

**Restatement
of
Declaration of Covenants, Conditions and Restrictions
for
Stonebriar Subdivision
Benton County, Arkansas**

Brenda DeShields-Circuit Clerk
Benton County, AR
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We, the undersigned, being at least two-thirds (2/3) of the owners of the lots in Stonebriar Subdivision, do hereby adopt this Restatement of Declaration of Covenants, Conditions and Restrictions for Stonebriar Subdivision, Benton County, Arkansas.

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Stonebriar Subdivision, Benton County, Arkansas was recorded in the records of Benton County, Arkansas on August 1, 2001 in Book 2001 at Page 115063, and

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Talamore Subdivision, Benton County, Arkansas were recorded in the records of Benton County, Arkansas in four separate but otherwise identical documents, except for the property covered by each of them, on May 24, 2000 in Book 00 at Page 50951, on August 4, 2000 in Book 00 at Page 78482, on August 4, 2000 in Book 00 at Page 78496, and on November 27, 2000 in Book 00 at Page 121966 are very similar to the Declaration of Covenants, Conditions and Restrictions for Stonebriar Subdivision, Benton County, Arkansas, and

WHEREAS, Talamore Subdivision and Stonebriar Subdivision are adjacent to each other, were developed by the same developer, and have many things in common, and

WHEREAS, the owners of the lots in Talamore Subdivision and in Stonebriar Subdivision desire to have one property owners association and otherwise to be operated in conjunction with each other.

NOW THEREFORE, the undersigned hereby agree that the Declaration of Covenants, Conditions and Restrictions for Stonebriar Subdivision, Benton County, Arkansas be, and hereby are, restated as follows:

**SECTION ONE
GOVERNING BODIES**

A. **GENERALLY.** This Declaration and the similar Declaration of Talamore Subdivision shall be implemented by the Board of Directors ("Board of Directors" or "the Board") of the Talamore/Stonebriar Property Owners' Association, Inc. ("POA" or "the Association") and the POA's Architectural Control Committee, as established herein.

B. **POA BOARD OF DIRECTORS.** The Board of Directors of the POA shall consist of five (5) directors, three (3) of which shall own lots and reside in Talamore Subdivision and two (2) of which shall own lots and reside in Stonebriar Subdivision. The existing three (3) Directors shall continue to

serve on the Board until December 31, 2008. As soon as reasonably possible after the adoption of both this Restatement and a similar Restatement by the lot owners of Stonebriar Subdivision, two (2) new Directors shall be elected as hereinafter provided. One (1) of the two (2) new Directors shall own a lot and reside in Talamore Subdivision, and one (1) shall own a lot and reside in Stonebriar Subdivision. These two (2) new Directors shall serve until December 31, 2009.

1. Term of Office. Beginning January 1, 2009, all Directors shall serve two (2) year terms. The terms shall be staggered so that two (2) Directors are elected in one year and three (3) Directors are elected in the next year. No person may serve more than two (2) consecutive terms as a Director, but after two (2) years of not being a Director, a former Director may again seek election as a Director for up to two (2) terms again. A person appointed to fill a Director vacancy may still be elected to two (2) consecutive terms as a Director immediately following his or her service as an appointed Director.

2. Election of Directors. Directors shall be elected as follows:

a. Time of Election. Beginning in 2008, elections shall be held in November of each year. Ballots shall be mailed on the first Monday in November and shall be returned by the first Monday in December in order to be counted.

b. Eligibility to Vote. There shall be one vote for each lot in Talamore Subdivision and in Stonebriar Subdivision. Joint owners of one lot shall have only one vote together. Owners of more than one lot shall have a number of votes equal to the number of lots owned. Lot owners in both Talamore Subdivision and Stonebriar Subdivision may vote on all candidates even though the candidate and the lot owner may reside in different subdivisions.

c. Nomination. In order to be a candidate for the Board of Directors, a person must (1) reside within one of the two Subdivisions, (2) be in good standing with the Association, (3) have his or her assessments paid current, (4) not be involved in any arbitration or litigation with the Association, (5) not have any liens asserted against his or her property by the Association, and (6) have a petition signed by the owners of at least five (5) lots. All nomination petitions must be turned in by at least four weeks before the ballots are mailed.

d. Votes Required To Be Elected. The candidate receiving the most votes for a position on the Board of Directors shall be elected even if that is less than a majority of the votes cast. There shall be no runoffs. If there is a tie vote, the tie will be broken by the tied candidates flipping a coin. Elected candidates shall take office on the following January 1.

