

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
AVERIE ESTATES**

This Declaration of Covenants, Conditions and Restrictions for Averie Estates is made on the Effective Date (as herein defined) hereinafter set forth by Declarant (as hereinafter defined).

Declarant is the owner of the Property (as herein defined). Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property. The development and improvement of the Property may be accomplished by successors and assigns of Declarant as future owners or developers of the Property, provided that Declarant is not in any manner agreeing to or obligating itself to undertake development activities with respect to the Property. The Declaration is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Property. In furtherance of such plan, Declarant has caused or intends to cause the Averie Estates Homeowner's Association, Inc., to be formed as an Arkansas nonprofit corporation to own, operate, and maintain the Common Areas and Common Maintenance Areas (as defined herein) and to administer and enforce the provisions of this Declaration.

Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration, which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner of any portion of the Property.

Compliance with this Declaration is not a substitute for compliance with Applicable Law. Please be advised that this Declaration does not purport to list or describe each restriction which may be applicable to a Lot located within Averie Estates. **Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot.** Furthermore, an approval by the ACA (as defined herein) should not be construed by the Owner that any improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot or with Applicable Laws.

All master plans, site plans, brochures, illustrations, information and marketing materials related to the Property or Averie Estates, including any statements or projections as to assessments, and expressly including any of the foregoing prepared by the Declarant (collectively, the "**Conceptual Plans**") are conceptual in nature and/or estimates only. The land uses reflected on or in the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within Averie Estates may include uses which are not shown on or in the Conceptual Plans and such land uses may be changed from time to time and at any time by the Declarant without notice to any Owner. It is also understood and agreed that assessments will change based on actual expenses incurred by the Association and no assurances are provided regarding the accuracy of any estimated assessments. The Declarant makes no representation or warranty concerning the Conceptual Plans, proposed land uses, proposed planned improvements, or assessments attributable to all or any portion of Averie Estates, and no Owner will be entitled to rely upon the Conceptual Plans, or on any statement made by the Declarant or any of Declarant's representatives regarding proposed land uses, proposed or planned improvements, or assessments, when making the decision to purchase any property or construct any improvements within Averie Estates.

ARTICLE I. DEFINITIONS

- 1.1 **"ACA"** or **"Architectural Control Authority"** shall have the meaning provided such terms in **Section 6.2** herein.
- 1.2 **"ACA Standards"** means standards adopted by the ACA regarding architectural and related matters, including, without limitation, architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials, and similar features which may be either recommended or required by the ACA for use within the Property.
- 1.3 **"Adjacent Lot"** shall have the meaning set forth in **Section 12.3** hereof.
- 1.4 **"Alleged Defect Costs"** shall have the meaning set forth in **Section 11.5** hereof.
- 1.5 **"Alleged Defects"** shall have the meaning set forth in **Section 11.4** hereof.
- 1.6 **"Applicable Law(s)"** means all laws, ordinances, policies, rules, regulations and orders of the City, County and all other federal, state, county, municipal and other governments and their agencies having jurisdiction and control over the Property, specifically including applicable zoning restrictions and permits.
- 1.7 **"Association"** means Averie Estates Homeowner's Association, Inc., an Arkansas nonprofit corporation, established, or to be established, for the purposes set forth herein, or such other Arkansas nonprofit corporation as the Board shall determine to operate as the Association under this Declaration, provided that only one such nonprofit corporation shall be in existence as the Association at any one time.
- 1.8 **"Association Easement"** means an easement intended for the construction, installation, operation, location, maintenance, replacement, or repair of any subdivision improvements, including, without limitation, the Association Maintenance Features, any subdivision signs, screening walls, monument or entry features, retaining, screening and/or perimeter walls, drainage facilities or other improvements owned by or otherwise for the benefit of the Association.
- 1.9 **"Association Maintenance Features"** means the fences, screening walls, monuments, entrance signage and/or other decorative features installed, or that may be installed, by Declarant or the Association along or within any roadways or Common Areas of the Property, or any other fences, screening walls, monuments, signage and/or other features installed by Declarant or the Association.
- 1.10 **"Averie Estates"** shall mean the subdivision developed in the Property now known as Averie Estates and formerly known as Pheasant Run.
- 1.11 **"Board"** means the Board of Directors of the Association.
- 1.12 **"Budget Deficit"** shall have the meaning set forth in **Section 4.5** hereof.
- 1.13 **"Builder"** means any person or entity that purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's or entity's business.
- 1.14 **"By-laws"** means the by-laws of the Association.
- 1.15 **"Certificate"** means the Certificate of Formation of the Association, and any subsequent amendment or restatement thereof.

- 1.16 **"City"** means the Cave Springs, Arkansas.
- 1.17 **"Claim"** shall have the meaning set forth in Section 11.1.a hereof.
- 1.18 **"Claimant"** shall have the meaning set forth in Section 11.1.b hereof.
- 1.19 **"Common Area"** and **"Common Areas"** means all areas (including the improvements and buildings thereon) within the Property owned or to be owned by the Association for the common use and enjoyment of the Members, including, without limitation, any recreational facilities, areas within any public rights-of-way, easements (public and private), portions of any Lot(s), public parks, private streets, landscaping, entry features, fences or similar areas that either the Board or Declarant deems necessary or appropriate to maintain for the common benefit of the Members or that is shown on a Recorded Plat of the Property or portion thereof as being maintained by the Association.
- 1.20 **"Common Expenses"** means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Member(s) and/or the Common Maintenance Areas.
- 1.21 **"Common Fence"** shall have the meaning set forth in Section 7.4.f hereof.
- 1.22 **"Common Maintenance Areas"** means the Common Areas, if any, and any areas within any public rights-of-way, easements (public and private), portions of any Lot(s), public parks, private streets, landscaping, entry features, fences, vehicular access gate(s), pedestrian access gate(s) or similar areas that either the Board deems necessary or appropriate to maintain for the common benefit of the Members or that is/are shown on the Plat or any subsequent Recorded plat of the Property or portion thereof as being maintained by the Association or reserved for the use by the Members.
- 1.23 **"Common Retaining Wall"** shall have the meaning set forth in Section 7.5.a hereof.
- 1.24 **"Conceptual Plans"** shall have the meaning set forth on Page 1 hereof.
- 1.25 **"County"** means Benton County, Arkansas.
- 1.26 **"Declarant"** means, collectively, SLO-HKO, Pheasant Plot and their successors and assigns as provided in Section 13.13 herein.
- 1.27 **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Averie Estates formerly known as Pheasant Run, and any amendments and supplements thereto made in accordance with its terms.
- 1.28 **"Deficit Loan"** shall have the meaning set forth in Section 4.5 hereof.
- 1.29 **"Designated Interest Rate"** means the interest rate designated by the Board from time to time, subject to any interest or usury limitations under Arkansas law. If the Board fails to designate an interest rate, then the interest rate shall be the lesser of 12% per annum or the highest rate permitted by Arkansas law. The Designated Interest Rate is also subject to the limitations in Section 13.7 herein.
- 1.30 **"Development Period"** means the period of time beginning on the date when this Declaration has been Recorded, and ending at such time as Declarant no longer owns any Lot or portion of the Property, unless earlier terminated by Declarant. Declarant may terminate the Development Period by an instrument executed by Declarant and Recorded. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

