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**SEVENTH  
AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF  
WATERFORD ESTATES AT HISSOM RANCH**

THIS SEVENTH AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF WATERFORD ESTATES AT HISSOM RANCH (this “**Declaration**”) is made and executed effective as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by **WATERFORD ESTATES, LLC**, a Texas limited liability company (the “**Developer**”).

**RECITALS:**

A. Pursuant to that certain Assignment and Assumption of Developer Status by and between Bank of the Ozarks, an Arkansas banking corporation (the “**Previous Developer**”), and Developer dated June 28, 2013 and recorded in the Circuit Clerk's Office of Washington County, Arkansas on June 28, 2013 as File No. **2013-00021854** (the “**Developer Assignment**”), the Developer is the developer of certain property in the Town of Goshen, Washington County, Arkansas, known as "Waterford Estates at Hissom Ranch" (the “**Property**” or the “**Subdivision**”) as more particularly described in Exhibit A hereto.

B. The Developer desires to impose upon and encumber the Property with those covenants, conditions, restrictions and easements contained herein in order to assure that the Property, or portions thereof that are sold to third parties, are developed and maintained in accordance with a uniform standard and further desires to reserve the right to submit in the future additional real property that it owns or may own to the covenants, conditions, restrictions and easements set forth herein, and further desires to reserve unto itself those benefits and rights as are set forth herein.

C. This Declaration amends and restates, in its entirety, that certain Sixth Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch dated December 3, 2009 recorded in the Circuit Clerk's Office of Washington County, Arkansas on December 3, 2009 as **File No. 2009-00038342**, as amended by that certain First Amendment to the Sixth Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch dated May 25, 2010 recorded in the Circuit Clerk's Office of Washington County, Arkansas on May 27, 2010 as **File No. 2010-00014493**, as amended by that certain Second Amendment to the Sixth Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch dated August 18, 2010 recorded in the Circuit Clerk's Office of Washington County, Arkansas on August 19, 2010 as **File No. 2010-00023821**, as amended by that certain Third Amendment to the Sixth Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch dated November 29, 2010 recorded in the Circuit Clerk's Office of Washington County, Arkansas on December 1, 2010 as **File No. 2010-00035489**, which amended and restated in its entirety that certain Fifth Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch dated July 26, 2007 recorded in the Circuit Clerk's Office of Washington County, Arkansas on August 1, 2007 as **File No. 2007-00029741**, which amended and restated in its entirety that certain Fourth Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch dated March 22, 2007 recorded in the Circuit Clerk's Office of Washington County, Arkansas on April 2, 2007 as **File No. 2007-00012202**, which amended and restated in its entirety that certain Third Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch dated February 12, 2007 recorded in the Circuit Clerk's Office of Washington County, Arkansas on February 12, 2007 as **File No. 2007-00005273**, which amended and restated in its entirety that certain Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch dated March 8, 2006 recorded in the Circuit Clerk's Office of Washington County, Arkansas on March 10, 2006 as **File No. 2006-00009902**, which amended and restated in its entirety that certain First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch dated March 8, 2006 recorded in the Circuit Clerk's Office of Washington County, Arkansas on March 9, 2006 as **File No. 2005-0009778**, which amended and restated in its entirety that certain Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch dated August 17, 2005 recorded in the Circuit Clerk's Office of Washington County, Arkansas on August 19, 2005 as **File No. 2005-00036656** (collectively, the "**Original Declaration**").

D. This Declaration is adopted and filed of record during the "Developer Control Period" as such term is defined in Section 1.14 of this Declaration, and pursuant to the provisions of Section 11.02 of this Declaration, and Developer does hereby amend and restate the Original Declaration in its entirety as amended by the provisions adopted hereby.

**NOW, THEREFORE**, in consideration of the foregoing and the promises and benefits set forth herein, and to provide the means and procedures to achieve them, the Developer hereby subjects the Property to the following covenants, conditions and restrictions, including charges

and assessments. Such covenants, conditions and restrictions are hereby granted and imposed for the purpose of protecting the value and desirability of the Property, as a whole, and shall run with the land and be binding upon, and inure to the benefit of, the Developer and its successors, transferees and assigns and the heirs, personal representatives, successors, transferees and assigns of the Developer's transferees and assigns and all other persons and entities, who or which have, at any time, any right, title or interest in all or any part of the Property including all existing Owners of Lots in the Subdivision and their transferees, assigns, heirs and personal representatives. Each future Owner, by accepting a deed and taking title to a Lot, acknowledges, agrees to and accepts the provisions of this Declaration with respect to such Lot and any Single Family Residence located thereon.

## **ARTICLE 1 DEFINITIONS**

When used in this Declaration or in any Supplemental Declaration, the following words shall have the meanings set forth below.

Section 1.01    "Annual Assessment" has the meaning set forth in Section 6.02 hereof.

Section 1.02    "Architectural Review Committee" has the meaning set forth in Section 7.01 hereof.

Section 1.03    "Articles" mean the Articles of Incorporation of the Association, which were originally filed with the Secretary of State of Arkansas on August 22, 2005, as amended from time to time, and which are incorporated herein by reference.

Section 1.04    "Assessments" collectively means the Annual Assessments and Special Assessments levied pursuant to Article 6 hereof along with all other costs, expenses and charges that are properly allocated to any or all Owners pursuant to the provisions of this Declaration or any Supplemental Declaration.

Section 1.05    "Association" means Waterford Estates at Hissom Ranch Property Owners Association, Inc., an Arkansas mutual benefit nonprofit corporation, together with its successors and assigns.

Section 1.06    "Association Documents" means this Declaration, the Articles, the Bylaws, the Initial Rules and Regulations, all Supplemental Declarations, all amendments to any of the foregoing, and all procedures, rules, regulations and policies adopted under such documents by the Association.

Section 1.07    "Board of Directors" means the governing body of the Association.

Section 1.08    "Bylaws" means the Bylaws of the Association, which were adopted by the Association effective as of \_\_\_\_\_, 2009, as amended from time to time, and which are incorporated herein reference.

Section 1.09 "Clubhouse" means Lot 190 and the clubhouse and all improvements constructed thereon, which was deeded by the Developer to the Association effective as of November 29, 2010.

Section 1.10 "Common Area" means all recreational areas, open or green space areas, entrances, monuments, berms, street islands and other ornamental areas and related utilities, lights, sprinkler systems and landscaping, storm water drainage or detention facilities and improvements and easements therefor, all utility easements and all similar or other places or areas other than Lots that are owned by the Association or that are identified as Common Areas on any plats filed of record in connection with the development of the Subdivision. All Subdivision plats shall endeavor to clearly illustrate the properties that are expressly identified and designated as Common Areas. The Board of Directors shall have the right to further specify the real and personal property that shall be deemed and considered to constitute Common Areas hereunder.

Section 1.11 "Common Expenses" means all costs and expenses of every nature that are incurred by the Association (a) to administer, service, conserve, manage, maintain, repair, renovate and replace the Common Area and all improvements thereon, (b) to operate recreational and other facilities operated for the general benefit of the Owners, (c) to manage and conduct the affairs of the Association, (d) to repay funds borrowed by the Association, (e) to pay any deficit remaining from a previous assessment period, (f) to create a reasonable contingency or other reserve or surplus fund for maintenance, repairs, and replacement of improvements within the Common Area on a periodic basis, (g) that are expressly declared to be common expenses by this Declaration, any Supplemental Declaration or the Bylaws, or (h) that the Board of Directors determines to be common expenses of the Association, including, without limitation, and as applicable all wages, utility charges, legal, accounting and other fees, taxes, insurance premium and related costs, interest, supplies, parts, and management or service fees associated with all or any aspect of the foregoing.