3. Removal by Board. A Director who ceases to reside in one of the two Subdivisions shall be removed as a Director by the Board.

4. Removal by Petition. If a Director is negligent in the performance of his or her duties as a Director, is guilty of criminal activity, or grossly mismanages POA money and if a petition asking for his or her removal signed by the owners of at least fifty (50) lots in the Subdivisions is presented to the Board, then the Board shall vote on whether to remove the Director with a two-thirds (2/3) majority vote being required to remove the Director.

5. Vacancies. If a vacancy develops on the Board, the remaining Directors shall fill the vacancy. A Talamore vacancy shall be filled with a Talamore resident, and a Stonebriar

vacancy shall be filled with a Stonebriar resident.

6. Voting. Each Director shall have one vote on all matters before the Board of Directors.

7. Officers. The Board of Directors shall elect from among themselves a President, a First Vice President in Charge of The Architectural Control Committee, a Second Vice President in Charge of The Grounds and Landscaping Committee, a Secretary, and a Treasurer of the Talamore/Stonebriar Property Owners' Association, Inc. and may elect such other officers as may be needed from time to time. The President, the Secretary, and the Treasurer shall have the duties that normal corporate presidents, secretaries, and treasurers have and such other duties as established by the Board of Directors. The two Vice Presidents shall be in charge of their respective committees. All officers shall be elected annually. A person may not be elected President for more than two consecutive years. There shall be no limitations on the terms of any other office.

8. Appointment of Architectural Control Committee. The Board of Directors of the Association shall have the sole authority to appoint members to the Architectural Control Committee.

9. Enforcement of Declaration of Covenants, Conditions and Restrictions. The Board of Directors of the Association shall have the power to enforce the Declaration of Covenants, Conditions and Restriction of both Talamore and Stonebriar Subdivisions and to review all violations of the said Declarations for proper action.

C. ARCHITECTURAL CONTROL COMMITTEE

1. Purposes and Composition. The Architectural Control Committee ("ACC") shall insure that all dwellings and accessory buildings constructed in the Subdivisions have good quality materials and workmanship and are compatible with other dwellings and accessory buildings constructed or to be constructed in the Subdivisions. The ACC shall be composed of three (3) members appointed by the Board. Members of the ACC shall serve three (3) year terms, except that the chairman of the ACC, who shall be the First Vice President in Charge of The Architectural Control Committee and who shall be elected annually by the Board. No absentee owner may serve on the ACC. In the event of the death or resignation of any member prior to the expiration of his or her term, the Board of Directors of the 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 along with the completed official ACC construction request form signed by the lot owner and the builder. 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

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intends to use to erect the same.

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 written confirmation that sufficiently complete plans and specifications have been submitted. All construction projects shall be completed within two (2) years of the time that they are started. If a construction project is abandoned after the dirt on the lot is disturbed, the builder or lot owner shall restore the lot to its original condition with grass growing to prevent erosion.

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 Two and Three of this Declaration and the Talamore 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 the Talamore 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 Subdivisions. A clean-up deposit of \$500.00 shall be paid by the lot owner. 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 Subdivisions impliedly consents to the authority of the ACC to set forth additional requirements or restrictions as may be deemed appropriate.

SECTION TWO BUILDING AND USE RESTRICTIONS

A. **BUILDING SITE.** A "building site" shall consist of one or more numbered lots as shown on the face of the plats of Talamore and Stonebriar Subdivisions or any modifications or adjustments thereto. No individual lot may be split to create two or more lots. No building or structure shall be

erected, constructed, maintained, or permitted on such residential lots, except on a "building site" as defined above.