- 1.31 **"Disputing Party"** shall have the meaning set forth in **Section 11.6.b** hereof.
- 1.32 **"Documents"** shall have the meaning set forth in **Section 11.1.a** hereof.
- 1.33 **"Dwelling"** means any residential dwelling situated upon any Lot.
- 1.34 **"Dwelling Lot"** shall have the meaning set forth in **Section 12.3** hereof.
- 1.35 **"Effective Date"** shall have the meaning set forth on the Signature Page hereof.
- 1.36 **"Eligible Mortgage Holder"** shall have the meaning set forth in **Section 13.15** hereof.
- 1.37 **"Energy Efficiency Roofing"** shall have the meaning set forth in **Section 12.2** hereof.
- 1.38 **"Entry Signs"** means the entry feature signs for Averie Estates that are or may be placed by the Declarant or its agents on the Common Areas or Common Maintenance Areas.
- 1.39 **"Exempt Claims"** shall have the meaning set forth in **Section 11.1.c** hereof.
- 1.40 **"FHLMC"** shall have the meaning set forth in **Section 5.5.b** hereof.
- 1.41 **"FNMA"** shall have the meaning set forth in **Section 5.5.b** hereof.
- 1.42 **"Higher Lot"** shall have the meaning set forth in **Section 7.5.a** hereof.
- 1.43 **"HUD"** shall have the meaning set forth in **Section 5.5.b** hereof.
- 1.44 **"Initial Member Election Meeting"** shall have the meaning set forth in **Section 5.2** hereof.
- 1.45 **"Lot"** means any separate residential building parcel shown on a Plat of the Property. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot.
- 1.46 **"Lower Lot"** shall have the meaning set forth in **Section 7.5.a** hereof.
- 1.47 **"Member"** means any person, corporation, partnership, joint venture or other legal entity that is a member of the Association pursuant to the terms in **Article III** herein.
- 1.48 **"Mortgage"** shall have the meaning set forth in **Section 13.16** hereof.
- 1.49 **"Notice"** shall have the meaning set forth in **Section 11.3** hereof.
- 1.50 **"Notice of Alleged Defect"** shall have the meaning set forth in **Section 11.4.a** hereof.
- 1.51 **"Owner"** means the record owner, whether one or more Builders, persons or entities, of fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract for deed, then the purchaser (rather than the fee Owner) will be considered the Owner.
- 1.52 **"Party"** or **"Parties"** shall have the meaning set forth in **Section 11.1** hereof.
- 1.53 **"Payment Plan"** shall have the meaning set forth in **Section 4.12** hereof.

- 1.54 **"Permitted Device"** shall have the meaning set forth in **Section 7.11** hereof.
- 1.55 **"Plat"** means each plat that may be filed of Record and that includes any of the Property.
- 1.56 **"Pheasant Plot"** means Pheasant Plot, LLC, an Arkansas limited liability company, and its successors and assigns.
- 1.57 **"Property"** means the real property described on **Exhibit "A"** attached hereto (other than areas dedicated to the City or County) and such additional property as is brought within the jurisdiction of the Association and made subject to this Declaration.
- 1.58 **"Rain System Application"** shall have the meaning set forth in **Section 7.30.a** hereof.
- 1.59 **"Rainwater Harvesting System"** shall have the meaning set forth in **Section 7.30** hereof.
- 1.60 **"Record," "Recording" or "Recorded"** means the filing of a legal instrument in the Public Records of Benton County, State of Arkansas, or such other place as may be designated as the official location for filing deeds, plats, and similar documents affecting title to real property.
- 1.61 **"Respondent"** shall have the meaning set forth in **Section 11.1.d** hereof.
- 1.62 **"SLO-HKO"** means SLO-HKO, LLC, an Arkansas limited liability company, and its successors and assigns.
- 1.63 **"Solar Application"** shall have the meaning set forth in **Section 12.2.c.i** hereof.
- 1.64 **"Solar Efficiency Roofing"** shall have the meaning set forth in **Section 12.2** hereof.
- 1.65 **"Solar Energy Device"** shall have the meaning set forth in **Section 12.2** hereof.
- 1.66 **"Solar Energy Systems"** shall have the meaning set forth in **Section 12.2** hereof.
- 1.67 **"Specialized Shingles"** shall have the meaning set forth in **Section 7.29** hereof.
- 1.68 **"Termination of Negotiations"** shall have the meaning set forth in **Section 11.6.b** hereof.
- 1.69 **"VA"** shall have the meaning set forth in **Section 5.5.b** hereof.
- 1.70 **"Xeriscaping"** shall have the meaning set forth in **Section 12.1** hereof.
- 1.71 **"Xeriscaping Application"** shall have the meaning set forth in **Section 12.1.a** hereof.

ARTICLE II. PROPERTY RIGHTS

2.1 **Owners' Easements of Use and Enjoyment.** Every Owner will have a right and non-exclusive easement of use, access and enjoyment in and to the Common Areas, subject to any limitations set forth herein, including, without limitation, the following:

- a. **Rules.** The right of the Declarant during the Development Period, and the Association, with the advance written approval of the Declarant during the Development Period, to establish and publish rules and regulations governing the use of the Common Areas and/or the Property.

b. **Suspension of Voting Rights.** The right of the Association to suspend the right to use the Common Areas and the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid except with respect to any election (i) of members of the Board, or (ii) concerning such Owner's rights and responsibilities.

c. **Construction of Improvements.** The right of the Declarant during the Development Period, and the Association thereafter, to cause such improvements and features to be constructed upon the Common Areas, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion.

d. **Conveyance of Common Areas.** The right of the Declarant during the Development Period, and the Association thereafter, to dedicate, subdivide, sell or transfer all or any part of the Common Areas, provided that following the Development Period, no such dedication, sale or transfer will be effective unless there is an affirmative vote of 67% or greater of all outstanding votes entitled to be cast. Notwithstanding the foregoing, Pheasant Plot shall convey to the Association all Common Areas within thirty (30) days after the Effective Date hereof.

e. **Mortgage Common Areas.** The right of the Association, subject to the provisions hereof, to mortgage or lien all or any part of the Common Areas, provided that following the Development Period, the Common Areas cannot be mortgaged or licensed without an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

2.2 Prohibitions on Easement of Use and Enjoyment. Each Owner's right and easement of use and enjoyment in and to the Common Areas is further limited as follows:

a. **No Transfer without Lot.** An Owner's right and easement of use and enjoyment in and to the Common Areas shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot.

b. **No Partition.** Except as provided in Section 2.1.d herein, the Common Areas shall remain undivided and no action for partition or division of any part thereof shall be permitted.

2.3 Right to Delegate Use and Enjoyment of Common Areas. Any Owner may extend his or her right of use and enjoyment in and to the Common Areas to the members of his or her family, lessees and guests as applicable, subject to the terms in this Declaration, the By-laws and any reasonable rules of the Board. An Owner who leases his or her Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

2.4 Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, Declarant will have the right and privilege at all times: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots; (ii) to maintain improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate sales and construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of improvements by Declarant will not be considered a nuisance, and the right and privilege to conduct the activities enumerated in this Section 2.4 will remain until three (3) years after the expiration or termination of the Development Period.

ARTICLE III. MEMBERSHIP AND VOTING

3.1 Membership - Owners. Every Owner by virtue of ownership of a Lot will be a Member of the Association. Membership will be appurtenant to and will not be separated from ownership of any Lot.