Section 1.12 "Declaration" means this Seventh Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Waterford Estates at Hissom Ranch, as it may be amended, restated or supplemented from time to time.

Section 1.13 "Developer" means Waterford Estates, LLC, a Texas limited liability company, together with its successors and assigns. Developer reserves the right to grant Developer status or Successor Developer status to any third party at any time by means of the filing of record of a Supplemental Declaration evidencing said grant.

Section 1.14 "Developer Control Period" means that period of time beginning as of the date of the Original Declaration and continuing until the earlier of: (i) the date the Developer, in its sole and absolute discretion, terminates in writing the Developer Control Period; (ii) the date upon which the Developer no longer owns any Lot; or (ii) December 31, 2015.

Section 1.15 "Expansion Property" has the meaning set forth in Section 10.01 hereof.

Section 1.16 "Improvements" has the meaning set forth in Section 7.02 hereof,

Section 1.17 "Initial Rules and Regulations" means those land use restrictions, rules and regulations that affect and limit an Owner's use and enjoyment of the Owner's Lot that may be adopted from time to time by the Association, which shall be published or otherwise made available for the benefit of the Members, and which are incorporated herein by reference.

Section 1.18 "Lot" means a building lot that is created either by a plat with respect to a Single Family Residence or other permissible Improvement, by replat, lot split certificate of survey, minor subdivision or otherwise, together with all appurtenances and Improvements now, or in the future, on such Lot.

Section 1.19 "Member" means a member of the Association as set forth in Section 3.01 hereof.

Section 1.20 "Mortgage" means any mortgage, deed of trust, contract for deed or other security document pledging or conveying in trust any Lot or interest therein as security for payment of a debt or obligation.

Section 1.21 "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 1.22 "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Lot, including the Developer and the purchaser under a contract for deed. The term shall not include any person or entity having any interest in a Lot merely as security for the performance of an obligation, including a Mortgagee or a trustee or beneficiary under a deed of trust, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.

Section 1.23 "Owner's Proportionate Share" means a fraction, the numerator of which is the number of Lots then owned by any individual Owner within the Property, and the denominator of which is the total number of Lots then within the Property, it being noted and understood that the total number of Lots within the Property may increase over time if additional real property is made subject to the provisions of this Declaration.

Section 1.24 "Property" means and refers to the real property on Exhibit A attached to this Declaration and also includes all additional property, if any, brought within the jurisdiction of this Declaration by all Supplemental Declarations.

Section 1.25 "Proposed Construction" has the meaning set forth in Section 7.02 hereof.

Section 1.26 "Restricted Common Areas" shall mean that real property that is identified on any Subdivision plat as such, the use of which may be limited to certain Owners and not all Owners as more fully specified and identified on either the plat illustrating the Restricted Common Areas or in a Supplemental Declaration.

Section 1.27 "Single Family Residence" means a single-family dwelling constructed on any Lot.

Section 1.28 "Special Assessment" has the meanings set forth in Section 6.04 hereof.

Section 1.29 "Street" shall mean any roadway, street, court, circle, terrace, drive, alley or other right-of-way designated for vehicular traffic shown on any plat of any part of the Property or the Subdivision.

Section 1.30 "Subdivision" means, collectively, the Lots, the Common Areas, the Restricted Common Areas and all other parts of the Property and may include any portion of the Expansion Property to the extent that said property is subjected to this Declaration by means of the filing of record of a Supplemental Declaration.

Section 1.31 "Successor Developer" means any person or entity to whom the Developer assigns or transfers all, or any part, of its rights, obligations or interests as the developer of the Property, as evidenced by an assignment or deed of record in the Office of the Circuit Clerk and Ex-Officio Recorder for Washington County, Arkansas, designating such person or entity as a Successor Developer. For purposes of clarification, in the event that any developer shall transfer all of its rights, obligations and interests as the developer of the Property to any other party, the transferring developer shall have no further designation as a "Developer".

Section 1.32 "Supplemental Declaration" means an instrument that amends or modifies this Declaration, as more fully provided for herein, including any instrument that includes or adds Expansion Property.

Section 1.33 "Unplatted Land" means that real property that the Developer may own from time to time that has not been subjected to this Declaration by means of the filing of record of a Supplemental Declaration.

## **ARTICLE 2**

### **PERSONS AND PROPERTY BOUND BY DECLARATION**

The covenants, conditions, restrictions, easements, benefits and burdens of this Declaration shall run with the land and shall inure to the benefit of, and be binding upon, the Developer, all Owners of Lots in the Subdivision and all persons or entities who shall hereafter acquire any interest in the Lots or other property within the Subdivision. The Developer and all persons who take any interest in a Lot shall, by taking such interest, be deemed to agree and covenant with all other Owners, the Association and the Developer, and their respective heirs, personal representatives, successors, transferees and assigns, to conform to, and observe, the covenants, conditions and restrictions in this Declaration, all Supplemental Declarations and the other Association Documents for the term hereof.

### **ARTICLE 3 MEMBERSHIP; VOTING; OPERATIONS**

Section 3.01 Membership in the Association. The Owner of each Lot within the Subdivision shall be a Member of the Association (a "**Member**"). If a Lot is owned by more than one Owner, all Owners of the Lot, collectively, shall be deemed the Member of the Association for such Lot. The Association shall be the sole judge of the qualifications of its Members and of their right to participate in its meetings and proceedings.

Section 3.02 Class of Members. There shall be one class of membership in the Association, which shall be comprised of all Owners, and the total number of Members shall be equal to the total number of Lots owned by Owners. The Developer reserves the right to create additional classes of membership should Expansion Property be sold to third parties for residential, commercial or other non-residential use purposes.

Section 3.03 Meetings. Annual and special meetings of the Members shall be called, held and conducted in the manner provided in the Bylaws or, in the absence of any provision in the Bylaws, as provided by applicable Arkansas law.

Section 3.04 Voting Rights. Except as otherwise provided herein, all Members shall be entitled to vote on Association matters requiring a vote under this Declaration or as allowed under the Bylaws. If more than one (1) Owner exists for any Lot, the Owners thereof shall designate a single person authorized to cast the subject vote on behalf of such Owners on behalf of and as the designated member for voting purposes and the Owners shall notify the Secretary of the Association in writing of such designation. Fractional votes shall not be permitted and there shall be only one (1) vote cast with respect to any Lot.

Section 3.05 Transfer of Membership. Membership is appurtenant to, and may not be separated from, ownership of any Lot. An Owner may not transfer, pledge or alienate membership in the Association in any way except in connection with the sale or encumbrance of the Lot and then only to the purchaser or Mortgagee of the Lot. Upon the sale of a Lot, the membership associated with the Lot shall automatically transfer to the purchaser of the Lot, or the purchaser's Mortgagee if so designated by the purchaser, and the party selling the Lot shall immediately cease being an Association member.

Section 3.06 Developer's Control of Association During the Developer Control Period. Notwithstanding anything in this Article 3 or elsewhere in this Declaration to the contrary, during the Developer Control Period, the Developer shall maintain absolute and exclusive control over the Association and the Architectural Review Committee, including appointment, election and removal of all directors and officers of the Association and all members of the Architectural Review Committee. During the Developer Control Period, only the Developer shall be entitled to cast any votes with respect to the election and removal of Association directors and officers and members of the Architectural Review Committee or any other matters requiring the vote or approval of Members or Owners. The Developer may (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Section 3.06.

## **ARTICLE 4**

### **POWER AND AUTHORITY; CASUALTY INSURANCE**

Section 4.01 General Power and Authority of the Association. Subject to any limitations in applicable laws and regulations and the Articles and Bylaws, the Association has the power and authority to take all action, and to refrain from taking all action, on behalf of the Association, it deems reasonably necessary to protect the rights and to fulfill the obligations of the Association under the terms of this Declaration or as otherwise set forth in the Articles.

