contain the above restrictive covenants by reference to this document, but whether or not such reference is made, each and all of such restrictive covenants shall be valid and binding upon the restrictive grantees.

This Declaration may be amended during the first twenty-five year period by an instrument signed by a sufficient number of Owners representing not less than two-thirds (2/3) of the votes in the Association, and thereafter by an instrument signed by a sufficient number of Owners representing not less than fifty percent of the votes.

However, the Declarant reserves the right during the Development Period, without joinder or consent of any Owner, Developer, Builder or mortgagee, to amend this Declaration or the By-Laws by an instrument in writing duly signed, acknowledged and filed for record, for any purpose whatsoever. Furthermore, Declarant reserves the right to make additional restrictions in any deed conveying title to a Lot.

All amendments shall be recorded in the real estate records of the Office of the Clerk and Ex-officio Recorder of Benton County, Arkansas.

Section 4. Books and Records. The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any Member. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matters to the end that inspection of the books and records by any Member will not become burdensome to nor constitute harassment of the Association. The Declaration, the Articles of Incorporation and By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

Section 5. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

Section 6. Good Faith Lender's Clause. Any violation of these covenants, conditions or restrictions shall not affect any lien or deed of trust of record held in good faith, upon any Lot, which liens may be enforced in due course, subject to the terms of this Declaration.

Section 7. Mergers. Upon a merger or consolidation of the Association with another association as provided by its Articles of Incorporation, its properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation. The surviving or consolidated association shall administer the covenants, conditions and restrictions contained in this Declaration, under one

administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

Section 8. Annexation.

(a) Notwithstanding any other provision herein, Declarant shall have the sole right and privilege, without the consent of any other Owners or any First Mortgagee, to bring additional property within the scheme of the Declaration, in one (1) or more future stages, sections or additions, within fifteen (15) years of the date of recording of this instrument. Further, any land annexed to the Property and subject to this Declaration may be acquired (by gift, purchase or otherwise) and/or designated as Common Areas by the Association without the consent of any Owners or any First Mortgagee. Additional land that is added or annexed shall become subject to assessment in accordance with Article V.

(b) The additions authorized under this Section shall be made by filing of record: (a) Supplementary Declaration(s) of Covenants, Conditions and Restrictions with respect to the additional lands which shall (i) extend the scheme of the covenants and restrictions or this Declaration to such lands and (ii) provide, if applicable, that the proportionate ownership interests in the Common Areas or the Owners by virtue of Association membership immediately prior to the filing of such Supplementary Declaration shall be equal to the number of Lots owned by such Owner divided by the total number of Lots within the lands then subject to this Declaration after such annexation; and (b) a deed from Declarant to the Association which shall convey to the Association the area within such additions (except for the Lots therein) as Common Areas for the sole benefit and use of the Owners, with reservation of Declarant's rights set forth herein.

Section 9. Deannexation.

(a) Land or lands may be deannexed from the Property with the consent of two-thirds (2/3) of each class of members and the approval of the Owner(s) of the land to be deannexed.

(b) Notwithstanding anything contained in Subparagraph (a) above, or any other provision herein, Declarant shall have the right, without the consent of any other Owners or any First Mortgagee, to deannex land from the scheme of the Declaration if the Owner of the land is agreeable to the deannexation and if the deannexation would benefit the general development process or general development plan.

(c) The deannexations authorized under this Section shall be filed of record.

Section 11. Additional Phases. The Declarant reserves the right, without joinder or consent of any Owner, Developer, Builder or Mortgagee, to file additional plats in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas to add additional phases

which shall be subject to this Declaration.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 26th day of March, 2013.

DECLARANT NAME

BY: 

NW Land Development, LLC
Brett Hash, Manager

[ACKNOWLEDGMENT ON FOLLOWING PAGE]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss.
COUNTY OF BENTON)

On this the 27th day of March, 2013, before me, Brett Hash, the undersigned officer, personally appeared, who acknowledged himself to be the Manager of NW Land Development, LLC, a corporation, and that he, as such president, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this
27th day of March, 2013.

Marsha L Johnson
Notary Public

My Commission Expires:
7-8-2020

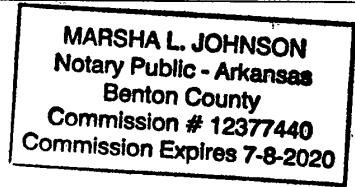


EXHIBIT "A"
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FAIRWAY VALLEY SUBDIVISION
PHASE I

Book 2013 Page 15226
Recorded in the Above
DEED Book & Page
03/27/2013

Benton County, AR
I certify this instrument was filed on
03/27/2013 3:19PM
and recorded in DEED Book
2013 at pages 15204 - 15226
Brenda DeShields-Circuit Clerk