

Brenda DeShields-Circuit Clerk  
Benton County, AR  
Book/P# 2007/38288  
Term/Cashier: CASH/DJONES  
09/18/2007 3:07:04PM  
Tran# 13766  
Total Fees: \$55.00  
Book 2007 Page 38288  
Recorded in the Above  
DEED Book & Page  
09/18/2007

**DECLARATION OF RESTRICTIVE COVENANTS,  
DEDICATION OF EASEMENTS,  
AND ROAD MAINTENANCE AGREEMENT  
FOR  
THE ESCARPMENT AT ROCKY BRANCH**

This Declaration of Restrictive Covenants, Dedication of Easements and Road Maintenance Agreement is made and entered into this 17<sup>th</sup> day of September, 2007, by The Escarpment L.L.C., or its successors and assigns (the "Declarant" or "Developer");

WITNESSETH

WHEREAS, the Declarant is the owner of the following described property known as The Escarpment at Rocky Branch, all located in Benton County, Arkansas previously known and described as follows:

A PART OF THE SW ¼ OF THE SW ¼ OF THE S/W ¼ SECTION 1 AND A PART OF THE NW ¼ OF THE NW ¼ OF SECTION 12, ALL IN TOWNSHIP 19 NORTH, RANGE 28 WEST MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SW CORNER OF THE SW ¼ OF SECTION 1, THENCE NORTH 01 DEGREES 00 MINUTES 39 SECONDS EAST 155.45 FEET TO A POINT ON THE GOVERNMENT TAKE LINE; THENCE SOUTH 41 DEGREES 49 MINUTES 45 SECONDS EAST 135.40 FEET ALONG SAID TAKE LINE; THENCE SOUTH 42 DEGREES 03 MINUTES 26 SECONDS EAST 105.40 FEET ALONG SAID TAKE LINE; THENCE SOUTH 08 DEGREES 30 MINUTES 57 SECONDS EAST 1006.77 FEET ALONG SAID TAKE LINE; THENCE SOUTH 00 DEGREES 56 MINUTES 24 SECONDS WEST 190.96 FEET ALONG SAID TAKE LINE; THENCE SOUTH 00 DEGREES 49 MINUTES 01 SECONDS WEST 136.66 FEET ALONG SAID TAKE LINE; THENCE NORTH 84 DEGREES 08 MINUTES 22 SECONDS WEST 325.23 FEET; THENCE NORTH 00 DEGREES 41 MINUTES 33 SECONDS EAST 1313.87 TO THE POINT OF BEGINNING.

said lands being in the aggregate of 8.24 acres, more or less, and described on a plat dated the 28<sup>th</sup> day of August, 2007, and recorded the 17<sup>th</sup> day of September, 2007, and entitled The Escarpment at Rocky Branch (the "Plat") in Plat Record Book 2007 at Page 181 of the Benton County Real Estate Records; and,

WHEREAS, the Declarant wishes to establish certain easements for the benefit of the Lots, to provide for the repair, maintenance and upkeep of a private road, utilities, parking areas and foot trails established within such easements and to establish restrictions on the Lots for the benefit of all of the Lots;

NOW, THEREFORE, in consideration of the premises and the benefits inuring to the Declarant and to the future owners of the Lots, the Declarant hereby creates the following easements for the benefits of the Lots and imposes the following restrictions thereon.

#### A. NAME

The name of the subdivision created by the establishment of the Six (6) lots shall be known as The Escarpment at Rocky Branch (also the "development" or the "subdivision").

#### B. EASEMENTS

1. There is hereby established for the benefit of each of all Lots in The Escarpment at Rocky Branch perpetual easements for purposes of ingress and egress and utilities as more particularly described on the Plat. Easements for parking areas, dock, and lake access shall be established as more particularly described on the Plat as "Parking Easement", "Dock Access Easement", and "Lake Access Easement". Such easements shall be for the purposes of constructing, maintaining, and improving any road, parking area, or lake access trail established thereon by the Declarant, his assigns or his agent and, further, for constructing, maintaining and repairing any utility service within the easements shown upon the Plat for purposes of providing electricity, telephone service, cable, water, sewer, gas and other utilities to each of the Lots and to the parking easements and lake access. The easements herein established are exclusive and not for the benefit of the general public but may be assigned or conveyed by the Association to utility companies to the extent necessary to provide such utility service. Except as may be necessitated by terrain or subsurface geology and approved in writing in advance by the Architectural Control Committee, **All utilities must be installed underground.** Road access easements serving Phase I and Phase II of The Escarpment at Rocky Branch shall be for the exclusive use of the owners of lots within said Phases I and II.