B. 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 ordinances, and as may be approved by the ACC, shall be permitted. Such accessory buildings shall not be used for or in connection with multi-family living, and each building site shall be used for no more than one family, together with attendants or domestic servants of that family. 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 Subdivisions.

C. BUILDING TYPE

1. No residence shall be constructed in Talamore Subdivision that is less than three thousand (3,000) square feet of heated area, exclusive of carports, garages, basements, and storage rooms. Of the total heated area, at least three thousand (3,000) square feet of heated area must be on the ground floor, unless the total heated area of the residence shall be three thousand five hundred (3,500) square feet or more, in which event the ground floor may have a total area of no less than two thousand five hundred (2,500) square feet.

2. No residence shall be constructed in Stonebriar Subdivision that is less than two thousand five hundred (2,500) square feet of heated area, exclusive of carports, garages, basements, and storage rooms. Of the total heated area, at least one thousand eight hundred (1,800) square feet of heated area must be on the ground floor.

3. A minimum of one (1) two-car garage, measuring at least twenty-four feet by twenty-four feet (24' x 24') 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.

4. All driveways shall be constructed of concrete, stone or brick only. No gravel, asphalt or dirt driveways shall be permitted.

5. 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.

D. BUILDING MATERIALS. The exterior walls of each building constructed or placed on any lot in Talamore Subdivision shall be one hundred percent (100%) masonry material and in Stonebriar Subdivision shall be ninety percent (90%) masonry material. Masonry material 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.

E. ROOFS. All roofing material shall be approved by the ACC prior to the installation of such materials. Such materials shall be limited to 40 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.

F. YARD SPACE RESTRICTIONS AND BUILDING LOCATION. All set back distances shall be set by the ACC on a lot-by-lot basis. No lot shall be subdivided into smaller lots or parcels than shown on the recorded Plats 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.

G. EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved on each lot as reflected on the recorded plats. 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, the POA, or a utility company is responsible.

H. EXTERIOR MECHANICAL DEVICES. Air conditioner 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. All such devices being installed with the initial construction of a residence shall be included in the landscaping plan for approval by the ACC.

I. YARDS AND LANDSCAPING REQUIREMENTS.

1. Landscaping Plan. All plans and specifications for new constructions submitted to the ACC shall include a landscaping plan, which plan shall include the entire lot and not just the front yard, but the plan may take into consideration ravines and other areas not suitable for grass or landscaping. No landscaping plan shall provide for leaving native grass anywhere in the yard (unless specifically approved by the ACC) but shall instead provide for planted, sodded, or hydra-mulched grass. All landscaping plans that provide for a fence shall comply with the fencing requirement below. All landscaping shall be completed within ninety (90) days of completion of construction or upon occupancy, whichever occurs first. The refund of any clean up deposit secured from the lot owner will not be refunded unless the conditions of this paragraph have been completed, in addition to any further clean up which may be necessary.

2. Maintenance of Grass. The grass on all vacant and built out lots shall be kept mowed so that the grass on the entire lot is no more than six inches (6") tall at any time. A brush hog may be used to mow a vacant lot but may not be used to mow a built out lot. All curbs shall be kept edged on both vacant and built out lots so that no grass grows over the curb. Both the inside and outside of all fences on a lot shall be edged. If mowing the yard on a built out lot results in clippings being blown into the street, the clippings shall on the same day be blown back into the yard or otherwise removed from the street.

3. Forced Yard Maintenance and Lien. After at least one attempt to contact the lot owner,

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the POA shall have the right, but not the obligation, to mow the yard of any lot that is not kept mowed as required and to charge the lot owner with the cost of the mowing plus a \$50.00 administrative fee each time that the lot has to be mowed. If the lot owner does not pay the cost of the mowing plus the \$50.00 administrative fee within thirty (30) days of being billed by the POA, the POA shall have the right to file a lien for the amount of the unpaid debt on the lot with the Benton County Circuit Clerk. As an alternative to filing a lien or in addition to filing a lien, the Board of Directors may bring an action in the District Court of Benton County, Bentonville Division to recover the cost of mowing, interest, the \$50.00 administrative fee, and, if an attorney is used, reasonable attorney fees.

