

Declaration of Covenants, Conditions and Restrictions
for
Marbella - Phase 1
a residential subdivision in Benton County, Arkansas

THESE Covenants, Conditions and Restrictions made this 26 day of June, 2014 by KSBD, LLC, an Arkansas Limited Liability Company, referred to herein as "Developer", and by **Marbella - Phase 1 - Property Owner's Association, Inc.**, referred to herein as "The Association" or "The POA" concerning the residential subdivision known as Marbella, referred to herein as "The Subdivision".

WHEREAS, the Developer desires that the entire subdivision constitute a single residential community, with rights and obligations toward the ownership and maintenance of common areas at or near the entries to the subdivision, common park area, as well as the signs identifying the subdivision; and

WHEREAS, the Developer is the owner of all lots in Phase one (1), of the Marbella Subdivision (the "Subdivision") located in Benton County, Arkansas as reflected upon a plat of said subdivision, filed in Plat Book 2014 at page 323 of the Plat of Records of Benton County, Arkansas, being more fully described as follows:

Lots 1 through 72, Marbella Subdivision, Phase 1, Cave Springs, Benton County, Arkansas.

and

WHEREAS, the Developer is in the process of developing and platting the aforesaid real property into a residential community, and contemplates subdividing such property into individual, quality, single family residential lots, and, in addition, contemplates setting aside certain tracts of land for common landscaped areas, for signs identifying the subdivision and other amenities; and

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

WHEREAS, the Developer and the Association 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 property 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.

THEREFORE, in consideration of the foregoing, the Developer and the Association hereby subject all of the real property described above, now known as Marbella, to the covenants, charges, assessments, conditions and restrictions set forth in this Declaration, which covenants and restrictions shall run with the land and be binding upon and inure to the benefit of the Developer, its successors, transferees and assigns and all other persons or entities who or that may have, at any time, any right, title or interest in all or any part of the Subdivision. Each future owner, by accepting a deed and taking title to any lot within the Subdivision, acknowledges and agrees to and accepts the provisions of this Declaration with respect to such lot and any residence located or to be located thereon.

I. GOVERNING BODIES:

- A. **GENERALLY.** This Declaration shall be implemented by the Board of Directors of the POA ("Board of Directors" or "the Board") and the POA's Architectural Control Committee and Violations Committee, as established herein.

B. **POA BOARD OF DIRECTORS.** The Board of Directors of the POA shall be elected and shall serve terms as outlined in the Bylaws of the Association. The Board of Directors of the POA shall be elected and shall serve terms as outlying in the Bylaws of the Association; provided, however, that for a period of time beginning as of the date of record of this original Declaration and continuing until the earlier of (A) the date the Developer no longer owns any lots in the Subdivision or (B) the ____ of _____, 20__ (a date certain) (the "Developer Control Period").

C. **ARCHITECTURAL CONTROL COMMITTEE.**

1. **PURPOSE AND COMPOSITION.** To insure that all dwellings and accessory buildings constructed in the Subdivision have good quality materials and workmanship and are compatible with other dwellings and accessory buildings constructed or to be constructed in the Subdivision, there is hereby established an Architectural Control Committee (hereinafter referred to as "ACC". Upon its initial formation, the Developer shall act as the ACC for the duration of the Developer Control Period. Following the Developer Control Period, the ACC shall be composed of two (2) members, to be appointed by the Developer, whose shall serve until the P.O.A. is formed. Once the P.O.A. is formed and there is a sufficient number of property owners, the developer will seek volunteers, from the pool of owners, two persons to serve as the ACC. Terms shall be for two (2) years, commencing upon the date of the execution of this Declaration. Thereafter, the members of the ACC shall be appointed by the Board of Directors of the POA. No absentee owner, other than the Developer's appointed representative, may serve on the ACC. In the event of the death or resignation of any member prior to the expiration of his term, the Board of Directors of the POA shall appoint a successor to complete the term of the deceased or resigning member.