2. The cost of maintenance and up keep of any road, parking area or access established within the foregoing road, parking area, dock, and lake access easements shall be apportioned **equally** among the Lots having the right to use such amenities. The cost of any repair of damage, other than normal wear and tear, directly attributable to a lot owner or owners, a lots owner's contractors, or a lot owner's suppliers, the source of which is readily identifiable to a specific lot owner or owners, shall be assessed to the lot owner or owners responsible for such damage. The costs of maintenance shall be assessed by The Escarpment at Rocky Branch Homeowner's Association (the Association) as hereinafter established. Any Lot's share of the foregoing assessment which is not paid within ninety (90) days of the date it becomes due and payable shall bear interest at the maximum rate allowable under Arkansas Law and shall constitute a lien against such Lot. Such lien may be enforced in the same fashion as judgment liens are enforced under the laws of the State of Arkansas. Any such assessment shall also be the joint and several personal liability of the owners of the Lot in question at the time such assessment is made.

3. There are hereby established perpetual parking and lake access easements as shown on the Plat, which shall include the right to install, maintain, repair, replace and extend parking areas and trails for foot traffic.

4. All easements, including those for roads, parking, lake access, and foot trails, are for the sole and exclusive benefit of the owners of the Lots and their invitees.

### C. RESTRICTIONS

1. No structure may be maintained on any Lot other than a single family residence and outbuildings and appurtenant structures consistent with residential use such as detached garages. Residences must have at least Two Thousand (2,000) square feet of living space not including unfinished basements, attics, porches, terraces and attached or free standing garages. Any residence which is more than 1 (one) story in height must have a minimum ground area (footprint) of at least Fifteen Hundred (1,500) square feet. Each residence must include a two (2) car or larger garage. All residences, outbuildings, and other structures shall be constructed according to plans submitted and approved by the Escarpment Architectural Control Committee (the "EACC") as hereafter established. All buildings or structures erected on all Lots shall be finished with standard building materials generally used for an exterior finish and approved in advance by the EACC. Building exteriors and roofs shall be maintained and kept in good repair, painted or otherwise maintained as the particular outside finish requires. All out building, including garages, must be constructed of the same style of construction, type of material and color scheme as the residence.

2. Lots may only be used for residential purposes. Notwithstanding the foregoing restrictions, commercial and professional activities may be conducted from any residence permitted on a Lot as long as it is conducted entirely within such residence without material alteration of such residence and does not cause more than two additional vehicle trips per day.

3. Except as may be required by the construction of permitted improvements on any Lot, no unsightly building or construction debris, trash or junk shall be allowed to remain on any Lot for a period of longer than seven (7) days. All construction debris, trash or junk shall be placed into a "rolloff" type dumpster. No construction trailer(s) shall be allowed on any lot for a period of greater than fourteen (14) days. No appliances, campers, trailers, trucks (larger than three quarter (3/4) ton), machinery, equipment or torn down or inoperable motor vehicles shall be kept on any Lot unless the same is stored in a garage or outbuilding out of view. One motor home or boat may be stored per lot, provided it is stored behind (the front of each residence is determined to be the side facing the street) the principal dwelling and is not visible from the street or adjoining lots.

4. All Lots shall be kept in a neat condition and all bare areas shall be kept natural, seeded, graveled or paved as may be practical. All lawns must be kept mowed and in a neat condition.

5. No trailer, tent, structure of a temporary character, mobile home or manufactured housing shall be allowed on a Lot at any time. All structures must be constructed on the lot. No residential structure may be occupied as a residence until it is fully completed. . All out building must be constructed of the same style of construction, type of material and color scheme as the residence. Construction of permitted improvements must be completed within twelve (12) months of their commencement. No time requirements are established as to when improvements must be commenced.