3.2 Voting Rights. The voting rights in the Association shall be as follows:

- a. **Members other than Declarant.** Except as provided in Section 3.2.b below, Members shall be entitled to one vote for each Lot owned. However, when more than one person or Member holds an interest in any Lot, only one vote in total may be cast per Lot as the Owners of such Lot determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. The Association shall have no affirmative obligation to take any action to determine which Member is the person designated to cast the Lot's vote. If the Members fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it.
- b. **Declarant.** In addition to the votes to which Declarant is entitled by reason of Section 3.2.a, for every one (1) vote outstanding in favor of any other Owners, persons or entities, Declarant will have four (4) additional votes until the expiration or termination of the Development Period. Declarant may cast votes allocated to the Declarant pursuant to this Section 3.2, shall be considered a Member for the purpose of casting such votes, and is not required to own any portion of the Property in order to cast any vote. Notwithstanding anything contained herein, as long as SLO-HKO and Pheasant Plot own Lots in the Property, SLO-HKO and Pheasant Plot shall vote pursuant to this Section 3.2 on a pro rata basis based on the number of Lots owned by each party as of the date of such vote.
- c. **Property and Lots for Voting Purposes.** If the Property contains unplatted tracts of land, each fifteenth of an acre is treated as a "Lot" for voting purposes. When unplatted portions of the Property are later subject to a Recorded Plat, the number of Lots for voting purposes will be automatically adjusted by the number of Lots reflected on such Plat. If additional property is made subject to this Declaration, the number of voting Lots will be increased automatically by the number of additional Lots in the additional Property. If the number of Lots in the Property changes with final platting or replatting, the number of voting Lots will be adjusted accordingly.
- d. SLO-HKO and Pheasant Plot will serve as Co-Declarants as long as both parties own Lots in the Property, and during such period of time, all decisions and actions of the Declarant hereunder shall be made and taken by a vote of SLO-HKO and Pheasant Plot based on one vote for each Lot owned by SLO-HKO and Pheasant Plot, respectively. If there is a deadlock with respect to any decision or action of the Declarant hereunder, SLO-HKO shall have the right to assert the deciding vote as long as SLO-HKO has the right to acquire the Lots then owned by Pheasant Plot as of the date of such vote. Upon Pheasant Plot's sale of the last Lot owned by Pheasant Plot, Pheasant Plot (i) shall cease to be a Co-Declarant hereunder, and (ii) shall assign and be deemed to have assigned to SLO-HKO all of its Declarant rights hereunder.

ARTICLE IV. ASSESSMENTS

4.1 Obligation to Pay Assessments. Subject to and except as provided in this Article IV, each Owner of any Lot by acceptance of a deed therefor, including any Builder that is an owner of a Lot, whether or not it will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges as provided in Section 4.3 herein, (ii) special assessments as provided in Section 4.6 herein, (iii) specific assessments as provided in Section 4.7 herein, and (iv) all other charges and assessments provided herein.

4.2 Rate of Assessments. Both annual assessments and special assessments shall be fixed at a uniform rate for all Lots, regardless of a Lot's location or size or the value of the Dwelling. The initial annual assessment will be \$750.00 per Lot. Notwithstanding the foregoing, the Declarant, during the Development Period, may decrease the amount of annual or special assessments payable by a Builder to an amount determined by Declarant for some or all of the period prior to the conveyance of the Lot from the Builder to an Owner. Unless decreased in

accordance with the preceding sentence, each Builder will pay assessments as set forth in Section 4.1 above and this Section 4.2.

4.3 **Annual Assessment.** Subject to Section 4.2 above, the amount of the annual assessment shall be an amount as determined by the Board. The annual assessment may be increased at any time by the Board, provided that the Board gives written notice to the Members of the increase. The effective date of the increase shall not be sooner than 60 days from the date of the notice. No vote or other approval shall be required for the increase to be effective, unless the increase is more than 10% of the prior annual assessment. If the increase is more than 10% of the prior annual assessment, then the increase may be disapproved by a 67% or greater vote of the votes cast, provided that the vote occurs within 60 days of the date of the increase notice.

4.4 **Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the date of conveyance of the first Lot to an Owner (other than to an entity, including a Builder, that assumes the Declarant status as provided herein), unless the Board elects to commence the annual assessment earlier. The first annual assessment shall be adjusted and prorated according to the number of months remaining in the calendar year when the first annual assessment goes into effect and is due. The Board shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each assessment period. Written notice of the annual assessment shall be sent to the Owners of all Lots subject thereto. Annual assessments shall initially be billed in advance annually and due by January 31 of the applicable year. The Board may thereafter establish whether the annual assessment shall be paid annually, semi-annually, quarterly or monthly.

4.5 **Assessment Obligation of Declarant.** (a) During the Development Period, subject to the limitations set forth below in this Section 4.5, Declarant may annually elect, by written notice to the Association, to pay assessments as otherwise set forth in this Article IV with respect to the Lots owned by Declarant, or to pay to the Association the difference between the Association's operating expenses and the assessments received by the Association (the "**Budget Deficit**") from the other Owners; provided that if the Budget Deficit is the result of the failure or refusal of an Owner or Owners to pay their annual assessment or special assessments, the Association will diligently pursue (and the Declarant may also pursue at its option) all available remedies against such defaulting Owners, and the Association will promptly reimburse the Declarant the amounts, if any, so advanced by Declarant and/or the amount, if any, of the delinquent assessments so collected. If Declarant fails to provide a written notice to the Association specifying Declarant's election above, Declarant will be deemed to have elected to pay the amount, whichever is lower, of the assessments with respect to the Lots owned by Declarant or the Budget Deficit. Notwithstanding the foregoing, in no circumstance shall Declarant have any obligation to pay any portion of a Budget Deficit that exceeds the total amount during any fiscal year of the Association that Declarant would have paid if Declarant were paying full assessments for the Lots owned by Declarant during the subject fiscal year. If Declarant elects, in Declarant's sole and absolute discretion, to fund Budget Deficits that exceed the total amount during any fiscal year of the Association that Declarant would have paid if Declarant were paying full assessments for the Lots owned by Declarant during the subject fiscal year, such excess amounts shall be treated as a loan to the Association, which loan shall bear interest at the lesser of the maximum rate of interest permitted under Applicable Law or a rate of eighteen percent (18%) per annum until repaid (a "**Deficit Loan**"). Deficit Loans shall be repaid by the Association to Declarant as non-reserve funds become available or, at Declarant's sole option and discretion, may be offset against all past, current or future assessments payable by the Declarant under this Declaration. Upon termination of the Development Period, Declarant's obligation to pay any Budget Deficit attributable to any period of time after the Development Period shall cease.

(b) Notwithstanding anything contained herein, as long as SLO-HKO and Pheasant Plot own Lots, the Budget Deficit shall be paid by SLO-HKO and Pheasant Plot on a pro rata basis based on the number of Lots owned by each such party as of the date that the Budget Deficit arises.

4.6 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment to cover expenses which the Board determines, in its sole discretion, to more appropriately be handled outside of the regular operating budget, provided that any such special assessment must have an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

4.7 Specific Assessments. The Association shall have the power to levy specific assessments against a particular Lot to (i) cover costs incurred in bringing a Lot into compliance with this Declaration, (ii) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees, or guests, and/or (iii) collect any sums due by the Owner to the Association (other than annual assessments, special assessments or interest or late charges related thereto), including, without limitation, fines.

4.8 Purpose of Annual and Special Assessments - Reserve. Annual assessments and special assessments levied by the Association shall be used for Common Expenses. The Association may establish and maintain a reserve fund for the periodic maintenance, inspection, repair and replacement of improvements to the Common Maintenance Areas.

4.9 Personal Obligation to Pay Assessments. Each assessment provided herein, together with interest at the Designated Interest Rate, late charges, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee or beneficiary under a Recorded first lien purchase money Mortgage (meaning any Recorded Mortgage with first lien priority over other mortgages or deeds of trust), shall be liable for unpaid assessments which accrued prior to mortgagee's acquisition of title. In addition, no mortgagee shall be required to collect assessments.