2. **AUTHORITY AND DUTIES.**

a. Any property owner seeking to construct a new home or other pertinent structure, or to add or to modify any portion of the exterior of an existing home, shall submit the plans and written specifications to the ACC for review. The written plans and specifications for 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, accessory buildings, dog runs, gazebos, arbors, roofing material, exterior lighting, exterior building materials, and other similar construction, as well as the builder(s) which the property owner intends to use to erect the same. In addition, methods to prevent erosion and sediment loss from the site must comply with all current storm water regulations by the Arkansas Department of Environmental Quality and is the responsibility of the lot owner.

b. No construction, change, modification or alteration shall commence until the plans and specifications detailing the nature, kind, shape, height, construction materials, and location of the improvements on the lot, and a landscaping plan for the lot, shall have been submitted to, and approved in writing by, the ACC. In the event the ACC fails to approve or disapprove said plans and specifications within thirty (30) 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 Sections II and 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 this 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 advisory and approval functions; 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 owner's property or buildings to be constructed.
- e. Only building contractors who have been approved by the ACC in conjunction with plans submitted to it by a property owner shall be allowed to construct any improvements within the Subdivision. Additionally, the ACC may require the building contractor to secure an appropriate letter of credit prior to commencing construction. Any building contractor participating in any fashion on any job in the subdivision impliedly consents to the authority of the ACC to set forth additional requirements or restrictions as may be deemed appropriate. If deemed necessary due to the lack of cleanliness by the builders, the ACC may require a clean-up deposit of \$200.00.

3. ARBITRATION OF DISPUTES.

- a. In the event of a dispute between a lot owner and the ACC involving a disapproval of planned construction or any other aspect of the ACC's function, the lot owner shall make a written demand upon the ACC for arbitration and shall in such written demand designate an architect licensed in the State of Arkansas to serve as an arbiter. Upon receipt of a written demand for arbitration and the name of the architect designated by the lot owner, the ACC may vote to submit the dispute to the architect designated by the lot owner as the sole arbiter, or the ACC may, within fifteen (15) days from the date of such written demand, give written notice to the lot owner of the name of a licensed architect to serve as an arbiter, and the two architects so selected shall then agree on a third person, whether an architect or not, and the three persons so appointed shall then proceed to consider the written position or statement of the lot owner and ACC, conduct such study or investigation as the committee of

arbiters deem appropriate and render a written decision, signed by at least two of the arbiters, which written decision shall be final and binding on the ACC and the lot owner.

- b. It is specifically intended that the provisions within this section for arbitration of disputes shall replace litigation as the method for resolving disputes under this Declaration. Any fees or costs incurred by a lot owner for the services of an architect shall be at the lot owner's expense, as well as one-half (½) of any fees or expenses charged by the third arbiter, and no award of fees or expenses shall be made by the arbiters. Any expenses incurred by the ACC in regard to arbitration or enforcement of arbitration decisions shall be paid by the POA, and if the Association does not have adequate funds for such payment, these expenses shall be shared equally by the owners of each lot in the subdivision (with the exception of the lot owner involved in the arbitration) in the form of a special assessment by the POA.
4. **VIOLATIONS AND ENFORCEMENT.** In the event the ACC determines, by its own investigation or upon complaint by a lot owner that any lot owner has violated the Architectural Control Provisions of this Declaration, or any other provision of this Declaration, the ACC shall have the right to serve a written demand for arbitration designating a licensed architect as an arbiter in the case of a violation of the Architectural Control Provisions of this Declaration, or designating any third party as the arbiter for any other violation. A lot owner receiving such written demand from the ACC shall, within fifteen (15) days from the receipt of such written demand, respond in writing accepting the designated arbiter as the sole arbiter, or designating in writing a second arbiter, and in such event, the two arbiters shall agree upon a third, and the arbitration committee shall proceed as set forth above to render a written decision. Any decision of a sole arbiter or committee of arbiters shall be binding on all lot owners within the subdivision, and in the event the decision requires actions be taken by a lot owner, the lot owner shall comply with such requirement within thirty (30) days or within the time specified in the written decision of the arbiters, whichever time period is longer. Should the lot owner fail to comply within the applicable time period, any lot owner, the ACC, or the POA, shall have the right to bring an action in a court of competent jurisdiction to enforce the arbitration decision and shall be entitled to recover a judgment against such lot owner for all costs and expenses incurred in the enforcement of such arbitration decision.
 5. **EROSION CONTROL.** The building Contractor shall be solely responsible for complying with all state and federal regulations pertaining to the authorization to discharge under the National Pollution Discharge Elimination System and Arkansas Water and Air Pollution Control.