Section 4.02 Exercise of Authority. Unless specifically reserved to the Members by this Declaration, the Bylaws, the Articles or applicable law, all powers and authority of the Association shall be exercised by the Board of Directors, acting within its sole discretion. The Association shall exercise such powers and authority in the discretion of its Board of Directors, unless otherwise specifically required or permitted herein or in the Articles or Bylaws to be exercised by the Members. During the Developer Control Period, the Developer shall possess the sole and exclusive right to unilaterally appoint all members of the Board of Directors of the Association.

Section 4.03 Insurance Requirements Generally. The Association shall annually obtain policies of casualty and liability insurance in amounts and issued by underwriters that the Board of Directors deem reasonable and necessary in its discretion. So long as the Developer owns any Lot, the Developer shall be named as a co-insured on all such policies.

## **ARTICLE 5**

### **COMMON AREA**

Section 5.01 Common Area and Restricted Common Areas. In accordance with that ordinance and those directives imposed upon the Developer by the Town of Goshen, Arkansas, the Developer hereby dedicates the Common Area and the Restricted Common Areas to the Association. The Developer may donate and convey to the Association, by special warranty deed, the Common Area and the Restricted Common Areas in their then present condition. Thereafter, the Developer shall have no further responsibility or obligation of any kind with respect to such Common Area or Restricted Common Areas. The Common Area and the Restricted Common Areas shall be used only for their intended purposes.

Section 5.02 Maintenance of Common Area and Restricted Common Areas. Except as otherwise specifically provided herein, the Association shall maintain, manage, operate, replace, repair and improve the Common Area and Restricted Common Areas, including all Improvements thereon. As noted below, any Owner damaging or abusing the Common Area or the Restricted Common Areas shall be responsible to the Association for all costs and expenses incurred by it to repair such damage, including full replacement of the damaged property. The Association may, but shall not be required to, maintain, manage, operate, replace, repair and improve all property located within the right-of-way of any Street including, without limitation, street lights and sidewalks, if the Board of Directors determines, in its sole discretion, that it would be in the best interest of the Association and the Owners that the Association undertake



such activities. The Association may contract with a third party to carry out all activities permitted by this Section, and said third party may be the Developer or an affiliate of the Developer.

Section 5.03 Property Rights in the Common Area. Subject to the other provisions hereof, and usage rules promulgated by the Board of Directors, every Member in good standing with the Association shall have a non-exclusive right and easement of enjoyment in and to the Common Area and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

Section 5.04 Maintenance of the Common Area. The Association shall own, manage, repair, maintain, replace, improve, operate and deal with the Common Area and keep it, and all improvements thereon, in good condition. The cost of performing these duties shall be a Common Expense. The Board of Directors may employ or contract with a third party to render such services with respect to the Common Area, and said third party may be the Developer or an affiliate of the Developer.

Section 5.05 Insurance. The Association may provide and maintain insurance for the protection, repair and replacement of the Common Area as set forth above.

Section 5.06 No Partition. The Common Area shall be owned by the Association, and no Owner, group of Owners, or the Association shall bring any action for partition or division of the Common Area.

Section 5.07 Streets. All Streets as illustrated on any Subdivision plat shall be used only for their intended purposes as free and clear roadways for ingress and egress purposes and no Owner of any Lot shall block passage, damage or abuse any Street.

Section 5.08 Clubhouse. The Developer deeded the Clubhouse to the Association effective as of November 29, 2010. The Clubhouse is a part of the Common Area.

Section 5.09 License to Use Clubhouse; Dues. Owners and their guests may use the Clubhouse facilities on the days and during the hours established for operation of the Clubhouse by the Association from time to time. The Association hereby reserves on its own behalf and on behalf of any successor owner of the Clubhouse, the ability to set forth additional requirements for use of or membership in the Clubhouse, including, but not limited to, the ability to set forth rules and regulations for use of the Clubhouse and dues for membership.

Section 5.10 Posting of Common Area Rules. All rules and regulations with respect to the Common Area shall be posted at the Clubhouse (including any special reservations) or such other central location as the Association may prescribe from time to time, or may be otherwise published by the Association for the benefit of the Owners and Members.

Section 5.11 Permitted Uses of Common Areas. The Common Area may not in any way be built upon by any Owner, except for trails that may be constructed for the use and enjoyment of the residents of the subdivision. Approved use of the Common Area trails includes

walking, hiking, biking, and driving "golf carts". Dogs, on a leash, may accompany the Owner if the animal is at all times under the control of the Owner and any pet droppings are removed by the Owner. In addition, subject to the future approval of the Association, up to 20 acres may be set aside for an ATV area.

Section 5.12 Ownership of Sewer System Fees and Liens. The sewer system shall be owned, operated, and maintained by Waterford Septic Operations, LLC (the "Sewer System Operator"), which shall establish and collect all fees from Owners. Fees for sewer paid to the Sewer System Operator are in addition to any other fees assessed by the Association and Owners who fail to pay the sewer fees will be subject to legal action and the filing of liens against the Owner's property.

## **ARTICLE 6 ASSESSMENTS, FINES, AND LIEN FEES**

Section 6.01 Annual and Special Assessments—Generally. The Association may assess Annual Assessments and Special Assessments against Members owning Lots, and each such Owner, by acceptance of a deed to such Owner's Lot, hereby agrees to pay to the Association all Annual Assessments and Special Assessments. No Assessments shall ever be levied or assessed against any Lots or Unplatted Land owned by the Developer. The Developer is exempt from the payment of any Assessments applicable to any Lots or other property that the Developer owns as of the date hereof, may own in the future, or to which the Developer may subsequently gain title.

Section 6.02 Determination of Annual Assessments and Special Assessments. "**Annual Assessments**" are hereby defined as those Assessments that are imposed and levied by the Board of Directors against each Lot in order to fund the payment of Common Expenses. The amount of the Annual Assessment for each Lot shall be determined by the Board of Directors by multiplying the Owner's Proportionate Share by the Common Expenses. "**Special Assessments**" are hereby defined as those Assessments that are imposed and levied by the Board of Directors against each Lot in order to fund capital improvements that are not otherwise included in the Common Expenses; provided, that, notwithstanding anything to the contrary herein, no Special Assessment shall be imposed or levied during the Developer Control Period. All Assessments shall be used for the benefit of the Owners and occupants of the Subdivision as set forth herein. No Assessments of any kind shall be imposed or levied against Unplatted Land included within the Property and no Annual Assessments, Special Assessments or other assessment, levy or contribution demand shall be imposed or levied against any Lots owned by the Developer. The initial annual assessment shall be \$1,000.00 per Lot commencing January 31, 2006 and, notwithstanding anything to the contrary herein, shall not increase during the Developer Control Period.