4. Clutter Prohibited. All toys, newspapers, tree limbs, rocks, debris, etc. shall be kept picked up so as not to accumulate in an unsightly manner in view of any street.

J. FENCING. All proposed fences, including the material, location, height, and quality of the fence, shall be included in the landscaping plan submitted to the ACC. Fencing of front yards is prohibited, and a front yard shall mean any yard that borders a street. No chain link fences shall be permitted. No fence shall have a height in excess of eight (8) feet. Wood fences shall be of a "shadow box" construction so that the exterior and interior portions are identical, and shall have two foot by two foot (2'x2') fence pillars that must be constructed of the same material as the main house (i.e. brick, stucco, or stone) and shall be twenty-four (24) to thirty (30) feet apart. For non-wood fences, the ACC shall set the distance between pillars. The front line of any fence shall not exceed the front elevation of the residence around which it is placed, and a residence shall be deemed to have a front elevation on each side that borders a street. 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. No fencing of any kind, other than the fence erected by the developer, shall be allowed along Talamore Boulevard or Highway 72, but a lot owner may construct a fence parallel with and fifty (50) feet from the developer erected fence on Highway 72 only. All variations from these fencing requirements shall be made in writing by the ACC. All existing fences not in compliance with these requirements may be maintained, but if an existing non-compliant fence is destroyed or otherwise is replaced, the replacement fence shall comply with these requirements.

K. MAILBOXES. All mailboxes shall be constructed either of case 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.

L. ACCESSORY BUILDINGS. All outbuildings, guest houses, 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 line of any such building shall exceed the lines which 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.

SECTION THREE ADDITIONAL BUILDING USE AND GENERAL RESTRICTIONS

A. OFFENSIVE ACTIVITIES. No noxious or offensive activity shall be carried on or permitted

upon any lot or on any street or sidewalk adjacent thereto, nor shall anything be done thereon which may be or may become an annoyance or nuisance to adjacent lot owners or to the Subdivisions. 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, provided, however, that one "For Sale" sign may be placed in the front of the property within ten (1) 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 shall have 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 ACC shall have the right to remove any sign which it deems to be obnoxious or non-compliant or unsightly due to shape, color, size, etc. Contractors may display only one contractor's sign and 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 a waiver is granted by the POA. When a driveway is constructed, the curb shall be cut and removed. No curb cut for a driveway shall be closer than five (5) feet to the side property line. All curbs shall be neatly blended into the 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, alley or adjoining lot. Recreational vehicle and equipment may be parked in the back yard of a residence for a period exceeding three (3) days only if it is screened from view by approved fencing, trees or shrubs so as to reasonably screen such vehicle or equipment from view from the street or by neighbors.

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. CLOTHES LINES. No outdoor clothes lines shall be permitted.

SECTION FOUR COMMON PROPERTY

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A. COMMON PROPERTY. The common tracts shown on the faces of the plats of the Subdivisions and identified as "common property" are for landscaping and signage for the Subdivisions. Such tracts shall be for the benefit of all properties in the Subdivisions and the landscaping and signage thereon shall be maintained by the Association as provided in this Declaration and the Talamore Declaration.

B. MAINTENANCE. 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 Subdivisions.

SECTION FIVE GENERAL AND SPECIAL ASSESSMENTS FOR ASSOCIATION

A. PERSONAL OBLIGATION FOR ASSESSMENTS. By acceptance of the deed or other instrument of conveyance for his or her lot within the Subdivisions, 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. Such assessments shall be fixed, established, and collected from time to time as provided in this Declaration and the Talamore 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.