II. BUILDING AND USE RESTRICTIONS:

- A. **BUILDING SITE.** A "building site" shall consist of one or more numbered lots as shown on the Final Plat or any modifications or adjustments thereto. No individual lot may be split to create two or more lots. The developer of the subdivision or the POA is allowed to construct structures on Common Property such as maintenance facilities, signs, or landscaping elements.

- B. **USE OF BUILDING SITE.** No building or structure shall be erected, constructed, maintained, or permitted on such residential lots, except on a "building site" as defined above.
- C. **BUILDING USE.** No building, except a single-family residential building, with approved guest accommodations, caretaker and household servant's quarters, together with detached garage and/or such other accessory buildings as may be permitted by local land use or ordinances, and as may be approved by 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. All such buildings shall conform to all Benton County ordinances as may apply. Additionally, no easements for ingress, egress, utilities or for any other use may be placed on any lot for the purpose of gaining access or providing utilities to any property outside of the subdivision.
- D. **BUILDING TYPE.**
1. No residence shall be constructed that is less than two thousand (2,000) square feet of heated area, exclusive of carports, garages, porches, basements, storage rooms or other unheated spaces.
 2. A minimum of one (2) two-car garage will be required for each dwelling and must be kept and maintained as part of the house. Detached garages shall require ACC approval, and shall be constructed in the same architectural style and materials as the main residence. All garages shall be side or rear "loaded" in that the garage door must not be seen from the street, except in the case of a corner lot, but must be approved by the ACC.
 3. All driveways shall be constructed of concrete, stone or brick. No gravel, asphalt or dirt driveways shall be permitted. There shall be no driveways directly accessing Wallis Road or Sands Road.
 4. 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.
 5. Any limitations in this Declaration to the contrary notwithstanding, until houses have been constructed on all lots in the subdivision, the Developer shall be entitled to use any lot owned by Developer for construction of model homes, sales offices, construction sheds or for storage of materials.
- E. **BUILDING MATERIALS.** The exterior walls of each building constructed or placed on any lot shall be ninety percent (90%) masonry material, which shall include brick, stone, stucco, or other similar masonry material, unless specifically approved by the ACC. This restriction shall not apply to the eaves or fascia of any such building, or other Architectural accents. All exterior colors of any material must be compatible and approved by the ACC. There shall be no Masonite, T111, vinyl or other similar product used as siding.

- F. **ROOFS.** All roofing material shall be approved by the ACC prior to the installation of such materials. Such materials shall be limited to 25-year architectural shingles, cedar shakes, cedar shingles, slate or tile. No metal roofs shall be permitted. The roof pitch of any structure shall be an eight foot rise over a twelve foot run (8' x 12') minimum. Back porches can be less slope as approved by the ACC.
- G. **YARD SPACE RESTRICTIONS AND BUILDING LOCATION.** All set back distances shall be in accordance with the recorded Final Plat for the subdivision. No lot shall be subdivided into smaller lots or parcels than shown on the recorded Plat for the purpose of creating additional building sites or lots, except that a lot may be divided to combine portions of it with adjacent lots on both sides to enlarge the building sites on said adjacent lots.
- H. **EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved on each lot as reflected on the recorded plat. Within these easements, no structure, planting or other material (except driveways across any lot) shall be placed or permitted to remain which may interfere with the operation, installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water toward or through drainage in the easement. Driveways permitted within the easement shall be constructed so as not to prevent any flow of water or change the flow in the area of each lot and all improvements in the easement shall be maintained continuously by the owners of the lot, except for those improvements for which a public authority, POA, or utility company is responsible.
- I. **EXTERIOR MECHANICAL DEVICES.** Air condition 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. All such devices shall be located in the rear yard area only.
- J. **YARDS AND LANDSCAPING REQUIREMENTS.** All plans and specifications for new constructions shall include landscaping around all above-ground utilities that are in the front yards i.e. electrical boxes, telephone pedestals, or gas meters. All landscaping shall be completed within ninety (90) days of completion of construction or occupancy, whichever occurs first. The refund of any clean up deposit secured from any approved building contractor will not be returned unless the conditions of this paragraph have been completed, in addition to any further clean up which may be necessary. All toys, newspapers, etc. must be kept picked up so as not to accumulate in an unsightly manner in view of any street. Front yard grass is to be kept mowed so as to never be above six inches (6").
- 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, provided that no chain link fences shall be permitted. No fence shall have a height in excess of six (6) feet. Wood fences shall be of wood privacy construction so that the exterior and interior portions are identical. The front line of any fence shall not exceed the front elevation of the residence around which it is placed. Any necessary alteration to fences to maintain utilities will be done at the owner's expense. Dog pens, properly 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. **MAILBOXES.** All mailboxes shall be constructed either of cast metal or masonry material and must be approved by the ACC as to 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.
- M. **ACCESSORY BUILDINGS.** All outbuildings, guesthouses, servant quarters and accessory buildings shall be approved by the ACC, and shall be placed behind the back line of the house. No wall or roof in of any such building shall exceed the lines that run from either side of the residence to the back lot line. All such buildings shall be constructed of similar style and materials as that of the main residence.