Section 6.03 Annual Assessments Payable by All Owners. The Board of Directors, in its sole discretion, shall establish Annual Assessments payable by all Owners (other than the Developer) based upon the estimated Common Expenses for the subsequent fiscal year of the Association. Until modified as provided herein, the Annual Assessments shall be in amounts as determined by the budgets established by the Board of Directors from time to time. The Annual

Assessments shall be made by the Board of Directors on or before January 1<sup>st</sup> of each year and shall be due and payable on January 31<sup>st</sup> of each year. The Association reserves the right to provide for period installment payments of Annual Assessments in its discretion. If the Board of Directors fails to timely make any Annual Assessments for any fiscal year, the amount of such Annual Assessments for the year shall automatically be the same as the Annual Assessments for the immediately prior year. During the Developer Control Period, the Board of Directors may increase the Annual Assessments as such Board shall determine appropriate. After the expiration of the Developer Control Period, the Annual Assessments made by the Board of Directors may not exceed (a) one hundred and twenty percent (120%) of the Annual Assessments for the immediately preceding year without the approval of a majority of the Members present at a meeting duly called or (b) one hundred fifty percent (150%) of the Annual Assessments for the immediately preceding year without the approval of sixty-six and two-thirds percent (66 <sup>2</sup>/<sub>3</sub>%) of the Members present at a meeting duly called. The Board of Directors may, but shall have no obligation to, make pro rata refunds of any Annual Assessments in excess of the actual Common Expenses incurred in any fiscal year or may hold the same in reserve. The Annual Assessments are payable by all Owners (other than the Developer). If an unimproved Lot is sold by the Developer to a person who is, or by such sale becomes, a Member, at closing the purchaser shall pay the Association the Annual Assessment for the Lot prorated on the number of days remaining in the year during which such purchase occurs less the prorated amount of such Annual Assessment for the Lot while owned by the Developer.

Section 6.04 Special Assessments Payable by All Owners. The Board of Directors may levy in any fiscal year one or more Special Assessments, payable by all Owners (other than the Developer) over any period as it determines, for the purpose of defraying, in whole or in part, the cost of any unexpected repair, renovation or replacement of improvements in the Common Area or for any other expenses incurred by the Association in fulfilling its obligations to all Owners under this Declaration or otherwise imposed upon the Association. In imposing any Special Assessment, the Board of Directors shall specifically refer to this Section 6.04. The Board of Directors shall promptly give the Owners written notice of the amount of all Special Assessments and the time for payment thereof. No payment of all or part of any Special Assessment shall be due less than thirty (30) days after such notice is given.

Section 6.05 Effect of Nonpayment: Liens. Any Annual Assessment or Special Assessment (individually, the "Delinquency" and, collectively, the "Delinquencies") that is not paid within thirty (30) days after its due date as established and specified by the Board of Directors shall be delinquent. Upon a Delinquency becoming delinquent, the Board of Directors, in its sole discretion, may take any or all of the following actions:

- (a) Assess a late charge for each Delinquency in the amount of \$500.00 or an amount established by the Board of Directors;
- (b) Assess an interest charge from the date of delinquency at the highest interest rate allowed by law, or portion thereof until paid in full, or such other rate as the Board of Directors may establish, but in no event shall such fees and interest in the aggregate exceed the highest allowable interest rate available under Arkansas law;

- (c) Suspend the voting rights and other privileges of the Owner during any period of a Delinquency;
- (d) Accelerate all remaining Assessment installments so that unpaid Assessments and other Delinquencies shall be immediately due and payable;
- (e) Bring an action at law against any Owner personally obligated to pay the Delinquency;
- (f) File a statement of lien with respect to the Lot; and
- (g) Proceed with foreclosure of liens for the Delinquency.

A Delinquency shall constitute a lien on the Lot, including the Single Family Residence thereon and any other Improvements, and shall attach on the due date for the Assessment. After first giving the applicable Owner of the Lot at least ten (10) days' written notice of the Delinquency and intent to assert a lien, the Association may evidence the lien by filing a certificate of lien with the Circuit Clerk and Ex-Officio Recorder for Washington County, Arkansas. The certificate of lien, which shall be signed and acknowledged by the President, any Vice President or the Secretary of the Association, or on behalf of the Association by any agent appointed by it, shall, at a minimum, set forth (i) the name and address of the Association, (ii) the amount of the Delinquency, (iii) the amount of accrued interest, penalty and other amounts due, (iv) the name of the Owner of the Lot and (v) the legal description of the Lot. Simultaneously with its filing thereof, the Association shall mail or cause to be mailed a copy of the certificate of lien to the Owner at the address of the Lot or to such other address as the Association has in its files for the Owner. At any time thirty (30) or more days after filing the certificate of lien, the Association may institute foreclosure proceedings against the affected Lot in the manner for foreclosing a deed of trust by private sale on real property under the laws of the State of Arkansas. Each Owner of a Lot by its acceptance of a deed thereto hereby consents to such foreclosure procedure and mechanism. In the event of any such foreclosure, the Owner shall be liable for the amount of all unpaid Delinquencies, all penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien and, if allowed by law, all reasonable attorneys' fees and expenses incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. All liens for Delinquencies shall continue for a period of five (5) years from the date of attachment and no longer, unless within such time suit is commenced to collect the Delinquency against persons personally liable for such amount or foreclosure proceedings are instituted. In such cases the lien shall continue until termination of the suit and sale of the Lot upon execution of any judgment obtained or until completion of foreclosure proceedings. The Association may bring suit against the Owner or any successor to recover unpaid Delinquencies any penalties and interest thereon, the cost and expenses of such proceedings and, if allowed by law, all reasonable attorneys' fees and expenses in connection therewith, without foreclosing or waiving the Delinquency lien provided in this Declaration.

Section 6.06 Personal Obligation. The amount of any Delinquency chargeable against any Lot shall be a personal and individual debt of the Owner of the Lot at the time the Assessment became due. No Owner may exempt himself from liability for the Delinquency by abandonment of his or her Lot or by waiver of the use or enjoyment of all, or any part of, the Common Area or the Restricted Common Areas. All successors to the fee simple title of a Lot shall be jointly and severally liable for all unpaid Delinquencies, interest, late charges, penalties, costs, expenses, and attorneys' fees against such Lot with the Owner who owned the Lot at the time the unpaid Delinquency first became due. Nothing contained herein shall prejudice any such successor's rights to recover from any prior Owner amounts paid by such successor. The liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot.

Section 6.07 Priority of Lien. The lien for Delinquencies provided for in this Declaration shall be subordinate to (a) liens for real estate taxes and special governmental assessments and (b) Mortgages recorded prior to the due date for any such Delinquency. The lien for Delinquencies shall be superior to and prior to any homestead exemption provided now or in the future under the laws of the State of Arkansas which all present and future Owners waive by taking title to Lots. Except as specifically set forth herein or provided by law, no sale or transfer of a Lot shall release it from the lien of any Delinquency. The amount of any extinguished lien for a Delinquency may, at the direction of the Board of Directors, be reallocated and assessed to all Lots as a Common Expense.

Section 6.08 Notification of Association's Address, Owner's Address. The Association shall notify each Owner, at their address listed with the Association, of the Association's address, and all changes thereto, where payments shall be made and other Association business may be conducted. Each Owner shall have the obligation of insuring that their most current mailing address is on-file with the Association for those notification and other purposes set forth herein.

Section 6.09 Pledge of Assessment Rights as Security. The Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligations of the Association. Such power shall include the ability to make an assignment of Assessments then payable to, or which will become payable to, the Association, which assignment may be then presently effective but allows such Assessments to continue to be paid to the Association and used by it unless and until the Association shall default on its obligation secured by the assignment.

Section 6.10 Optional Developer Loans to Association. In the event that, at any time or from time to time, the Assessments, are not sufficient for the Association to pay all Common Expenses or otherwise permit the Association to perform its duties and obligations under this Declaration, the Developer may (but shall not be obligated to) make loans or advances to the Association to enable it to meet such deficiency or deficiencies in funding. Any such loan or advance made by the Developer to the Association shall bear simple interest at a per annum rate equal to the maximum rate allowed by Arkansas law. As soon as reasonably practicable, the Board of Directors shall increase the Assessments in amounts sufficient to pay off the principal and interest of such loans or advances made by the Developer to the Association.