B. ANNUAL ASSESSMENTS. The annual assessment shall continue from year to year, shall be due on January 31 of each year, and shall be delinquent if not paid by March 15 of each year. The Board of Directors shall have the right from time to time to propose to the members an increase in the annual assessment by calling a meeting of the members of the Association owning lots in the Subdivisions. A simple majority of the votes cast at the meeting, including those cast by members present at the meeting and those cast by members by proxy, shall be required in order to increase the annual assessment.

C. **SPECIAL ASSESSMENTS FOR EMERGENCIES.** The Board of Directors may levy, in addition to annual assessments, a special assessment or assessments from time to time without a vote of the members if the Board is facing an emergency situation. An emergency situation shall be one that is unforeseen or unexpected. A new project or improvement shall not be considered an emergency situation. The cost of ordinary maintenance expenses unexpectedly exceeding available revenue may be an emergency situation if the maintenance is necessary and is likely to prevent larger expenses in the future.

D. **SPECIAL ASSESSMENTS FOR IMPROVEMENTS.** There shall be no special assessment for improvements unless the Board of Directors submits a request for such a special assessment to a meeting of the members of the Subdivisions and the special assessment is approved by a two-thirds (2/3) affirmative vote of the votes cast at the meeting, including those cast by members present at the meeting and those cast by members by proxy. At the member meeting, there shall be a presentation of the pros and cons for the making of the improvements. A member meeting for the purpose of considering a special assessment for improvements may be called by the Board of Directors on its own initiative or upon the written request of the owners of twenty (20) lots in the Subdivisions.

E. **NOTICE.** It shall be the duty of the Association to notify all owners or contract purchasers of lots within the Subdivisions, 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 Subdivisions 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.

F. **LIEN.** Any general or special assessment levied as set forth in this Declaration and the Talamore 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 the payment of both principal and interest may be enforced as in the case of a laborer's lien on the affected real estate, and a notice of such lien may be filed with the Circuit Clerk of Benton County, Arkansas, and venue shall be laid in the Circuit Court of Benton County, Arkansas. It shall be the duty of the Board of Directors of the Association, as provided below to bring actions to enforce such liens before they expire. For each lien so filed, the Association shall be entitled to collect from the owner or owners of the property described in such lien an administrative fee of \$50.00, and shall be collectible in the same manner as the original assessment provided for in this Declaration and the Talamore 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. As an alternative to filing a lien or in addition to filing a lien, the Board of Directors may bring an action in the District Court of Benton County, Bentonville Division to recover the delinquent dues, interest, the \$50.00 administrative fee, and, if an attorney is used, reasonable attorney fees.

G. 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 Subdivisions, and, in particular, for the improvement and maintenance of property, service, and facilities devoted to the above stated purpose and related to the use and enjoyment of the common properties and of the homes situated in the Subdivisions. 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 and the Talamore Declaration or which may be lawfully imposed hereafter on or against any of the property in the Subdivisions.
2. To maintain the common property and amenities and improvements thereon as provided in this Declaration and the Talamore 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 and the Talamore Declaration by the Association.
4. To protect property values in the Subdivisions by promoting pride in and enthusiasm for it to work for improved transportation, schools, libraries, and recreation facilities within the community in which the Subdivisions are 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 Subdivisions and the owners of the lots in the Subdivisions.

SECTION SIX
MISCELLANEOUS AND GENERAL PROVISIONS

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A. **MEMBERSHIP.** Each owner, by purchasing any lot in the Subdivisions, shall automatically become a member of the Association and shall be bound by the terms and conditions of this Declaration, the Talamore Declaration, the Articles and Bylaws of the Association, and such rules and regulations as may be promulgated and adopted by the Association under such Articles and Bylaws. 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 and the Talamore Declaration, the term "owner" shall be deemed to include the

purchaser under an installment contract regardless of whether a deed has been executed to be held in escrow or whether the deed will be executed and delivered upon payment in full of the installment payments. The Articles of Incorporation and Bylaws of the Association, as may be amended from time to time, are incorporated by reference to the same effect as if set forth word for word herein. 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 for purposes for voting at meetings of the Association or on issues submitted to the members, cast one vote collectively for each lot owned. Notwithstanding the foregoing, if a lot owner's dues are delinquent, the lot owner shall have no vote until the dues are paid current.