4.10 Capitalization of Association - Payment. Upon acquisition of record title to a Lot by the first Owner thereof (other than Declarant or a Builder), a contribution shall be made by or on behalf of such Owner to the working capital of the Association in an amount that is initially established to be \$250.00. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be collected at the Closing of the purchase and sale and shall be disbursed to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-laws. The Declarant (during the Development Period) and the Association (after the Development Period) from time to time may elect to increase or decrease the amount of the working capital contribution. The change of amount is not effective unless stated in a writing that is Recorded, signed and acknowledged by the Declarant or an officer of the Association, as applicable. If the change of amount results in an overall reduction of the working capital contribution for a conveyance that is pending at the time of the change, the lower amount is effective immediately for any closing that occurs after the date the notice of change is Recorded. If the change of amount results in an overall increase of the working capital contribution for the Lot being conveyed at the time of the change, the increased amount is not effective until the 30th day after the date on which the notice of change is Recorded.

4.11 Failure to Pay Assessments; Remedies of the Association. With respect to any assessment or other sum due herein not paid within 10 days after the due date, and subject to Section 4.12 below, the Association shall have the right to (i) charge a late fee, in an amount determined by the Board, (ii) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid, and/or (iii) charge costs and fees related to the collection of the sum due. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or Common Maintenance Areas or by abandonment of his or her Lot. The failure to pay assessments shall not by the terms of this Declaration constitute a default under an insured mortgage, unless otherwise provided by the terms of such mortgage.

4.12 Payment Plans. If an Owner is unable to pay any assessment or other sum due herein, then upon written notice to the Association delivered no later than two (2) business days following the due date of such payment, the Association shall extend to such Owner a payment plan on the following terms (a **"Payment Plan"**):

a. The amount due herein may be paid in three equal partial payments, due one (1) month, two (2) months and three (3) months following the original due date of such payment.

b. Such amounts shall be subject to (i) interest at the Designated Interest Rate from the due date until the date the sum is paid; and (ii) reasonable costs related to the collection of the sum due.

c. The Association is not obligated to extend a Payment Plan to an Owner who failed to honor the terms of a previous Payment Plan during the two (2) years following such Owner's default under the previous Payment Plan.

Notwithstanding the terms of this **Section 4.12**, the Association may adopt an alternative payment plan, in which event the alternate payment plan will supercede and replace this Payment Plan.

4.13 Lien.

a. **Creation of Lien.** The Association shall hereby have a continuing lien against each Lot to secure payment of delinquent assessments (annual assessments, special assessments and specific assessments), as well as interest at the Designated Interest Rate, late charges, other charges and amounts due hereunder, and costs of collection, including, without limitation, court costs and reasonable attorneys' fees, and any other fees or charges that are authorized under or pursuant to this Declaration. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot the amount of delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the Association to execute and Record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

b. **Enforcement of Lien - Judicial or Nonjudicial.** The lien may be enforced by judicial or by nonjudicial foreclosure as set forth in Chapters 49 and 50 of the Arkansas Property Code. By accepting title to a Lot, each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private power of nonjudicial sale. The Board may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board's meeting. A foreclosure must comply with the requirements of Applicable Law. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Chapters 49 and 50 of the Arkansas Property Code as amended, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the By-laws and Applicable Law, including Chapter 13 of the Arkansas Property Code as amended. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

c. **Subordination of Lien.** The lien of the assessments provided for herein is subordinate to the lien of any Recorded first purchase money Mortgage against a Lot.

d. **Effect of Conveyance.** An Owner that conveys title to a Lot shall not be liable for assessments that are attributable to the period after the conveyance of the Lot, except as provided in **Section 4.13.e** herein. However, a conveyance of title to a Lot shall not affect the assessment lien or

relieve the Owner that conveys the Lot from personal liability for any assessments attributable to the period prior to the date of the conveyance, except as provided in **Section 4.13.e** herein.

e. **Effect of Foreclosure.** The foreclosure of a first lien Mortgage, trustee's sale of a first lien Mortgage or a deed in lieu thereof will extinguish the lien of such assessment as to payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof. However, a foreclosure of a first lien Mortgage, trustee's sale of a first lien Mortgage or a deed in lieu thereof will not relieve such Lot or Owner thereof from liability for any assessment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a first lien Mortgage, trustee's sale of a first lien Mortgage or a deed in lieu thereof shall also not release the Owner whose Lot is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the Owner's obligation to pay assessments attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof. For purposes of this Declaration, the use of the term first in connection with a Mortgage shall refer to the lien priority as compared to other mortgages or deeds of trust.

ARTICLE V. THE ASSOCIATION

5.1 **The Association - Duties and Powers.** The Association is a Arkansas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Certificate, By-laws, and this Declaration. The Association shall have such rights, duties and powers as set forth herein and in the Certificate and By-laws. The Association shall continue to exist until the Association is dissolved, regardless if the corporate status expires or lapses.

5.2 **Board of Directors.** The affairs of the Association shall be conducted by the Board, and such officers as the Board may elect or appoint, in accordance with the Certificate and the By-laws. The Board shall have the powers granted in this Declaration, the Certificate and the By-laws, all powers provided by Arkansas law, and all powers reasonably implied to perform its obligations and/or duties provided herein. The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, Declarant will have the sole right to appoint and remove all members of the Board until the 5th anniversary of the date this Declaration is Recorded. No later than the 5th anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board shall hold a meeting of Members of the Association for the purpose of electing one-third of the Board (the **"Initial Member Election Meeting"**), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

5.3 **Limitation on Liability.** Neither the Declarant, nor any officer, director, employee or agent of the Association, nor any member of the ACA shall be liable to any person or entity, including any Owner, for any act or omission in the performance of the duties of the Declarant or such officer, director, employee or agent, or member of the ACA, unless such act or omission is finally determined to constitute fraud or intentional willful misconduct. The liability of an officer, director, employee, agent or committee member of the Association shall be further limited as provided in the Certificate and Bylaws.

5.4 **Indemnification.** To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she (a) acted in good faith

and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association, or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

5.5 Insurance.

a. **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following insurance coverage, if reasonably available:

i. **Property Insurance – Common Areas.** Blanket property insurance covering loss or damage on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Areas and within the Common Maintenance Areas to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership.

ii. **General Liability Insurance.** Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on behalf of the Association.

b. **Additional Insurance.** The Board may obtain additional insurance as the Board determines advisable, including, without limitation, directors and officers liability insurance, fidelity insurance and any insurance to comply with any applicable insurance requirements of any federal agency or secondary mortgage market entity, including, without limitation, the Federal Home Loan Mortgage Corporation ("**FHLMC**"), the Federal National Mortgage Association ("**FNMA**"), the U. S. Department of Veterans Affairs ("**VA**"), and the U.S. Department of Housing and Urban Development ("**HUD**"), to the extent applicable and having jurisdiction over the Property and/or Mortgages on any of the Lots and Dwellings on the Property. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary, the Board shall use its own business judgment to determine if such insurance and/or endorsement is advisable based on the cost and availability of the insurance and/or the endorsement compared to the risks associated therewith.

c. **Review of Policies.** The Board shall periodically review the types and amounts of insurance coverage for sufficiency.