6. Notwithstanding any other provision contained herein, no Lot owner may use his Lot in a way that affects Lots adjoining him by reducing the value of such Lots as a result of that Lot owner's use of his property.

7. There may be no mining on any Lot, which for such purpose shall not include the drilling of wells for water.

8. Television antennas and dishes are permitted, provided dishes are not larger than twenty four (24) inches in diameter and towers not exceeding thirty (30) feet in height are constructed between the rear wall of the residence and the back of the lot.

9. No overnight parking is allowed on any street within The Escarpment at Rocky Branch.

10. No activity that shall constitute a nuisance shall be permitted on any lot. It shall be the responsibility of any lot owner to fence in permitted pets. Any lot owner who keeps or allows others to keep pets on his (her) lot shall insure that other lots are not adversely affected or damaged by any animal wastes, noise, odor or destruction or alteration of the natural ground cover.

11. No Lot may be further divided by anyone.

12. Security lighting, street lights, or other outdoor lighting that illuminates or causes a nuisance upon any adjoining property is prohibited. All outdoor lighting must be designed to minimize illumination of adjoining property and the design and location of such lighting must be approved by the EACC. Mere visibility of outdoor lighting by an adjoining property owner shall not constitute a violation of this provision.

#### **D. ARCHITECTURAL CONTROL COMMITTEE**

1. In order to preserve, to the extent possible, the natural beauty of the Subdivision and its setting, to maintain a pleasant and desirable environment, to establish and preserve a harmonious design for the Subdivision and to protect and enhance the property, the Declarant does hereby create the Escarpment Architectural Control Committee (EACC). Said Committee shall approve the details of construction plans, including placement of any structure on any Lot.

2. The Declarant will appoint the initial EACC, which may be composed of up to but no more than three (3) members. Upon the sale of seventy five per cent (75%) of the Lots, The Escarpment at Rocky Branch Homeowners Association will assume the responsibility of naming two (2) of the members of the EACC until the Declarant has sold one hundred per cent (100%) of the lots or abdicates his right to appoint committee members to the Association.

3. No building or improvement of any type shall be constructed, erected, placed or altered upon any lot or property within the Subdivision and no grading shall be commenced until the name of the building contractor, the building plans and specifications, plot plan, nature, kind and shape of exterior materials to be used, color scheme, layout and the location of the driveway and sidewalk, and construction schedule have been approved by the EACC. Any modification to the exterior of any improvement in a manner not previously approved by the EACC shall be submitted as provided above. All approvals shall be withheld until all submissions for a given project are in complete compliance with the applicable covenants. THE APPROVAL OF PLANS AND SPECIFICATIONS AS REQUIRED HEREIN IS FOR THE MUTUAL BENEFIT OF THE OWNERS WITHIN THE SUBDIVISION AND SHALL NOT BE CONSTRUED AS AN APPROVAL OR CERTIFICATION THAT SUCH PLANS AND SPECIFICATIONS ARE TECHNICALLY SOUND OR PROPERLY ENGINEERED.

4. The owner of any lot wishing to construct any structure upon a Lot shall submit three (3) copies of the plans to the EACC prior to commencement of construction. The EACC shall have 30 business days from receipt of any plans to review and either approve or disapprove of the submitted plans. If additional information is requested from the owner, the EACC shall have fifteen (15) days from the receipt of the requested information. Approval or disapproval must be in writing. In the event the EACC fails to act within thirty (30) business days and provide written notice, the plans shall deem to have been approved as presented. The authority granted to the EACC shall include, but not be limited to, review and approval of the color, materials used in construction, size, design, and location of each and every structure proposed to be located within the subdivision. The authority granted to the EACC and the interpretation of its rules and regulations shall be liberally construed for the benefit of the other property Owners within the subdivision. All such designs and specifications affecting the exterior, including size, of any structure as submitted to and approved by said Architectural Control Committee may be modified by submission of such modification for consideration of the EACC. The committee may take into consideration whether the proposed residence or other structure and the materials used are reasonable and suitable for the lot upon which the residence or structure is erected, the harmony thereof with the surroundings, and the effect of the residence or structure as planned on the sight-lines from adjacent or neighboring property. The EACC shall, in the exercise of its judgment and determination use reason and good faith.