B. **TRANSFER OF MEMBERSHIP.** On transfer, conveyance, or sale by any owner of all of his or her or its interest in any Subdivision lot, such owner's membership in the Association shall thereon cease and terminate.

C. **MEMBER MEETINGS.** There shall be an annual meeting of the members owning lots in the Subdivisions. The financial reports for the prior year and the budget for the next year shall be presented by the Board of Directors at the annual meeting. The Board of Directors may call special member meetings as needed. For special meetings, the notice of the meeting shall specify the business to be conducted at the meeting and shall be mailed at least thirty (30) days before the date of the special meeting. The Board of Directors shall be the sole judge of the right to participate in and vote at member meetings, and shall have the right to prescribe the procedure to be followed concerning all such meetings and votes. A form proxy shall be included in each meeting notice. All votes of the members at member meetings shall be the total of the votes cast in person and by proxy.

D. **ASSOCIATION FINANCES.** The financial information of the Association shall be compiled by a CPA at least quarterly and posted on the Association's website. In addition, the CPA shall prepare an annual compilation. All single expenditures that exceed five percent (5%) of the annual operating budget of the Association shall be bid to at least three bidders, unless there are a limited number of available or qualified bidders for the particular product or service.

E. **ADDRESS OF ASSOCIATION.** The official address of the Association shall 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.

F. **LOT OWNER ADDRESS.** 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.

G. **MODIFICATION OF POWERS.** The Association may be given such additional powers and duties as may be deemed necessary and reasonable by written consent of the owners of a majority of the lots within the two Subdivisions.

H. **CONFLICT WITH LAWS.** The Association shall, at all times, observe all of the laws, regulations, ordinances, and the like of all governmental authorities recognized in the City of Bentonville, 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 or the Talamore 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 or the Talamore Declaration not in conflict therewith shall be affected thereby.

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

J. **TERMINATION.** This Declaration and the Talamore 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 and the Talamore Declaration, by the owners of seventy-five percent (75%) of the properties subject hereto at any time it is proposed to terminate this Declaration and the Talamore 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.

K. **BINDING.** 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 the lots in the Subdivisions, their heirs, successors, and shall be taken to hold, agree, and covenant with such owners, and observe all of the terms and conditions contained in this Declaration and the Talamore Declaration.

L. **AMENDMENT.** This Declaration and the Talamore Declaration may be amended at any time with the written approval of the owners of a majority of the lots within the Talamore and Stonebriar Subdivisions. 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.

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SECTION SEVEN
ENFORCEMENT OF COVENANTS AND RESTRICTIONS

A. **NOTICE OF VIOLATION.** The POA, the ACC, or any property owner within the Subdivisions may enforce this Declaration and the Talamore 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 POA, the ACC, or 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. **ARBITRATION PROCEDURE.** 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 Talamore or Stonebriar Subdivision subject to this Declaration and the Talamore 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. 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 the Benton County Circuit Court to appoint a third arbiter, and the cost of such legal proceeding shall be borne equally by the parties to the dispute.

C. **ENFORCEMENT OF ARBITRATION DECISION.** 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, the POA, the ACC, or 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.** The 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. *No court litigation may be commenced with regard to disputes arising under this Declaration and the Talamore Declaration, except to enforce an arbitration decision or to perfect or enforce a lien.*

E. **FAILURE TO ENFORCE.** The failure of the POA, the ACC, or any lot owner to enforce any provision of this Declaration or the Talamore 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 POA and the ACC shall incur no liability whatsoever for such failure.

SECTION EIGHT EFFECTIVE DATE OF RESTATEMENT

This Restatement shall not become effective until the lot owners of Talamore Subdivision have adopted a corresponding Restatement of the Talamore Declaration.