## ARTICLE 7

### ARCHITECTURAL CONTROL AND CONSTRUCTION STANDARDS

Section 7.01 Architectural Review Committee. An Architectural Review Committee, consisting of three (3) or more persons, shall be established to exercise the powers granted by this Article 7 (the "Architectural Review Committee"). At all times during the Developer Control Period, the Developer shall have the power to appoint all members of the Architectural Review Committee, who shall serve until they resign or are removed by the Developer. Upon the expiration of the Developer Control Period, the Board of Directors shall appoint the members of the Architectural Review Committee who shall serve terms of one (1) year or until their earlier resignation or removal by the Board of Directors. All decisions of the Architectural Review Committee shall be made by a majority of its members.

Section 7.02 Architectural Control. To preserve the harmony of the construction, location and exterior design and appearance of the Lots, the Single Family Residences and other Improvements on the Lots, (a) all Single Family Residences, buildings, walls, fences, structures and other appurtenances or Improvements of any kind to be constructed or located on any Lot (collectively, the "**Improvements**"), (b) all additions, changes and alterations to any Improvement which impacts its exterior design or appearance and (c) all changes to the topography of any Lot (collectively, the "**Proposed Construction**"), shall be approved, in writing, by the Architectural Review Committee before such Proposed Construction is commenced. The Association shall have the right to seek injunctive or other remedies to halt any Proposed Construction that does not comply with the express provisions of this Article. Except as provided in Section 7.04 hereof, the Architectural Review Committee shall not approve any Proposed Construction that does not fully comply with the requirements hereof or where the exterior design or appearance (including exterior color) of the Proposed Construction is not, in the sole discretion of the Architectural Review Committee, in harmony with the existing Single Family Residences in the Subdivision, the topography and overall design and appearance of the Subdivision, the Developer's intended design and appearance of the Subdivision or otherwise detracts from the design and appearance of the Subdivision in the sole opinion of the Architectural Review Committee. The Architectural Review Committee also shall have the power and right to designate certain areas within the Property as Restricted Common Areas. The Initial Rules and Regulations shall constitute the initial architectural control rules and regulations that pertain to the Subdivision. The Architectural Review Committee shall have the right to modify said rules in their sole discretion.

Section 7.03 Application for Approval. The Owner shall apply, in writing, to the Architectural Review Committee for approval of all Proposed Construction. The application shall include plans, drawings, specifications and information (including all construction drawings and site plans) showing, as and if applicable, (a) the front, rear and side elevations, (b) proposed grading and drainage from the Lot, (c) floor plan with total square footage, (d) height of all Improvements, (e) exterior materials, (f) method of construction, (g) exterior color scheme, including samples, manufacturers name and product numbers, (h) landscaping and (i) all other information reasonably required by the Architectural Review Committee. The Architectural Review Committee may request additional information from an Owner at any time within thirty

(30) days after its last receipt of information from the Owner or his or her representatives. The Architectural Review Committee may establish and publish such other rules and regulations regarding approval of Proposed Construction as the Architectural Review Committee determines are reasonable. If the Architectural Review Committee does not act upon an Owner's application within thirty (30) days after submission of all information required by the Architectural Review Committee, approval of the Proposed Construction as submitted shall be deemed to have been given and the requirements of this Section 7.03 fully satisfied.

Section 7.04 Modification of Requirements; Anneal of Architectural Review Committee Decision. Except as specifically provided herein to the contrary, by unanimous decision, the Architectural Review Committee may, for good cause shown, waive any of the requirements set forth herein. Any waiver granted shall not be effective and may not be acted upon until eleven (11) days after the date on which the Architectural Review Committee renders its decision. The Owner submitting an application may appeal any decision of the Architectural Review Committee which denies that application for Proposed Construction. An Owner of any Lot may appeal any decision of the Architectural Review Committee which waives any of the requirements set forth herein. All appeals shall be to the full Board of Directors. All appeals to the Board of Directors shall be made in writing and submitted to the Secretary of the Association within ten (10) days after the Architectural Review Committee renders its decision which is the subject of the appeal. If the Board of Directors does not act upon an appeal within sixty (60) days of it being timely submitted, the relief requested in the appeal shall be deemed granted. In deciding an appeal, the Board of Directors can take only such actions as the Architectural Review Committee was originally empowered to take. All decisions on appeals shall be made by a majority of the Board of Directors, acting in the sole discretion of the members of the Board, and shall be final and not subject to further appeal, including to the Owners, or subject to judicial review. Pending final decision on appeal, the waiver requested shall be held in abeyance and may not be acted upon.

## **ARTICLE 8 USE RESTRICTIONS**

Section 8.01 General. Unless the Board of Directors, acting in its sole discretion, unanimously waives the application thereof, the following restrictions are hereby placed on the Property.

Section 8.02 Single Family Residence Use Only. Except as specifically provided herein, only Single Family Residences shall be constructed on Lots and each Single Family Residence shall be used strictly as a family dwelling. No business shall be conducted, or carried on, in or from any Lot, Single Family Residence except: (a) marketing or sales activities by the Developer, or its agents, and builders authorized to have model homes may be conducted from model homes or sales trailers and (b) with the approval of the Architectural Review Committee, conduct of a profession or home industry which does not involve: (i) employees working at the Single Family Residence who are not permanently residing therein and (ii) customers regularly visiting to conduct business. Even if the foregoing are satisfied, the Architectural Review Committee may withhold its approval if it determines, in its sole discretion, the commercial

activity is not compatible with the Subdivision for any reason, such as, without limitation, a daycare business which is prohibited.

Section 8.03 Square Footage. At a minimum, each Single Family Residence shall possess 2,400 square feet of heated and air conditioned floor space (excluding garage, attic and storage spaces).

Section 8.04 Garages. Each Single Family Residence shall include a private, front or side entry garage for a minimum of two (2) cars with dimensions of not less than twenty-two feet (22') by twenty-two feet (22'). No garage may be used for or converted into living areas.

Section 8.05 Roofs and Exteriors. The roofs of each Single Family Residence shall be constructed of tile, wood shake shingles or forty-year composite architectural shingles and must have a minimum of 8/12 pitch. All roofing materials must be black or dark brown in color. The exterior of each Single Family Residence must be constructed of a wood product, brick or stone, and all windows must be constructed of either wood or aluminum clad wood. High quality vinyl windows may be used with prior approval of the Architectural Review Committee. Vinyl material with a coordinated color scheme may be used on soffit and fascia only.

Section 8.06 Yards and Landscaping. The front, side and back yards of all Single Family Residences shall be sodded with Bermuda grass.

Section 8.07 Retaining Walls. All retaining walls applicable to, or located adjacent to any Single Family Residence shall be constructed exclusively with either stone, brick matching material or Allan Block.

Section 8.08 Set Back Restrictions. No Single Family Residence or other allowable structure shall be located on any Lot nearer than: (a) thirty feet (30') to the front curb, (b) twenty feet (20') to the side Lot line, and (c) twenty feet (20') to the rear Lot line, in each instance as measured to the subject building's overhang; provided, however, that should the Subdivision plat specify a greater set-back for any of the front, side or rear, the Subdivision plat shall control.

Section 8.09 Fences. Fencing of front yards is prohibited, except that decorative wood, masonry or wrought iron fencing of a maximum height of four feet (4') may be allowed upon request to and approval by the Architectural Review Committee. Chain link and other forms of wire fencing are prohibited. Backyards may have a fence with a maximum height of six feet (6') and shall be built of wood, masonry or wrought iron. All fences abutting Common Areas, Restricted Common Areas, or corner Lots constructed after the date this Declaration is recorded must be board on board with a cap. All fences abutting the White River Common Area or Common Area surrounding the Lake constructed after the date this Declaration is recorded must be rod iron.