5. The EACC may grant, at the committee's sole discretion, reasonable variances or adjustments from any conditions or restriction imposed by this declaration. A variance shall be only granted if it is not material, detrimental, or injurious to the other lots in the project and not defeat the general intent of this declaration. Any variance

granted by the committee shall not affect nor negate the requirements of any other applicable authorities.

6. In the event that an Owner shall dispute the determination of the EACC and bring an action to overrule, vacate or otherwise mitigate the effect of any determination of the EACC, or if an owner fails to submit for approval any action as required and the Association or any owner brings an action to enforce these provisions the prevailing party shall be entitled to an award of all of its or their attorney fees.

#### **E. HOMEOWNER'S ASSOCIATION, MEMBERSHIP DUES AND CREATION OF LIENS**

1. The Escarpment at Rocky Branch Homeowner's Association (the "Association") shall be established within ninety (90) days from the recording date of this document. It is the responsibility of the developer to establish the association at the developer's expense.

2. For the purpose of maintaining areas to be used in common with some or all of the residents and owners of property in the subdivision, the roads in the development, parking and lake access areas, foot trails, the street lights, if any, drainage, community docking facilities, community storage facilities, if any, and such other activities and undertakings as may be for the general use and benefit of owners and residents of the property, each and every lot owner, in accepting a conveyance of any lot in this subdivision, agrees to and shall become a member of and be subject to the obligations and duly enacted by-laws and rules of the Association, a non-profit corporation. Each such member of the Association, including the Declarant, shall have one (1) vote for each lot owned within the Subdivision.

3. The Association may, by majority vote of its duly elected Board of Directors, levy assessments or dues against all lot Owners in order to defray the costs of performing the purposes described above. All property Owners in the subdivision shall pay the required dues, including, if applicable, any such assessments or dues hereafter associated with the boat dock, to the Association promptly when the same become due, and in the event of failure to pay the same promptly when the same become due, such dues, including any such assessments or dues hereafter associated with the boat dock, shall constitute a lien upon the property owned by such Owners in the Subdivision and the same may be enforced in equity as in the case of any lien foreclosure authorized in the State of Arkansas.

4. All delinquent assessments shall bear interest at the maximum rate per annum permitted by Arkansas law from the date the same become due until they are paid, and the association shall be entitled to a reasonable fee for its attorneys when their services become necessary to collect any delinquent assessments or dues, all of which shall be a part of the lien for dues.

5. The liens herein created or retained for unpaid assessments or dues to the Association are hereby made expressly inferior and subordinate to valid and bona fide mortgages and deeds of trust or retained vendor's liens securing obligations of Owners of any of the lots in the addition up to the time of sale at foreclosure of any such mortgage, deed of trust or vendor's lien and for a period of six (6) months thereafter or until the residence upon such property is occupied, whichever date shall first occur, after which time monthly membership dues shall thereafter accrue as a lien upon such lot in the identical form and manner as prior to the foreclosure sale of the property involved. This subordination shall be construed to apply not only to the original, but to all successive, mortgages, deeds of trust, and vendor's liens given by property Owners to secure obligations, together with all extensions and renewals thereof.

#### **F. PRIVATE BOAT DOCKS.**

Private boat docks are prohibited. All Owners shall use the community boat dock for on-site docking. Only property Owners or, if necessary for compliance with Corp of Engineers regulations, members of their immediate household, may own dock slips. Maintenance of and payment for utilities consumed by the community boat dock shall be the responsibility of the Association as above provided.

#### **G. SEWAGE DISPOSAL.**

All septic systems must have Health Department Approval.