III. **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 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 or the POA for any expense it incurs in alleviating the noxious or offensive activity, annoyance or nuisance.
- B. **OIL AND MINING OPERATIONS.** No oil drilling, oil development operations, 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. **SIGNAGE.** No signage shall be permitted on any lot or on any house after it is initially sold unless approved otherwise by the ACC. However, that one "For Sale" sign may be placed in the front of the property within ten (10) feet of the curb, and such sign shall be no larger than five (5) square feet, and no more than three (3) feet high. Any such "For Sale" sign must be removed within ten (10) days of the date of the sale of the property. However, the Developer hereby reserves the right to erect construction site signs, lot signs, and signs to designate the name of the addition and the advertisement thereof, without regard to the above restriction. The Developer or the ACC reserves the right to remove any sign which it deems to be obnoxious or non-compliant or unsightly due to shape, color, size, etc. Further, the Developer reserves the right to display within the subdivision for a period of five (5) years after the adoption of this Declaration signs advertising the availability of lots for sale by the Developer, which shall not be subject to the size restriction set forth in this paragraph. Contractors may display only one contractor's sign and a building permit. No other advertising signs shall be permitted.
- D. **SIGHT DISTANCES AT INTERSECTIONS.** No obstructions, including landscaping, shall be permitted at or near intersections of streets within the subdivision which block or obstruct a reasonable sight distance for vehicular and pedestrian traffic within the subdivision.
- E. **CURBS AND STREETS.** All street cuts are specifically prohibited unless the Developer grants a waiver. No curb cut for driveways shall be closer than five (5) feet to the side property line. All curbs are to be neatly blended into driveway radius.

- F. **PARKING.** All residences must have off-street parking only, and shall not be permitted to park off of designated driveways or parking pads. The ACC shall have the right to have vehicles in violation of this provision towed at the owner's expense. Recreational vehicles, boats, trailers, campers, and the like, shall be stored, placed or parked in such a manner so as not to be visible from a street, or adjoining lot. No recreational vehicles and or equipment may be parked in the side or front yard of a residence for a period exceeding two (2) days. Automobiles, trucks, or other vehicles or machines shall not be repaired, overhauled, serviced or otherwise worked on in the street, driveway, or yard.
- G. **LOT AND GROUND MAINTENANCE.** No lot or easement 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.
- H. **ANIMALS.** No animals, livestock, swine 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 not kept or maintained for commercial purposes, and provided that they are registered with the county, if required. Household pets shall be maintained in a clean and sanitary condition and shall not be obnoxious or a nuisance to the surrounding owners. Any owners with pets are required to provide containment or backyard fencing in accordance with the ACC specified acceptable fence requirements. Pet owners shall be liable for all damages caused by their pets.
- I. **TEMPORARY INHABITANTS.** The inhabiting of any structure or vehicle such as a boat, trailer, basement, tent, shack, garage, barn, camper, mobile home or other outbuilding shall not be permitted on any residential lot, whether temporarily or permanently.
- J. **PLAY EQUIPMENT AND BASKETBALL GOALS.** No playground equipment, swing sets, trampolines, swimming pools, picnic table or similar equipment is allowed in the front yard of any said lots. No basketball goals or courts may be erected or constructed on the front of any house unless approved by the ACC.
- K. **CLOTHING LINES.** No outdoor clotheslines shall be permitted.