Section 8.10 Storage of Automobiles. Boats, Etc. No automobiles, boats, trailers, campers, recreational vehicles, motorcycles, buses, inoperative vehicles, boat rigging or other similar items shall be parked on any Street, yard area or driveway longer than a forty-eight (48)



hour period of time. No eighteen wheel vehicle or other vehicle requiring a commercial driver's license to operate shall be parked on any Street, yard area or driveway except in connection with the delivery of merchandise or materials or in connection with construction activities. No vehicle repair work shall ever be conducted on any Street, yard area or driveway.

Section 8.11 Sidewalks and Driveways. Concrete sidewalks running parallel to fronting Streets shall be constructed at each Owner's expense and shall be installed contemporaneously with the laying and installation of the Owner's driveway. Sidewalks shall be constructed of concrete and finished in accordance with Architectural Review Committee standards. All driveways shall be concrete.

Section 8.12 Utilities. All utilities affecting each Single Family Residence shall be constructed and placed underground.

Section 8.13 Yard Lights and Mailboxes. All Lots shall utilize uniform mailboxes, which may be purchased from a manufacturer designated by the Developer to ensure conformity and uniformity. Each Lot shall possess one mailbox the location of which shall be specified by the Architectural Review Committee. In addition, Lots may, but shall not be required, to possess gas yard lights, which may also be purchased from a manufacturer designated by the Developer in order to ensure conformity and uniformity. The location of any gas yard light shall be specified by the Architectural Review Committee. Mailboxes and yard lights shall be installed at or prior to the issuance by the Town of Goshen, Arkansas of its certificate of occupancy, and all maintenance and repair costs shall be borne exclusively by the corresponding Owner.

Section 8.14 Heating and Cooling Devices. No Single Family Residence shall be permitted to install or possess a heating or cooling unit or devise that is located in a window or other opening that can be viewed from the Street or any adjoining Lot.

Section 8.15 Prohibited Buildings and Structures. Except as provided below, no mobile home or trailer (with or without wheels), basement (without a Single Family Residence above it), moved house, manufactured house, tent, shack, or barn shall be constructed or located on any Lot at any time. Other detached structures such as gazebos, detached garages, pool houses, storage buildings, permanent cooking or other grills or ovens may be constructed only with the prior approval of the Architectural Review Committee obtained in advance of construction.

Section 8.16 Antennas and Other Projections. No television, radio, citizen's band, short wave or other antenna, satellite dish, flag pole, solar panel, clothes line, pole (exclusive of permitted basketball goals for Single Family Residences only) or other unsightly projection shall be visible from the exterior of any Single Family Residence, including any such item attached thereto or located in a yard, the Restricted Common Areas or the Common Area. The Architectural Review Committee may, in its sole discretion, approve satellite dishes which are twenty inches (20") or less in diameter or otherwise in size attached to a Single Family Residence permitted by applicable laws and regulations subject to all conditions which the Architectural Review Committee attaches to such approval, including the location and applicable screening of the satellite dish, which conditions shall comply with all applicable laws and

regulations. To the extent that this restriction may be inconsistent with the regulations of the Federal Communications Commission (the "FCC"), as amended from time to time, this restriction shall be deemed modified to the extent necessary to comply with such FCC regulations and still provide such limitations as are consistent with the intent of this restriction.

Section 8.17 Holiday Decorations. Christmas and other holiday lights and decorations may be displayed on the exterior of a Single Family Residence on any Lot only during the period beginning forty-five (45) days prior to and ending twenty-one (21) days after such holiday and they must be removed at the expiration of such period. The method and means of installation of such lights and decorations shall be only as established or permitted by the Architectural Review Committee.

Section 8.18 Septic Tanks. Except for individual sewage holding tanks approved by the Developer or the Architectural Review Committee and contemplated by Section 9.01 hereof, no septic tanks or other individual sewage disposal system may be constructed on any Lot or elsewhere on the Property. Nothing herein, however, shall prevent the Developer, an improvement district or any other governmental or non-governmental entity from installing any form of decentralized wastewater collection and treatment center that might be allowed by applicable governmental regulation and regarding which the Architectural Review Committee shall approve.

Section 8.19 Storage Tanks. No tank for storage of oil, propane, liquefied gas or other product may be maintained in or adjacent to any Single Family Residence, garage or on any Lot, whether above or below the surface of the ground.

Section 8.20 Refuse. No trash, ashes or other refuse may be thrown, dumped, stored or burned on any Lot, the Common Area or any of the Restricted Common Areas, except during construction of a Single Family Residence or any addition thereto or remodeling thereof. The storage or burning of trash, garbage, old appliances, junk or other refuse is prohibited on the Property outside of a Single Family Residence, except such items may be set out for collection after 6:00 p.m. on the day before the scheduled collection day. If there is an alley in the rear of a Single Family Residence, such items set out for collection shall be placed along such alley.

Section 8.21 Signs; Advertising. Except as provided below, no signs, billboards or advertising structures of any kind may be placed on any Lot or in or on any Single Family Residence or be visible from the interior of any Single Family Residence or building on the Lot. Signs advertising the lease or sale of an individual Lot, which do not exceed five square feet (5' sq) in size, may be erected or placed on the Lot being sold or leased. The Developer may erect or place "bill board" type signs related to the Subdivision on any Lot owned by it or on any Common Area or Restricted Common Areas.

Section 8.22 Nuisances. No activity shall be carried on in, on or from any Lot, Single Family Residence which is noxious or offensive or an annoyance or nuisance to the neighborhood. The Owner shall be responsible for all activity carried on in, on or from a Lot, a

Single Family Residence whether or not the Owner is involved in, or has knowledge of, such activity.

Section 8.23 Animals. At no time shall pit bulls, animals with vicious propensities by breed, bees, cows, horses, swine, goats, sheep, poultry, other domesticated farm animals, undomesticated (wild) animals, exotic animals or animals requiring special permits from the State of Arkansas or United States of America be kept at any time in any Single Family Residence or on any Lot or in any Restricted Common Areas or the Common Area. Except as otherwise prohibited herein, dogs, cats and other household pets (i) may be kept in a Single Family Residence (provided such pets are not kept for breeding or other commercial purposes), and (ii) the keeping of such pets does not create any unsanitary condition. Doghouses or similar animal shelters shall be located, for a Single Family Residence, in the back yard, and, for both, shall only be of such size, design and materials as approved in advance by the Architectural Review Committee and painted the same color as the main structure. With respect to Single Family Residences only, runs, kennels or similar structures shall be permitted only with the approval of the Architectural Review Committee which may, in the Architectural Review Committee's sole discretion, impose requirements for such structures as to construction, design, materials, location and screening from view except under no circumstances shall runs, kennels or similar structures include chain link or other wire fencing.

Section 8.24 Occupancy; Repair. No Single Family Residence shall be occupied until it is fully completed, except for exterior painting and minor trim details. In the event of fire, windstorm or other damage, no Single Family Residence shall be permitted to remain in a damaged condition longer than three (3) months.

Section 8.25 Storage of Construction Materials. No building material of any kind or character shall be placed or stored on any Lot, the Common Area or the Restricted Common Areas until the Owner thereof has received required approval from the Architectural Review Committee for the project and is ready to commence construction. All material permitted to be stored on a Lot shall be placed only within the property lines of the Lot or Lots upon which the approved Improvements are to be constructed or on portions of the Common Area or Restricted Common Areas approved in advance by the Architectural Review Committee.

Section 8.26 Landscaping Easement. Except as permitted by any plat of the Subdivision and the Architectural Review Committee or elsewhere herein, no Improvement or personal property of any Owner shall be located in any buffer strip shown on any plat affecting the Property or in any of the Restricted Common Areas or the Common Area.