#### **H. ADDITIONAL LANDS**

Additional real property consisting of proposed Phase II Lots 7-14 ("Phase II") and adjoining tracts of land (the "Additional Parcels") may be annexed to the Subdivision and subjected to the terms and conditions of this Declaration and jurisdiction of the Association at any time by the Developer's executing an amendment to this Declaration which specifically incorporates Phase II or all or a portion of the Additional Parcels into this Declaration solely for such purpose and recording same in the Benton County Real Estate Records. Owners of lots in the Additional Parcels shall be solely responsible for the repair, maintenance, and upkeep of all private roads, utilities, common areas, parking areas and foot trails within any easements established for the use and benefit of such lots and shall share with the owners of the Lots and Phase II in the costs of maintaining the Dock Access Easement and foot trail serving all lots in the Subdivision





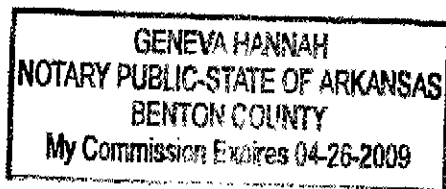
LLC., the party in the foregoing instrument and state that he had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 14<sup>th</sup> day  
of 20<sup>th</sup> Sept., 2007.

NOTARY PUBLIC

*Geneva Hannah*

My Commission Expires:



Benton County, AR  
I certify this instrument was filed on  
09/18/2007 3:08:06PM  
and recorded in DEED Book  
2007 at pages 0038288 - 0038296  
Brenda DeShields-Circuit Clerk

1st

Brenda DeShields-Circuit Clerk  
Benton County, AR  
Book/Pg: 2007/46533  
Term/Cashier: CASH5/DJONES  
11/13/2007 2:37:17PM  
Tran: 18453  
Total Fees: \$20.00  
Book 2007 Page 46533  
Recorded in the Above  
BEED Book & Page  
11/13/2007

**AMENDED  
DECLARATION OF RESTRICTIVE  
COVENANTS, DEDICATION OF  
EASEMENTS AND ROAD  
MAINTENANCE AGREEMENT FOR  
THE ESCARPMENT AT ROCKY  
BRANCH**

WHEREAS, the Declarants amending the Declaration of Restrictive Covenants, Dedication of Easements and Road Maintenance Agreement for The Escarpment At Rocky Branch made and entered into the 14<sup>th</sup> day of September 2007 by The Escarpment, (the Declarant); as recorded in the Benton County Circuit Clerk's Office of Benton County Arkansas at Book 2007 Pages 38288 through 38296 on September 18<sup>th</sup> 2007 are the owners of at least three fourths (3/4's) of the "non-developer" lots and all of the "developer lots" of The Escarpment At Rocky Branch on the date of this Amended Declaration of Restrictive Covenants, Dedication of Easements and Road Maintenance Agreement.

WHEREAS, the Declarants wish to amend certain easements for the benefit of the Lots, Therefore, the terms and provisions of the original Declaration of Restrictive Covenants, Dedication of Easements and Road Maintenance Agreement for The Escarpment at Rocky Branch are hereby specifically amended to provide as follows:

**B. EASEMENTS**

3. There are hereby established perpetual parking and lake access easements as shown on the Plat, which shall include the right to install, maintain, repair, replace and extend parking areas and trails for foot traffic. No parking or parking easement shall interfere with ingress and egress into or onto any lot. Parking on Blue Water Ridge where Blue Water Ridge terminates on Lot 6 will not be allowed. The ten (10') foot egress/ingress and utility easement along the western boundary line of lot 6 is not and shall not be used as a parking easement.

**GENERAL**

The invalidity of any one of the portions of this document shall in no way affect any other provisions which shall remain in full force or effect.

This document may be modified or amended at any time by affirmative vote of the Declarant (The Escarpment, L.L.C., it successors or assigns) and by three fourths (3/4) of the lots owned by persons other than the Declarant at the time of such amendment or modification so long as the Declarant maintains an ownership interest in any lot. At such time as the Declarant no longer holds an interest in any lot, the requirement of consent of the Declarant to such amendment shall lapse. Such amendment is effective as of the later of (a) the date stated in such amendment or (b) the date such amendment is recorded in the Clerk's Office of Benton County,



Brenda DeShields-Circuit Clerk  
Benton County, AR  
Book/Ps: 2007/47224  
Term/Cashier: CASH5/DJONES  
11/19/2007 1:27:15PM  
Tran: 19006  
Total Fees: \$30.00  
Book 2007 Page 47224  
Recorded in the Above  
DEED Book & Page  
11/19/2007

**Corrected Amended Declaration of Restrictive Covenants,  
Dedication of Easements and Road Maintenance Agreement  
for The Escarpment at Rocky Branch**