IV. COMMON SPACE AND AMENITIES:

- A. **CONVEYANCE OF COMMON SPACE.** Upon the filing of the final Subdivision plat, the mentioned common tracts located in the Subdivision shall be conveyed to and accepted by the Association.
- B. **MAINTENANCE OF COMMON PROPERTY.** Maintenance of the common property 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 their lots to the total number of lots

that have been created by the filing of the final subdivision plat and any amendments thereto.

V. GENERAL AND SPECIAL ASSESSMENTS FOR ASSOCIATION:

- A. PAYMENT OF ASSOCIATION DUES AND ASSESSMENTS.** By acceptance of the deed or other instrument of conveyance for his or her lot within the subdivision, each lot owner shall be deemed to covenant and agree to pay to the Association annual assessments and special assessments for operating expenses incurred by the Association and for maintenance and care of the common properties. In no event shall an assessment fee be applicable at anytime to any lot owned by the Developer. Such assessments shall be fixed, established, and collected from time to time as provided in this Declaration. 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 property unless expressly assumed by such successors. The annual assessment shall be determined as set for in the Bylaws of the P.O.A. The initial annual assessment fee shall be \$100.00. The fee is due and payable to the Association on the first day of January each year, with the first such assessment being prorated and paid at closing according to time of conveyance of a lot. 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 Association may levy, in addition to annual assessments, a special assessment or assessments from time to time for the purpose of defraying, in whole or in part, the cost of reconstruction, repair, or replacement of the landscaping and signage on the common properties in the Subdivision, as well as any common amenity owned by the Association, including fixtures and appurtenances related thereto. The Board of Directors of the Association must approve any special assessments or change in annual assessments.
- B. NOTICE OF ASSESSMENT.** It shall be the duty of the Association to notify all owners or contract purchasers of lots within the Subdivision, whose addresses shall be supplied by the owner or contract purchaser to the Association, by sending written notice to each of such owners within fifteen (15) days after the date on which the assessment has been fixed or levied, giving the amount of the charge or assessment for the current year, when the same shall be due, and the amount due for each lot. Failure of the Association to levy an assessment or charge for any one year shall not affect the right of the Association to issue and collect assessments in future years. Failure to deliver or levy an assessment due to lack of an address for the owner of any particular lot within the Subdivision or for any other reason, shall not discharge the obligation or 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. FAILURE TO PAY.** Any general or special assessment levied as set forth in this Declaration shall become a lien on the affected real estate 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 shall constitute a lien on the affected lot. 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 certificate so filed, or for any lien so filed, the Association shall be entitled to collect from the owner or owners of the property described in such certificate or 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 until the termination of the execution of the judgment establishing the same. In the event legal proceedings are commenced to collect any such assessment, or if the services of any attorney are retained by the Association in connection 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 as provided above.

D. PURPOSE OF ASSESSMENTS. 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, service, and facilities devoted to the above-state purpose and related to the use and enjoyment of the common properties and of the homes 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 property and amenities and improvements thereon as provided in this Declaration.
3. To pay expenses to carry out the above, such as attorney's fees, manager's fees, expenses of liability, fire, and other insurance, bookkeeping and accounting expenses, and any and all other expenses that may from time to time be deemed necessary to carry out the intent of this Declaration by the Association.
4. To protect property values in the Subdivision by promoting pride in and enthusiasm for it; to work for improved transportation, schools, libraries, and recreation facilities within the community in which the Subdivision is located, and to do all lawful things and tasks that the Association, in its discretion may deem to be in the best interests of the Subdivision and the owners of the lots in the Subdivision.