Section 8.27 Maintenance of Lawns and Plantings. All lawns and plantings shall be maintained and kept in good condition. No Single Family Residence Owner shall permit grass to reach a height of six inches (6") or more or otherwise permit such Owner's lawn or plantings to create an unsightly appearance. If a Single Family Residence Owner fails to comply with this restriction, the Association may have such grass cut or otherwise correct such unsightly appearance and all costs thereof shall be assessed against and collected from such Single Family Residence Owner in the same manner as Assessments.

Section 8.28 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat or plats of the Subdivision or by separate recorded instruments. No structure, except driveways, paved areas and approved fences, may be placed or permitted to remain within any utility easement which interferes with the construction or reconstruction and the proper, safe and continuous maintenance of such utility easement. No structure, planting or other material shall be placed or permitted to remain on any drainage easements which (a) damages or interferes with the installation, use or maintenance of the easement, (b) changes the direction of flow of drainage channels in the easements, (c) obstructs or retards the flow of water through drainage channels or its collection in detention ponds or basins in the easements.

Section 8.29 No Subdividing. No Lot may be subdivided, or combined with any other Lot or Property, without the prior written approval of the Architectural Review Committee. The Architectural Review Committee may deny approval of any request to subdivide or combine a Lot or Lots that it determines, in its sole discretion, is not in harmony with the existing Single Family Residences in the subdivision. In the event a request is approved by the Architectural Review Committee, the subdivided or combined Lot or Lots must comply with all applicable rules and regulations set forth in this Declaration. In the event a request to subdivide a Lot is approved by the Architectural Review Committee, each subdivided Lot shall be treated as a separate and distinct Lot for purposes of determining the amount of Assessments and fees due, and each Owner of a subdivided Lot shall be individually assessed and responsible for the same amount of Assessments and fees imposed upon all other Lot Owners. In the event a request to combine two or more Lots is approved by the Architectural Review Committee, notwithstanding such approval, each Lot subject to such request shall continue to be treated as a separate and distinct Lot for purposes of determining the amount of Assessments and fees due, and the Owner of the combined Lots shall be assessed and responsible for the same amount of Assessments and fees imposed upon the Lots prior to such request to combine the Lots being approved.

Section 8.30 No Mining Activities. No portion of the Property shall be used, at any time, for mining, boring, quarrying, drilling, refining or other operations involving, or related to, the extraction or exploitation of any subsurface natural resource of any kind including oil, gas, coal or other hydrocarbon product. The prohibitions of this Section 8.30 may not, under any circumstances, be waived or amended by the Architectural Review Committee, the Board of Directors, the Owners or Members.

Section 8.31 No Hunting, Firearms or Archery Use Permitted. No hunting or use of air rifles, air pistols, firearms, bows, crossbows, arrows or bolts or other archery equipment, spears, blowguns or similar devices shall be permitted or conducted by any Owner, or by any Owner's guests, tenants or invitees, at any time on any Lot or any other portion of the Subdivision or the Property, including the Common Area and the Restricted Common Areas.

Section 8.32 Enforcement by Architectural Review Committee. The Architectural Review Committee, the Association and/or the Developer shall have the right to enforce the provisions hereof, and take all steps that they may deem necessary to cure any violations hereof, including the obtaining of injunctive relief to prevent any Owner from violating the provisions

hereof and the performing of repair, upkeep and curative work at the cost and expense of the subject Owner. All costs of enforcement repair, upkeep or other curative work shall become the financial responsibility of the subject Owner and, if not promptly paid by said Owner, said costs will be deemed and considered to constitute a portion of the Assessments.

## **ARTICLE 9**

### **WASTE WATER TAP, AVAILABILITY AND SERVICE FEE**

Section 9.01 Tap Fee. By virtue of their acceptance of title to any Lot, each Owner personally covenants and agrees to pay for the purchase of an individual sewage holding tank to be approved by the Developer, Architectural Review Committee, or Sewer System Operator, together with the installation costs thereof.

Section 9.02 Monthly Minimum. By virtue of its acceptance of title to any Lot, each Owner additionally personally covenants and agrees to pay to the Sewer System Operator on a monthly basis the current sum of \$50.00 in exchange for the supplying of waste water collection and treatment services as provided by the Sewer System Operator (the "**Monthly Minimum**"). The Monthly Minimum shall constitute and comprise a charge, assessment and lien against each Lot that shall run in favor of the Sewer System Operator. The Sewer System Operator reserves the right each year to increase the Monthly Minimum (a) by an amount equal to the greater of \$3.00 per month or any increase in the Consumer Price Index, (b) by an amount necessary to pay costs associated with any subsequently enacted or required Health Department, Department of Environmental Quality, or other federal, state or local rule or regulation, and/or (c) by any other objectively demonstrable increase in the operation of the Facilities.

Section 9.03 Agreement to Exclusively Use Services. Each Owner agrees to exclusively use the Sewer System Operator's waste water collection and treatment facility (the "**Facility**") as the Owner's sole source of waste water collection and treatment services (the "**Services**"). Each Owner further agrees that they will never use any other form of septic tank or other waste water collection or treatment service or facility.

Section 9.04 Billing: Late Fees. The Sewer System Operator shall invoice each Owner for the Monthly Minimum on or about the third (3rd) day of each month. Owners shall pay the Monthly Minimum in full on or before the tenth (10th) day of each month. If not paid by said date, the Sewer System Operator shall have the right to levy a late payment fee of \$15 per delinquency to reimburse the Sewer System Operator for its additional servicing and accounting costs. All invoices shall reflect the address to which Owner shall make payments. The Sewer System Operator may contract with a third party for operation and maintenance of the Facility, and may delegate to such party the ability to invoice Owners directly for such services.

Section 9.05 Owner Default; Termination of Services. If Owner defaults in the payment obligations set forth herein for a period of thirty (30) days, the Sewer System Operator shall have the right to disconnect Owner's property from the Services and shall have the right to levy collection litigation against the Owner. Owner agrees to reimburse the Sewer System

Operator for all legal fees and court costs incurred in connection with any such collection activity.

Section 9.06 Foreclosable Lien Right Reserved. There is hereby granted and reserved in favor of the Sewer System Operator a foreclosable lien against each and every Lot that the Sewer System Operator may exercise should any Owner fail to pay the Tap Fee or the Monthly Minimum as provided herein. The Sewer System Operator shall have the right to foreclose said lien only if any Lot owner has failed to pay the Owner's Monthly Minimum for a period of sixty (60) days after that date upon which the Monthly Minimum becomes past due and delinquent.

Section 9.07 Liens Subordinate to Third Party Lender Liens. All liens created in favor of the Sewer System Operator hereby shall be subordinate to prior bona fide liens of record which are filed of record by third party lenders. Reasonable attorney's fees incurred by the Sewer System Operator incident to the collection of Monthly Assessments or the enforcement of the liens provided herein, together with all sums advanced and paid by the Sewer System Operator for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Sewer System Operator in order to preserve and protect its lien, shall be secured by the liens provided for herein.

Section 9.08 Personal Obligation of Owners. Each Owner, by accepting ownership of his Lot personally covenants and agrees to pay the Owner's Monthly Minimum. The Sewer System Operator may take such action as it deems necessary to collect the Monthly Minimum by personal action or by enforcing and foreclosing the lien created hereunder pursuant to the same procedures applicable to the judicial or, if applicable, non-judicial foreclosure of real property mortgages or deeds of trust, and may settle and compromise the same if deemed in its best interest. The Sewer System Operator shall be entitled to bid at any sale held pursuant to a suit to foreclose a lien created hereby, and to apply as a cash credit against its bid all sums due, as provided herein and covered by the lien enforced.