**Grantors:** The Escarpment, L.L.C. and Gregory J. Duker and  
Ann Duker

**Date:** November 9, 2007

**\*\*\*Re-recording to attach signature page**

1st

Brenda DeShields-Circuit Clerk  
Benton County, AR  
Book/Pg: 2007/46533  
Term/Cashier: CASH/D.JONES  
11/13/2007 2:37:17PM  
Tran: 18453  
Total Fees: \$20.00  
Book 2007 Page 46533  
Recorded in the Above  
DEED Book & Page  
11/13/2007

Correction  
**AMENDED**  
**DECLARATION OF RESTRICTIVE  
COVENANTS, DEDICATION OF  
EASEMENTS AND ROAD  
MAINTENANCE AGREEMENT FOR  
THE ESCARPMENT AT ROCKY  
BRANCH**

\*\*\*Re-recording to attach  
signature page.

WHEREAS, the Declarants amending the Declaration of Restrictive Covenants, Dedication of Easements and Road Maintenance Agreement for The Escarpment At Rocky Branch made and entered into the 14<sup>th</sup> day of September 2007 by The Escarpment, (the Declarant); as recorded in the Benton County Circuit Clerk's Office of Benton County Arkansas at Book 2007 Pages 38288 through 38296 on September 18<sup>th</sup> 2007 are the owners of at least three fourths (3/4's) of the "non-developer" lots and all of the "developer lots" of The Escarpment At Rocky Branch on the date of this Amended Declaration of Restrictive Covenants, Dedication of Easements and Road Maintenance Agreement.

WHEREAS, the Declarants wish to amend certain easements for the benefit of the Lots, Therefore, the terms and provisions of the original Declaration of Restrictive Covenants, Dedication of Easements and Road Maintenance Agreement for The Escarpment at Rocky Branch are hereby specifically amended to provide as follows:

**B. EASEMENTS**

3. There are hereby established perpetual parking and lake access easements as shown on the Plat, which shall include the right to install, maintain, repair, replace and extend parking areas and trails for foot traffic. No parking or parking easement shall interfere with ingress and egress into or onto any lot. Parking on Blue Water Ridge where Blue Water Ridge terminates on Lot 6 will not be allowed. The ten (10') foot egress/ingress and utility easement along the western boundary line of lot 6 is not and shall not be used as a parking easement.

**GENERAL**

The invalidity of any one of the portions of this document shall in no way affect any other provisions which shall remain in full force or effect.

This document may be modified or amended at any time by affirmative vote of the Declarant (The Escarpment, L.L.C., its successors or assigns) and by three fourths (3/4) of the lots owned by persons other than the Declarant at the time of such amendment or modification so long as the Declarant maintains an ownership interest in any lot. At such time as the Declarant no longer holds an interest in any lot, the requirement of consent of the Declarant to such amendment shall lapse. Such amendment is effective as of the later of (a) the date stated in such amendment or (b) the date such amendment is recorded in the Clerk's Office of Benton County,

Book 2007 Page 47225  
Recorded in the Above  
DEED Book & Page  
11/19/2007

Arkansas.

Except as herein specifically stated the original Declaration of Restrictive Covenants, Dedication of Easements and Road Maintenance Agreement for the Escarpment at Rocky Branch as above referenced shall remain in full force and effect.

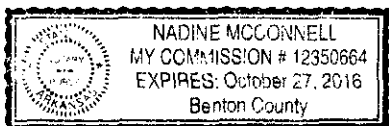
WITNESS the following signature and seal.

By: *Pete P. Hatcher*  
The Escarpment, L.L.C.

STATE OF Arkansas )

COUNTY OF Benton )

This instrument was acknowledged before me this 9th day of November 2007, by The Escarpment, L.L.C.



*Nadine McConnell*  
Notary public, State of Arkansas

Printed name: Nadine McConnell

My commission expires: 10/27/2016

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

By: \_\_\_\_\_  
Gregory J. Duker

By: \_\_\_\_\_  
Ann Duker

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Gregory J Duker and Ann Duker.

\_\_\_\_\_  
Notary public, State of Illinois

Printed name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