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Recorded in the Above
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05/14/2008

We hereby approve the Restatement of Declaration of Covenants, Conditions and Restrictions for Stonebriar Subdivision, Benton County, Arkansas.

We own Lot 1.

Dated this 17 day of Jan, 2008

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Recorded in the Above
DEED Book & Page
05/14/2008



Geoffrey G. Sease



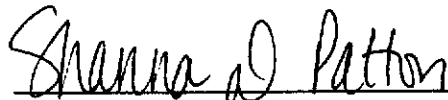
Suzanne Sease

STATE OF ARKANSAS)
) SS
COUNTY OF BENTON)

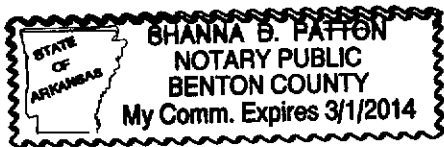
BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public within and for the County and State aforesaid, duly commissioned and acting, Geoffrey G. Sease and Suzanne Sease, to me well known as lot owners in Stonebriar Subdivision, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public this 17th day of Jan, 2008.

Seal & Commission Expiration:



Notary Public



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Declaration of Covenants, Conditions and Restrictions FILED FOR RECORD
for
Stonebriar Subdivision 2001 AUG 1 PM 2 52
Benton County, Arkansas

THESE Covenants, Conditions and Restrictions made this 1st day of August 2001 by 3 Putz, L.L.C., Inc., an Arkansas Limited Liability Company, referred to herein as "Developer", and by Stonebriar Subdivision Property Owner's Association, Inc., referred to herein as "The Association" or "The POA" concerning the residential subdivision known as Stonebriar, referred to herein as "The Subdivision".

SUE HODGES
CLERK AND RECORDER
BENTON COUNTY, ARK.

WHEREAS, the Developer is the owner of real property located in Benton County, Arkansas, being more fully described in Exhibit "A" attached to this Declaration; and

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

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 in Exhibit "A", now known as Stonebriar Subdivision, to the covenants, charges, assessments, conditions and restrictions set forth in this Declaration.

SECTION 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 consist initially of three (3) directors, which shall be designated representatives of the Developer. After all three directors have served one year, they shall elect one of them to resign. The remaining directors shall thereafter appoint a successor, which shall be a property owner, to fill the remainder of the resigning director's term. The initial directors shall serve ten (10) year terms. In the event of the death or resignation of any initial director prior to the expiration of his or her term, the vacancy shall be filled by an appointment of the remaining directors. After the expiration of the terms of the initial directors,

elections shall be held to fill each of the three (3) seats, which shall have staggered terms of three (3), four (4) and five (5) years, respectively. Upon the expiration of each term of these initially elected directors, elections shall be held to fill the expired position, which shall thereafter be for a term of five (5) years. These subsequent directors shall be residents of the Subdivision. These elections will be held at called meetings upon giving ten (10) days' written notice to all lot owners, who may cast one vote for each platted lot owned. The Board of Directors of the Association shall have the sole authority to appoint members to the Architectural Control Committee, as provided for herein. Additionally, the Board of Directors of the Association shall have the power to enforce this Declaration and to review all violations of this Declaration for proper action.

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 ACC shall be composed of three (3) members, to be appointed by the Developer, whose terms shall be for ten (10) 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. Members, other than those initially appointed by the Developer, shall serve three (3) year terms. No absentee owner, other than the Developer's appointed representative, may serve on the ACC. In the event of the death or resignation of any member 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.
- 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. A clean-up deposit of \$500.00 shall be required. 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.

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.

**SECTION II
BUILDING AND USE RESTRICTIONS**

- A. **BUILDING SITE.** A "building site" shall consist of one or more numbered lots as shown on the face of the plat or any modifications or adjustments thereto. No individual lot may be split to create two or more lots.
- B. **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 five hundred (2,500) square feet of heated area, exclusive of carports, garages, basements and storage rooms. Of the total heated area, at least one thousand eight hundred (1,800) square feet of heated area must be on the ground floor.