5.6 **Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational, or other agreements with other persons or entities, including without limitation municipal utility districts; provided, any such agreement shall require approval of the Declarant (during the Development Period) and Board. The Board may employ for the Association a management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority. The Association is hereby authorized to negotiate with, exchange with, delegate to, convey to, and accept from a utility district or other special district certain functions, properties (including Common Areas), authorities, and obligations, provided the action is not prohibited by Applicable Law.

5.7 Books and Records. The books and records of the Association shall be made available to the Members for inspection as provided in the By-laws. In addition, Members may obtain copies, at a reasonable cost, of the books and records of the Association as provided in the By-laws.

5.8 Dissolution of Association; Conveyance of Assets. If the Association is dissolved other than incident to a merger or consolidation, the assets (both real and personal) of the Association shall be conveyed as provided in the Certificate.

5.9 Adoption of Rules. The Declarant (during the Development Period) and the Association (with the consent of the Declarant during the Development Period) may, from time to time, make, establish and promulgate, and in its discretion amend from time to time, or repeal and re-enact, rules not in conflict with this Declaration, as it deems proper, covering any and all aspects of Averie Estates (including the operation, maintenance and preservation thereof) or the Association. Any rules, and any modifications thereto, proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

5.10 Enforcement – Notice. The Declarant (during the Development Period) and the Association (with the prior approval of the Declarant during the Development Period) may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with and subject to the applicable procedures set forth in this Declaration, the By-laws and Applicable Law, including Chapter 13 the Arkansas Property Code, as amended. Specifically, written notice and opportunity for a hearing must be given prior to the Declarant or Association exercising its remedies if such notice and hearing is required by this Declaration, the By-laws and Applicable Law, including Chapter 13 the Arkansas Property Code, as amended. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

a. **Fines.** The Declarant or Association (with the consent of the Declarant during the Development Period) may impose reasonable monetary fines which shall constitute a lien upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest, or invitee of the Owner of such Lot.

b. **Suspension of Voting Rights.** As set forth in Section 2.1.b above, the Declarant or Association (with the consent of the Declarant during the Development Period) may suspend an Owner's right to vote, except with respect to any election (i) of members of the Board or (ii) concerning such Owner's rights and responsibilities.

c. **Suspension of Rights to Use Common Areas.** The Declarant or Association (with the consent of the Declarant during the Development Period) may suspend any person's or entity's right to use any Common Areas; provided, however, nothing herein shall authorize the Association to limit ingress or egress to or from a Lot.

d. **Right of Self-Help.** The Declarant or Association (with the consent of the Declarant during the Development Period) may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration.

e. **Right to Require Removal.** The Declarant or Association (with the consent of the Declarant during the Development Period) may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Declarant or Association (with the consent of the Declarant during the Development Period) or its designee shall have the right to enter the Lot, remove the violation, and restore the Lot to substantially the same condition as previously existed, without such action being deemed a trespass.

f. **Levy Specific Assessment.** The Declarant or Association (with the consent of the Declarant during the Development Period) may levy a specific assessment to cover costs incurred by the Declarant or Association in bringing a Lot into compliance with this Declaration.

g. **Lawsuit; Injunction or Damages.** The Declarant or Association (with the consent of the Declarant during the Development Period) has the right, but not the obligation, to bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

h. **Perform Maintenance.** In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot and/or Dwelling, the Declarant or Association (with the consent of the Declarant during the Development Period) may record a notice of violation in the Records and/or enter the Lot and perform such maintenance responsibilities and assess all costs incurred by the Declarant or Association against the Lot and the Owner as a specific assessment.

5.11 **Pursuit of Action.** Subject to the prior approval of the Declarant during the Development Period, the decision to pursue enforcement action, including the commencement of legal proceedings, in any particular case shall be left to the Association's sole and absolute discretion, except that the Association shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Association may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with Applicable Law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

ARTICLE VI. ARCHITECTURAL CONTROLS

6.1 **No Improvements Unless Approved by Architectural Control Authority - Except Improvements by Declarant.** No house, building, fence, wall, outbuilding, landscaping, pool, detached building, athletic or play equipment or facility, structure or improvement will be erected, altered, added onto or repaired upon any portion of any Lot without the prior written consent of the ACA. However, ACA approval is not required for (i) any improvements constructed, erected, altered, added onto or repaired by Declarant or a Builder designated in writing by Declarant to be exempt from the ACA approval requirements, (ii) any improvements to the interior of a Dwelling, except as provided herein, (iii) the painting or re-bricking of the exterior of any Dwelling in accordance with the same color or design as originally constructed by Declarant or a Builder or in accordance with the approved color and design scheme approved by the ACA, (iv) improvements for which the Declaration expressly states that the ACA's prior approval is not required, or (v) repair or replacement of worn out or damaged improvements if such repair or replacement is with substantially similar materials. Any improvements pursuant to clauses (iii) and (v) immediately preceding must be in compliance with any applicable ACA Standards. All primary residential buildings must contain a minimum of 3,300 square feet of heated and air conditioned space. All garages on Dwellings must be either rear loading or sideloading. No garage doors on a Dwelling will be permitted on the front of any structure. Any approved out building must have minimal visibility from the street, which will be decided by the Declarant in its sole discretion on each individual basis, and may have a front loading garage door as long as it is minimally visible from the street as decided by the Declarant in its sole discretion on each individual basis.

6.2 **Architectural Control Authority.** The ACA shall have the sole and exclusive authority to perform the functions contemplated by the ACA in this Declaration. The purpose of the ACA is to enforce the

architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots. The ACA will have the authority to delegate its duties or to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses. The "ACA" or "Architectural Control Authority" shall be the following entity:

a. **Declarant** - The Declarant shall be the ACA until the Declarant in writing has terminated its rights to act as the ACA.

b. **Architectural Committee** - The Architectural Committee shall be the ACA after the Declarant's right to act as the ACA has either expired or voluntarily been terminated.

6.3 **Architectural Committee.** A committee to be known as the "Architectural Committee" or ACA consisting of a minimum of 3 members will be established after the Declarant's right to act as the ACA has either expired or voluntarily been terminated. The members of the ACA will be appointed, terminated and/or replaced by the Board. The ACA will act by simple majority vote.

6.4 **Submission of Plans.** Prior to the initiation of construction of any work required to be approved by the ACA as provided in Section 6.1 above, the Owner (excluding Declarant and any Builder designated in writing to be exempt from the ACA approval requirements as provided herein) will first submit to the ACA a complete set of plans and specifications for the proposed improvements, including site plans, landscape plans, exterior elevations, specifications of materials and exterior colors, and any other information requested or deemed necessary by the ACA for the performance of its function. In addition, the Owner will submit the identity of the individual or company intended to perform the work and projected commencement and completion dates.

6.5 **Plan Review.**

a. **Timing of Review and Response.** Upon receipt by the ACA of all of the information required by this Article VI, the ACA will have 15 days in which to review said plans and other documents and materials submitted pursuant to Section 6.4 herein. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the ACA in form satisfactory to the ACA. If the ACA requests additional information and the applicant fails to provide such information prior to the date stated in the ACA's notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the ACA consider the request. If the ACA fails to issue its written approval within fifteen (15) days after the ACA's receipt of all materials requested by the ACA to complete the submission, then such failure by the ACA to issue its written approval shall be deemed a rejection of such materials. The ACA may charge a reasonable fee for reviewing requests for approval.

b. **Approval Considerations - Aesthetics.** The proposed improvements will be approved if, in the sole opinion of the ACA, (i) the improvements will be of an architectural style, quality, color and material that are aesthetically compatible with the improvements within the Property, (ii) the improvements will not violate any term herein or in the ACA Standards, and (iii) the improvements will not have an adverse impact on the Property. Decisions of the ACA may be based on purely aesthetic considerations. The ACA shall have the authority to make final, conclusive and binding determinations on matters of aesthetic judgment and such determination shall not be subject to review so long as the determination is made in good faith and in accordance with the procedures set forth herein. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the ACA and its members change over time.