Section 9.09 Exclusive Control Over Facility. Each Owner agrees and understands that the Sewer System Operator shall have the sole and exclusive right and responsibility for the operations of the Facilities in accordance with all applicable federal, state, local and other laws and regulations. Each Owner additionally agrees and understands that the Sewer System Operator shall have the exclusive authority to repair, maintain and replace all STEP tanks, pumps, controls and related and unrelated appurtenances that might be located upon any Owner's Lot, and that any such repair and maintenance performed on an Owner's Lot shall be at that Owner's sole cost and expense. Each Owner additionally agrees and understands that the Owners are expressly prohibited from personally providing such repair and maintenance on their Lots, unless such repair or maintenance shall have been approved in advance, in writing, by the Sewer System Operator.

Section 9.10 Sewer System Operator Amendment Right. For a period of seven (7) years from and after the date of this covenant, the Association, with the express written consent of the Developer, shall have the right to modify, amend, extend and/or terminate the provisions of this

covenant in the Association's sole discretion, which modification or amendment shall relate back to the date of the filing of this instrument.

## **ARTICLE 10 EXPANSION OR REDUCTION OF PROPERTY**

Section 10.01 Reservation of Right to Expand. The Developer reserves the right to submit additional real property to the encumbrances created by this Declaration by means of filing one or more Supplemental Declarations of record in the Office of the Circuit Clerk and Ex-Officio Recorder for Washington County, Arkansas that, among other things, will expressly identify (a) the real property that the Developer submits hereunder, (b) additional covenants, conditions, easements and restrictions that may pertain uniquely to the expanded property, (c) additional Lots, Common Areas, Restricted Common Areas and other specifically identified properties (collectively, the "**Expansion Property**"), Expansion Property may be added in stages by successive supplements or in one (1) supplemental expansion. The Expansion Property shall be subject to all of the terms and conditions of this Declaration, unless limitations and reservations are expressly provided to the contrary.

Section 10.02 Reservation of Right to Remove. By amendment or supplement to this Declaration, the Developer hereby reserves the absolute right at any time to unilaterally remove from the effect and control of this Declaration any portion of the Property which the Developer has not sold or conveyed, whether platted or unplatted (the "**Removed Property**"). Any such removal shall be by Supplemental Declaration filed of record in the manner set forth above and shall be effective on the date so filed of record.

## **ARTICLE 11 DURATION OF DECLARATION; AMENDMENT**

Section 11.01 Term. The covenants, conditions, restrictions and easements set forth in this Declaration shall run with and bind the Property until December 31, 2035, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated at the expiration of any such period by a vote of the Members as set forth in Section 11.03 below.

Section 11.02 Amendment During the Developer Control Period. During the Developer Control Period, the Developer expressly reserves the right to unilaterally modify and amend any of the terms, conditions or provisions of this Declaration at any time and for any purpose upon the filing of record of a Supplemental Declaration that is executed solely by the Developer. Thereafter, the Developer may modify or amend the terms, conditions or provisions of this Declaration at any time so as to resolve any ambiguity that may be contained herein or that might be required to assure comply with rules and regulations that imposed by any national home loan originator or federal, state or local governmental authority.

Section 11.03 Amendment after Developer Control Period. After the Developer Control Period, this Declaration may be amended by a Supplemental Declaration that is signed by the Members holding a majority of votes possible to be cast under this Declaration and the

Developer if it then owns any Lots. This Declaration may be additionally amended by a Supplemental Declaration signed by the Members holding at least sixty-six and two-thirds percent (66 2/3%) of the votes possible to be cast under this Declaration. Proper approval of all amendments shall be shown by a certificate of the Secretary of the Association, attached to the Supplemental Declaration to be recorded, certifying that the signature of the Developer or, if required, the signatures of a sufficient number of Members approving the amendment, are on file in the office of the Association. No amendment shall be effective until the Supplemental Declaration setting forth the approved amendment is recorded in the Office of the Circuit Clerk and Ex-Officio Recorder for Washington County, Arkansas.

Section 11.04 Revocation; Termination. This Declaration shall not be revoked or terminated at any time without the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the votes of the Members possible to be cast under this Declaration and, during the Developer Control Period, the express written approval of the Developer.

## **ARTICLE 12 GENERAL PROVISIONS**

Section 12.01 Enforcement. Except as otherwise provided herein, the Association or the Board of Directors, the Developer and every Owner of a Lot has the right and power to enforce, by a proceeding at law or in equity, all conditions, covenants, restrictions and easements set forth in this Declaration. Failure of the Association or the Board of Directors, the Developer or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so at a subsequent time.

Section 12.02 Severability. If any provision of this Declaration, or the application hereof to any circumstance, is held to be invalid or unenforceable to any extent, the remainder of this Declaration and its application to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 12.03 Rule against Perpetuities. Notwithstanding anything in this Declaration to the contrary, the creation of all interests under this Declaration shall vest, if at all, within the period of time measured by the life of the survivor of the now living children of Prince Charles, Prince of Wales, plus twenty-one (21) years.

Section 12.04 Conflicts Between Documents. If this Declaration conflicts, in any way, with the Articles, Bylaws, or the Original Declaration, this Declaration shall control.

Section 12.05 Developer's Right to Assign. The Developer may, by appropriate agreement made expressly for that purpose, assign or convey to a Successor Developer all, or any part, of the rights, reservations and privileges herein reserved by the Developer. Upon recording of the assignment in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, the Developer's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document. Every Successor Developer



shall have the rights of the Developer, including the right to transfer such rights set forth in this Section 12.05.

Section 12.06 Release of Liability. Neither the Developer, the Association, the Board of Directors or the any members of the Architectural Review Committee, nor their respective officers, directors, stockholders, members, employees or agents, shall be liable to any Owner, Member or other person for any discretionary action taken or not taken under the terms hereof including, without limitation, approval, disapproval or failure to approve of any application or enforcement or non-enforcement of the terms hereof.

Section 12.07 Indemnification. To the fullest extent permitted by law, every director and officer of the Association, all members of the Architectural Review Committee and the Developer and its agents and employees (to the extent a claim may be brought against the Developer by reason of its election, appointment, removal or control over directors of the Association Board, its officers or members or the Architectural Review Committee) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board of the Association, be indemnified by the Association against all liabilities, damages, costs and expenses, including reasonable attorneys' fees and costs, incurred by or imposed upon him or her in connection with any proceeding or any settlement thereof to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having served in such capacity on behalf of the Association (or, in the case of the Developer, by reason of having elected, appointed, removed or controlled, or failed to control, officers or directors of the Association or members of the Architectural Review Committee) whether or not he or she is a director, an officer or a member of the Architectural Review Committee, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Association's Board shall determine, in good faith, that such officer, director, member of the Architectural Review Committee or other person, or the Developer, did not act, fail to act or refuse to act, willfully, or with gross negligence, or with fraudulent or criminal intent, in the performance of his, her or its duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be emitted at law or otherwise.

**[THE REMAINDER OF PAGE HAS BEEN INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS.]**

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by its duly authorized officers as of the day and year first above written.

**DEVELOPER:**

**WATERFORD ESTATES, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_

Name: Robert H. Holmes

Its: Managing Member

STATE OF ARKANSAS                    )  
  )  
COUNTY OF BENTON                 )

**ACKNOWLEDGMENT**

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named Robert H. Holmes, as a Managing Member of Waterford Estates, LLC, a Texas limited liability company, being the person authorized by said limited liability company to execute such instrument, stating his respective capacity in that behalf, to me personally well known, who stated that he was a Managing Member of Waterford Estates, LLC, a Texas limited liability company, and was duly authorized in his respective capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
(S E A L)

**EXHIBIT A**

[LEGAL DESCRIPTION]

All that land covered by Plat Book 23A at Page 174, filed in the records of Washington County, Arkansas.