2. A minimum of one (1) two-car garage, measuring at least twenty-four feet by twenty-four feet (24' X 24') 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.
 3. All driveways shall be constructed of concrete, stone or brick only. No gravel, asphalt or dirt driveways shall be permitted.
 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.
- F. **ROOFS.** All roofing material shall be approved by the ACC prior to the installation of such materials. Such materials shall be limited to 40-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'X12') minimum.
- G. **YARD SPACE RESTRICTIONS AND BUILDING LOCATION.** All set back distances shall be set by the ACC on a lot-by-lot basis. 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 a landscaping plan. 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 eight (8) feet. Wood fences shall be of "shadow box" construction so that the exterior and interior portions are identical, and shall have brick pillars on the front and side elevations at intervals not to exceed twelve (12) feet. 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. No fencing of any kind, other than the fence erected by the developer, shall be allowed along Talamore Boulevard.
- 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 roofline 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.

**SECTION 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 or sidewalk adjacent thereto, nor shall anything be done thereon which may be or may become an annoyance or nuisance to adjacent lot owners or to the Subdivision. Any lot owner violating this paragraph shall be required to indemnify and hold harmless the ACC 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; provided, 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, alley or adjoining lot. Recreational vehicles and equipment may be parked in the back yard of a residence for a period exceeding three (3) days only if it is screened from view by approved fencing, trees or shrubs so as to reasonably screen such vehicle or equipment from view from the street or by neighbors.
- 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. **BASKETBALL GOALS.** 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.

**SECTION IV
COMMON SPACE AND AMENITIES**

- A. **SUBDIVISION SIGNAGE.** There shall be created, as shown on the face of the plat of the Subdivision and identified as "common property", such common tracts as the Developer shall create for landscaping and signage for the Subdivision. Such tracts shall be for the benefit of all properties in the Subdivision and the landscaping and signage thereon shall be maintained by the Association as provided in this Declaration.
- B. **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.
- C. **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.

**SECTION 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. 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. Unless changed by a majority vote of the lot owners casting votes, the annual assessment for any lot in the Subdivision shall be that amount last approved by the Board on the question of annual assessment. On vote of the Board of Directors of the Association in the manner set forth in the Articles of Incorporation and By-Laws of the Association, the 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 the payment of both principal and interest may be enforced as in the case of a laborer's lien on the affected real estate, and a notice of such lien may be filed with the Circuit Clerk of Benton County, Arkansas, and venue shall be laid in the Chancery Court of Benton County, Arkansas. It shall be the duty of the Board of Directors of the Association, as provided below, to bring actions to enforce such liens before they expire. For each 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-stated 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.

**SECTION 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 purchaser under an installment contract, regardless of whether a deed has been executed to be held in escrow or whether the deed will be executed and delivered upon payment in full of the installment payments. The Articles of incorporation and By-Laws of the Association, as may be amended from time to time, are incorporated by this reference to the same effect as if set forth word for word herein. 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.
- 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 written consent of a majority of the owners of all the lots within the Subdivision (one per lot), the Association may be given such additional powers and duties as may be deemed necessary and reasonable, and by such vote, this Declaration may be modified or amended in any manner.
- G. **ADHERANCE 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 City of Bentonville, 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 described in Exhibit "A", 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 of two-thirds (2/3) of the lots 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.

SECTION 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 Stonebriar 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.

20010115074

EXECUTED this ____ day of _____, 2000.

20010115075

3 PUTZ, L.L.C.
PROPERTY OWNER'S
ASSOCIATION, INC.

STONEBRIAR SUBDIVISION

By: [Signature]
Member

By: [Signature]
Member

By: [Signature]
Member

By: [Signature]
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 Dan Dykema, B F Gibbons, and _____, representing 3 PUTZ, L.L.C., and Rusty James, representing STONEBRIAR SUBDIVISION 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 31st day of July, 2000.

Beth E Mummert
Notary Public

My Commission Expires: 1/28/08