6.6 Timing of Completion of Approved Items. All work approved by the ACA shall be completed within one year after the approval by the ACA or such shorter period that the ACA may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the ACA. All work and related improvements shall be in compliance with the items approved by the ACA.

6.7 Improvements Impact on Drainage. With respect to any improvements performed on a Lot and/or any alterations to the grade of a yard, the Owner shall take proper precautions to insure that such improvements do not cause the surface water drainage on the Lot to (i) drain onto an adjoining Lot in an amount more than the drainage amount, or in a location, direction or concentration materially different than the location, direction or concentration, existing prior to the improvement or alteration, or (ii) collect near the foundation of the Dwelling. Although the ACA may comment on and/or deny the approval of plans because of the impact of the proposed improvements or alterations on surface water drainage, the ACA's comments or approval shall not constitute or be construed as a representation, warranty or guaranty that adverse surface water drainage problems will not occur and shall not be relied upon as such. The Owner is responsible for taking the necessary actions in order to avoid any surface water drainage problems, including, without limitation, engaging the services of a qualified consultant and contractors.

6.8 No Waiver. The approval by the ACA of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ACA under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

6.9 Variances. The ACA may authorize variances from strict compliance with the requirements herein, any ACA Standards or any required procedures (i) in narrow circumstances where the design meets the intent of the provision from which variance is sought and where granting the variance would enhance design innovation and excellence, or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. For purposes of this Section 6.9, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing as the sole or primary reason for requesting a variance shall not be considered a hardship warranting a variance. No variance (a) shall be contrary to the terms of this Declaration, (b) shall be effective unless in writing, or (c) shall estop the ACA from denying a variance in other circumstances.

6.10 Architectural Control Authority Standards. The ACA may, from time to time and in its sole and absolute discretion, adopt, enact, amend and repeal, by unanimous vote or written consent, ACA Standards. The ACA Standards may not conflict with the terms of this Declaration.

6.11 Enforcement; Non-Conforming and Unapproved Improvements. If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the ACA, in their sole and absolute discretion, such improvements will be in violation of this Article VI to the same extent as if made without prior approval of the ACA. In addition to the Declarant's and Association's rights in Section 5.10 herein, the Declarant, Association or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement or alteration to any improvement on any Lot that is not approved by the ACA. A deposit of \$5,000.00 with ACA is required to insure the approved plans are followed. Upon completion of the Dwelling based on the plans and compliance with this Declaration and the ACA requirements, the \$5,000.00 deposit will be returned to the Owner.

6.12 Limitation of Liability. Neither the Declarant, the Association, the Board, nor the ACA or any member of the ACA shall bear any responsibility for ensuring the structural integrity or soundness of any approved improvements, construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Review and approval of any submission or application is made on the basis of aesthetic considerations only and not for engineering, structural design or quality of materials.

No approval of any plans by either the ACA, the Declarant, the Association or the Board shall be construed to mean that the plans comply with any Applicable Law, building code, or governmental regulation. Neither Declarant, the Association, the Board, the ACA nor any member of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Dwelling and/or Lot. Declarant and members of the ACA shall have no liability for decisions made by them regarding the approval or disapproval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious. The ACA and its members shall be defended and indemnified by the Association as provided in Section 5.4 herein.

ARTICLE VII. USE RESTRICTIONS AND COVENANTS

7.1 Single Family Residential Use. (a) All Lots and Dwellings will be used and occupied for single-family residential purposes only and no trade or business may be conducted in or from any Lot and/or Dwelling, except that an Owner of the Dwelling may conduct business activities within the Dwelling so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling, (ii) the business activity conforms to all zoning requirements for the Property and all Applicable Laws, (iii) the business activity does not involve unreasonable visitation to or from the Dwelling by clients, customers, suppliers or other business invitees, and (iv) the business activity is ancillary to the residential use of the Dwelling and does not diminish the residential character of the Property or constitute a nuisance, or a hazardous or offensive use, or threatens the security or safety of the other residents in the Property. The determination of whether a business activity satisfies the foregoing requirements set forth in clauses (i) through (iv) above in this Section 7.1 shall be made by the Board in their sole and absolute discretion. The business activity prohibition will not apply to the use by Declarant or any Builder (a) of any Dwelling as a model home, construction office and/or sales office, or (b) of any Lot as a site for a selection center trailer, construction office trailer, sales office trailer, and/or parking lot, any of which uses may be for the benefit of real property owned by Declarant or any Builder located within or outside of the Property.

(b) Each Owner of a Lot may construct and maintain up to one (1) habitable guest house on a Lot in addition to the primary Dwelling provided such guest house is located behind the Dwelling, is not rented out, and is only occupied by up to 2 persons who are relatives or persons providing services on the Lot for the Owner.

7.2 Parking of Motor Vehicles. No vehicles or similar equipment will be parked or stored in an area visible from any street within the Property, except passenger automobiles, motorcycles, passenger vans and pick-up trucks may be parked in any garage or driveway if such vehicle (i) has less than 1 ton carrying capacity, (ii) has less than 3 axles, (iii) is in operating condition, and (iv) is currently registered and generally in daily use as a motor vehicle on the streets and highways of the State of Arkansas. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement, provided, however, that this restriction will not apply to any driveways, roads, parking lots or other areas designated by the Board as intended for such vehicular use. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot or a street within the Property, except within an enclosed garage. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or portions of any Lot that are visible from any street within the Property.

7.3 Trailers, Boats, Commercial and Recreational Vehicles. No campers, boats, trailers, motor homes, travel trailers, camper bodies, golf carts, recreational vehicles, non-passenger vehicles, vehicles with 3 or more axles or greater than 1 ton carrying capacity, and/or equipment or accessories related thereto may be kept on any Lot, unless such item is operable and such item is (i) kept fully enclosed within a garage located on such Lot, (ii) kept fully screened from view by a screening structure or fencing approved by the ACA, (iii) temporarily parked on any street within the Property or on a Lot for the purpose of loading or unloading, or (iv) a commercial vehicle that is in use for the construction, maintenance or repair of a Dwelling or Lot in the immediate vicinity. The

Board will have the absolute authority to determine from time to time whether an item is in operable condition and complies with the requirements in clauses (i) through (iv) above in this Section 7.3. Upon an adverse determination by the Board, the Owner will cause the item to be removed and/or otherwise brought into compliance with this Section 7.3. Notwithstanding any provision herein, no trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept on the Property at any time.