VI. MISCELLANEOUS AND GENERAL PROVISIONS:

A. MEMBERSHIP IN THE PROPERTY OWNERS ASSOCIATION. Each owner, by purchasing any lot in the Subdivision, shall automatically become a member of the Association 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. 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 term "owner" shall be deemed to include the purchase under an installment contract, regardless of 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. Multiple owners of a single lot, either as joint tenants, tenants in common, or tenants by the entirety, shall collectively constitute one member of the Association and shall of purposes of voting at meetings of the Association or on issues submitted to the members, cast one vote collectively for each lot owned, except that the Developer shall have four (4) votes per lot until the Developer has conveyed all lots to owners.

- B. **TERMINATION OF MEMBERSHIP.** On transfer, conveyance, or sale by any owner of all or his or her or its interest in any Subdivision lot, such owner's membership in the Association shall thereon cease and terminate.
- C. **VOTING PROCEDURES.** 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.
- D. **ADDRESS.** The official address of the Association is to be provided to all members by the Board of Directors of the Association, and shall remain so until changed by a majority vote of the Board of Directors of the Association, at which time the Association shall notify each member thereof of the change in address.
- E. **NOTIFICATION OF PURCHASE.** Each lot owner or contract purchaser, upon purchase of such lot or upon contracting for the purchase of such lot, shall immediately notify the Association of such owner's or purchaser's name and address. Failure to provide the Association with a name and proper mailing address shall constitute a waiver of any notice otherwise required hereunder.
- F. **MODIFICATION OF POWERS.** By a vote of a majority of the owners of all the lots within the Subdivision, the Association may be given such additional powers and duties as may be deemed necessary and reasonable, and by such vote.
- G. **ADHERENCE TO LOCAL, STATE, AND FEDERAL LAW.** The Association shall, at all times, observe all of the laws, regulations, ordinances, and the like of all governmental authorities recognized in the County of Benton, 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 shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby.
- H. **OUTSIDE AGENTS.** Subject to the limitations set forth in this Declaration, 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.

- I. **TERMINATION.** This Declaration may be terminated, and all of the real property now or hereafter affected may be released from all or any part of the terms and conditions of this Declaration, by the owners of seventy-five percent (75%) of the properties subject hereto at any time it is proposed to terminate this Declaration, by executing and acknowledging an appropriate written agreement or agreements for that purpose, and filing the same with the office of the Circuit Clerk of Benton County, Arkansas.

- J. **BINDING NATURE OF COVENANTS.** All of the provisions of this Declaration shall be deemed to be covenants running with the land, and shall be binding on and inure to the benefit of the owners of the properties, their heirs, successors, shall be taken to hold, agree, and covenant with such owners, observe all of the terms and conditions contained in this Declaration.

- K. **AMENDMENT OF COVENANTS.** This Declaration may be amended at any time with the written approval of the owners representing not less than seventy-five (75%) percent of the votes within the subdivision. No amendment shall be allowed which would be in violation of the Benton County Standards and Regulations for the Development of Subdivision of land in effect at the time of the amendment. This Declaration cannot be amended without written consent from the developer within the first five (5) years after filing.

VII. ENFORCEMENT OF COVENANTS AND RESTRICTIONS:

- A. **PROVIDING NOTICE OF VIOLATION.** Any property owner within the subdivision may enforce this Declaration by serving written notice of an alleged violation on the offending or violating property owner. If, within ten (10) days after delivery of a written notice, the violation has not been corrected or the property owner receiving such notice has not delivered written assurances to the complaining property owner that the violation will be corrected without unreasonable delay under the circumstances, the aggrieved property owner shall have the right to serve a written notice on the property owner in violation or alleged to be in violation of a demand for arbitration designating the name of an arbiter.

- B. **RECEIVING NOTICE OF VIOLATION.** The party receiving such written demand for arbitration shall act within ten (10) days from the date of such receipt to accept the designated arbiter as the sole arbiter, or to designate in writing a second arbiter. If a second arbiter is designated, the two arbiters so selected shall then agree on a third and the arbitration committee or the sole arbiter shall then proceed to receive written statements from both parties, and shall render a written decision. By purchase of a lot in Marbella Subdivision subject to this Declaration, each lot owner agrees that the decision of the arbiter or committee of arbiters shall be final and binding. Each party to this arbitration shall bear the cost or expenses of the arbiter they have appointed and shall share equally the cost of the third arbiter. If a sole arbiter is accepted, the party appointing the arbiter shall bear the arbiter's cost and expenses.