7.4 Fences.

a. **Required Fencing.** The front yard, back yard and side yard of each Lot must be fully enclosed with a black 3 board corral perimeter fence that meets the specifications noted in Exhibit I attached hereto. The Owner of that Lot must at all times maintain such fence in accordance with the terms of this Declaration, unless that Owner obtains the ACA's written approval to modify, replace, relocate or remove such fence in accordance with the provisions of this Declaration.

b. **Type of Fencing.** All black 3 board perimeter fences will be wood. No other type of fencing including, without limitation chain link, shall be permitted without the prior approval of the ACA, which has no obligation to consider or approve another type of fencing. The ACA, however, may from time-to-time consider if other types of fence materials are appropriate for the community and publish a list of other permitted fence materials. All fencing shall comply in all respects (including size and location) with applicable City requirements. All perimeter fences shall be cedar wood, three horizontal runners, stained/painted black, and otherwise subject to the approval of the ACA. Unless approved by the ACA, fences must be stained with the same color stain as originally applied by the Declarant.

c. **Completing the Fencing** The Builder, at the homeowner's expense, shall construct the remainder of the Required Fencing when the Builder constructs a dwelling on the Lot. The Owner shall be responsible for maintaining Required Fencing located on such Owner's Lot to the extent required by the ACA

d. **Location of Fence.** Unless approved by the City, if required, and the ACA, no fence or wall will be placed (i) on any Lot in a location other than along each Lot's property line.

e. **Animal Containment Fencing** Unless approved by the ACA, all fencing required to contain a pet, shall be a black wire mesh and shall be as invisible as possible from the street and shall be applied to standard black 3 board corral board fence.

f. **Maintenance of Fencing.** The ACA will decide when all fencing visible from the street (inside or out) needs to be repainted/stained. Except with respect to any Association Maintenance Feature, each Owner shall maintain both sides of the portion of fencing on or along the boundary of such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto (as deemed necessary by the Board, in its sole and absolute discretion), except that Owners adjoining a Common Fence (as provided in Section 7.4.g) herein shall share in the cost of such maintenance as provided in Section 7.4.g herein. The Association shall be responsible to maintain any Association Maintenance Feature.

g. **No Changes / Repairs.** All repairs and replacements to the perimeter fencing must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new appearance of the repaired or replaced materials. Except as provided in this Section 7.4.f, no fencing may be changed or modified without the prior written consent of the ACA. This includes the prohibition against changing the height of the fencing and the fencing materials.

h. **Common Fencing.** Except for any Association Maintenance Feature, side and rear yard fences that are installed by Declarant or the Builder of the Dwelling to separate adjacent Lots as a common boundary fence (the "Common Fence") shall be maintained jointly by the Owners whose Lots adjoin such Common Fence, and the costs associated therewith shall be shared equally by said Owners. An Owner is not released from the joint maintenance obligation even if an Owner constructs a second fence along or near the Common Fence, unless the other Owner agrees in writing otherwise and the ACA's approval is obtained. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or portion thereof, then Owner may make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of one-half (1/2) of the cost of repair or replacement provided in Article XI herof, subject to the repair or replacement being made.

7.5 Common Retaining Wall.

a. **Maintenance of Common Retaining Wall.** If a retaining wall, or a portion of a continuous retaining wall (in either case, a "Common Retaining Wall"), is installed on a common boundary of two Lots, or is located on a Lot but adjacent to (generally within not more than 3 feet) and generally parallel with the boundary of another Lot, the Common Retaining Wall shall be maintained as provided in this Section 7.5. As the Owner of the Lot at the higher elevation (the "Higher Lot") has more control over the conditions that affect the stability and structural integrity of the Common Retaining Wall, the Owner of the Higher Lot is solely responsible for all maintenance, repair and reconstruction of the Common Retaining Wall (unless due to the negligence or willful act or misconduct of the Owner of the Lot at the lower elevation (the "Lower Lot"), in which case such costs shall be paid by the Owner of the Lower Lot). A retaining wall that is entirely within the boundaries of a Lot and not on or near a dividing line between two Lots is solely the responsibility of the Lot Owner on whose Lot the retaining wall is located. The Common Retaining Wall shall be maintained in the same location, size, style and design and with the same materials, as originally installed, unless the ACA's approval is obtained. In the case of a dispute between Owners of Lots as to which Lot is the Lower Lot and which Lot is the Higher Lot, the decision of the ACA shall be final and binding upon the Owners.

b. **Easements for Common Retaining Wall.** Common Retaining Walls may not be located exactly on the common boundary line between two Lots. Therefore, there is hereby created an easement in and on the Lot where the Common Retaining Wall is actually located. The easement area shall be limited to the area that is within five (5) feet of the common boundary line. The easement shall be for the benefit of the Owner of the Lot that is responsible for maintenance of the Common Retaining Wall so that such Owner can maintain the Common Retaining Wall as provided in Section 7.5a.

c. **Easement of Enjoyment and Use.** The Owner of the Lower Lot is granted a non-exclusive and perpetual right and easement of enjoyment and use over the exterior surface of the Common Retaining Wall for use as a perimeter wall or fence of the Lower Lot. The Owner of the Lower Lot is responsible for maintaining the Lower Lot up to the Common Retaining Wall, even if the Common Retaining Wall is inside the boundaries of the Higher Lot, and to maintain the lateral ground support of and for the Common Retaining Wall.

7.6 **Outbuildings, Sheds and Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages, storage buildings, and sheds, shall be erected, placed or constructed upon any Lot, unless (i) the building is approved by the ACA prior to the installation or construction of the building, (ii) such building is compatible with the Dwelling to which it is appurtenant in terms of its design and material composition, (iii) the exterior paint and roofing materials of such building shall be consistent with the existing paint and roofing materials of the Dwelling, (iv) the building is located within a backyard that has a fence that completely encloses the backyard, (v) the total height of the building (including walls and roof) is not greater than the height of the

primary Dwelling first floor roof ridge, and (vii) the building has minimal visibility from the streets and has mature landscaping surrounding the structure. In addition, the Owner is required to comply with any applicable City requirements, including, without limitation, any necessary permits.

7.7 Animals. No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except that a reasonable number of cats, dogs or other generally recognized household pets may be permitted on any Lot; however, those pets which are permitted to roam free, or in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board. If the animal owner fails to remove the animal from the Lot after the Board's request, the Board may remove the animal, in addition to imposing such other sanctions as are authorized by the Declaration and the By-laws. All animals will be kept in strict accordance with all Applicable Laws (including leash laws) and in accordance with all rules established by the Association. All persons bringing an animal onto the Common Maintenance Areas shall be responsible for immediately removing any solid waste of said animal.

7.8 Signs. Except for Entry Signs, no sign or emblem of any kind, including "for rent" signs, may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the following: (i) an Owner may erect one (1) sign on a Lot advertising the Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size, (ii) an Owner may temporarily place one (1) sign on a Lot advertising the "open house" of a Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during actual open house hours, (iii) an Owner may place one (1) sign on the inside of a window advertising a Dwelling "for rent", provided that the sign does not exceed one and one-half (1 1/2) feet by one and one-half (1 1/2) feet in size, (iv) signs or billboards may be erected by the Declarant or any Builder designated in writing by the Declarant as having the right to erect such signs or billboards, (v) an Owner may temporarily place 1 sign on a Lot advertising a "garage sale", provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during the garage sale hours, or (vi) political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 60 days in advance of the election to which they pertain and are removed within 15 days after the election. The ACA may in the ACA Standards permit additional signs and/or place additional restrictions or limitations on the signs permitted in this Declaration, provided that such additional restrictions or limitations do not conflict with the terms herein. The Association will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing. Removal shall not subject the Association to any liability in connection with such removal.

7.9 Trash; Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. In no event shall such containers be stored, kept, placed or maintained on any Lot where visible from the location on the street that is immediately in the front of the Dwelling except solely on a day designated for removal of garbage, then such containers may be placed in the designated location for pick-up of such garbage and the container will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any Builder designated by Declarant.

7.10 Nuisances. No noxious or offensive activity, including, without limitation, unreasonable smells, noise or aesthetics, will be carried on upon any Lot, nor will anything be done thereon which the Board determines, in its sole and absolute discretion, is or may become an unreasonable source of annoyance or nuisance to the Property or the Members.