- C. **FAILURE TO COMPLY.** If a lot owner fails to comply with the written decision of an arbiter or arbitration committee within thirty (30) days or within the time specified in the written decision by the arbiters, any lot owner shall have the right to enforce the written arbitration decision in a court of competent jurisdiction, and shall be entitled to recover all costs and expenses incurred in connection with such enforcement.

D. **PURPOSE OF ARBITRATION.** This provision for arbitration of disputes, as well as the provision for arbitration of ACC disputes, is intended to promote a prompt, efficient and economical resolution of disputes arising within the subdivision and to prevent the delays and expense normally associated with litigation of such disputes. It is the sincere belief of the Developer that these arbitration provisions will be beneficial and will promote goodwill within the subdivision, and the owner strongly urges each lot owner to carefully consider any matter before demanding arbitration. No court litigation may be commenced with regard to disputes arising under this Declaration, except to enforce an arbitration decision.

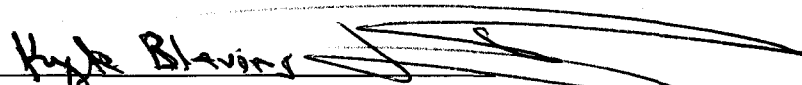
E. **FAILURE TO RESPOND.** Should an individual lot owner fail to respond to a written demand for arbitration within the time limit specified herein, the party demanding arbitration may petition a court of competent jurisdiction in Benton County, Arkansas for the appointment of the remaining two members of the arbitration committee, with the cost of such action to be at the expense of the party who has failed to respond without good cause as determined by the court. In the event the two arbiters designated by the parties to a dispute cannot agree upon a third arbiter within a reasonable amount of time, either party to the dispute may petition a court of competent jurisdiction in Benton County, Arkansas to appoint a third arbiter, and the cost of such legal proceeding shall be borne equally by the parties to the dispute.

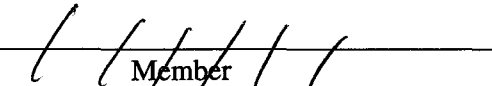
F. **FAILURE TO ENFORCE.** The failure of the Developer, the POA, the ACC, or any lot owner to enforce any provision of this Declaration, or to fail to take action on any purported violation hereof, shall not constitute a waiver of the right to do so, and the Developer, the POA and the ACC shall incur no liability whatsoever for such failure.

G. **SEVERABILITY:** Invalidation of any one of these covenants by judgement or court order shall, in no way, affect any of the provisions hereon contained.

EXECUTED this 8th day of September, 2014.

**Marbella
PROPERTY OWNER'S
ASSOCIATION, INC.**

By: 
Member

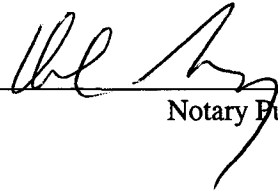
By: 
Member

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)SS.
COUNTY OF BENTON)

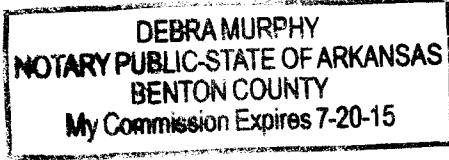
Before me, the undersigned, a Notary Public duly commissioned and acting in and for the said County and State, on this day personally appeared Kyle Blevins, _____, and 11111111, representing Marbella, and _____, representing Marbella PROPERTY OWNER'S ASSOCIATION, INC., known to me to be the person whose name is subscribed to the foregoing instrument, and stated that they executed the same for the purposes and consideration therein expressed.

WITNESS my official seal on this 8th day of September, 2014.



Notary Public

My Commission Expires:



Benton County, AR
I certify this instrument was filed on
09/09/2014 3:29:36PM
and recorded in DEED Book
2014 at pages 50732 - 50745
Brenda DeShields-Circuit Clerk