7.11 Antennae and Satellite Dishes. Except with the written permission of the ACA or as provided herein, exterior antennae, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Dwelling or on any portion of

the Lot outside the Dwelling, except that (i) antennas, satellite dishes or other apparatuses that are one meter or less in diameter and that are designed to receive transmissions other than television broadcast signals shall be permitted, and (ii) antennas or satellite dishes designed to receive television broadcast signals shall be permitted. Any of the foregoing permitted devices and any other device permitted by the ACA (a "Permitted Device"), must be located in an area where such Permitted Device is not visible (for aesthetic reasons) from any portion of the street in front of the applicable Lot with the apparatus. However, if the Owner determines that the Permitted Device cannot be located in compliance with the foregoing non-visibility requirement without precluding reception of an acceptable quality signal, then the Owner may install the Permitted Device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained. The ACA in the ACA Standards may include rules or provisions regarding the type of additional Permitted Devices and/or the placement of Permitted Devices, provided that such ACA Standards do not conflict with the terms of this Section 7.11 and do not unreasonably increase the cost of installation, maintenance or use of the Permitted Device. A Permitted Device that complies with the provisions of this Section 7.11 and the ACA Standards shall not require the ACA's approval prior to installation. However, the ACA shall be the sole and exclusive authority for purposes of determining if the item or device complies with the provisions of this Section 7.11 and the ACA Standards.

7.12 Air-Conditioning Units. Air-conditioning apparatuses must be installed on the ground behind the rear of the Dwelling, on the ground on the side of the Dwelling or such other location as may be approved by the ACA but in no case will be visible from the street. No air-conditioning apparatus or evaporative cooler may be located in or on the front of any Dwelling or attached to any roof, wall or window of any Dwelling.

7.13 No Temporary Structures as a Residence. No structure of a temporary character, including without limiting the generality thereof any tent, shack, garage or barn, will be used on any Lot at any time as a residence, either temporarily or permanently, except that camping out in a tent is permitted provided that such activity is on a temporary basis and does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board in its sole and absolute discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

7.14 Sidewalks. The Builder, at the homeowners expense, shall construct a sidewalk on a lot in accordance with all City requirements when the Builder constructs a dwelling on the Lot. The Owner shall be responsible for maintaining any sidewalk located on such Owner's Lot to the extent required by the City.

7.15 Landscaping Maintenance. All yards must be sodded or grassed within a reasonable time period not to exceed three (3) months after the initial conveyance of a Lot with a Dwelling thereon to an Owner other than a Builder. Decorative ground cover rock (excluding flower beds and planters with mulch rather than rock) in the front and side yard may not exceed 10% of the total area of the front and side yard. All trees, grass and other landscaping located on any Lot (or located adjacent to such Lot within the right-of-way of a street, alley or other right-of-way, including, for example, the area adjacent to a Lot between the sidewalk and the curb of the street) must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flower beds and planter areas. No hardscape, including, without limitation, edging may include any symbols, characters, numbers or letters, unless approved by the ACA.

7.16 Exterior Improvement Maintenance. All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board, in its sole and absolute discretion.

7.17 Garages. Each Dwelling must have a garage that will accommodate a minimum of three (3) automobiles. All garages must comply with City requirements. Garages may be used as Declarant's or a Builder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by the Declarant or Builder as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation.

7.18 Clothes Hanging Devices. No clothes hanging devices exterior to a Dwelling are to be constructed or placed on the Lot, except within the Dwelling.

7.19 Window Treatment. No aluminum foil, newspaper, reflective film, bed sheets or similar linens, or similar treatment will be placed on windows or glass doors of a Dwelling.

7.20 Oil and Gas Drilling or Mining. No drilling, refining, quarrying or mining operation of oil, gas or other minerals of any kind will be permitted upon or from the surface of any Lot, nor will any oil derrick, well, tank, storage facility or other related equipment be permitted on any Lot. This Section 7.20 shall not prohibit subsurface drilling activities that begin upon and are conducted from the surface of real property not subject to these restrictions, provided, however, in no event shall the directional drilling or sub-surface activities be at depths less than two hundred feet (200') below the overlying surface of the Property and no closer than two hundred feet (200') from the boundary line of the Property, and no such drilling shall interfere with or result in damage to or subsidence of the surface of the Property, the structures located at any time thereon, or the support of any such structures.

7.21 Mail Boxes. Mailboxes will be installed by Builder at the time each individual home is constructed. All mailboxes will be of same design selected and/or approved by Declarant.

7.22 Athletic and Recreational Facilities. No outdoor athletic and recreational facilities, such as playgrounds, swing sets and sport courts, may be placed on a Lot unless (i) such item is placed within a backyard and the location and the item does not exceed 12 feet in height, or (ii) such item is a temporary and movable facility that is stored each night in the garage, the Dwelling or other fully screened area. Notwithstanding the foregoing, basketball goals and any other recreation equipment designated by the ACA may be located on any portion of the Lot (including side yards) that is behind any portion of the rear of the Dwelling and is not visible from the street.

7.23 Lighting; Exterior Holiday Decorations. Lighting and/or decorations on a Lot may not be used or placed in a manner which, in the Board's sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the Owners or occupants of other Lots. Except for lights and decorations within the interior of a Dwelling that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six (6) weeks in advance of that specific holiday and must be removed within 30 days after the holiday has ended.

7.24 Flags, Flagpoles, Lawn Decorations and Sculptures. The Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags, flagpoles and similar items on any portion of such Owner's Lot except the interior of the Dwelling, unless (i) such item is placed within a backyard and is not visible from the street. Each Homeowner is authorized to mount two temporary or permanent flagstaffs on the front, rear or side of their residence by wall bracket. Homeowners may not locate a flag or flagpole on the Common Areas or any portion of the Property owned by Declarant. Additionally, to maintain the overall aesthetic character of the community, the following restrictions shall govern the display of flags within the community:

- a. The flag of the United States of America, the flag of the State of Arkansas and flags of any branch of the United States armed forces are the only permitted flags that may be flown on a Lot. All other

flags, pennants, banners, kites or similar types of display are not permitted without the prior written approval of the ACA in its sole discretion.

b. Installations of flagpoles in front yards require the ACA's prior written approval. No more than one in-ground flagpole per Lot is permitted without the ACA's prior written approval. No part of a flagpole base may be above-grade (on the surface) or visible from a street without the ACA's prior written approval. In lieu of an in-ground flagpole in the front yard, a flag may be flown from a flagstaff wall-mounted to the first floor façade of the house and projecting at an angle of approximately 45 degrees. Without the ACA's prior written approval, a flagpole may not be installed in the side yard of a corner Lot or the rear yard of a Lot that backs up to a street or Common Areas. Such flags may contain no more than twenty-four (24) square feet of material. Flags and flagpoles must be maintained in good condition, and the ACA may require any deteriorated flag or flagpole to be repaired, replaced or removed.

c. Flagstaffs should not exceed six (6) feet in length. The suggested location for bracket mounting is on the garage doorframe or near the garage door. No roof-mounted flagstaff is allowed. Multiple flag configurations and any flagstaff in excess of six (6) feet must be approved by the ACA prior to installation or display. Such flags may contain no more than twenty-four (24) square feet of material and must be of good taste and presentation.

d. Notwithstanding anything in this Section 7.24 to the contrary, an Owner may display religious objects on the front door or doorframe of the Owner's Dwelling, unless such objects contain patently offensive language or symbols or the object is more than twenty-five (25) square inches in size.

7.25 No Lot Consolidation or Division. No Lot may be subdivided. Lots may be replatted by the Lots directly affected by the replating and subject to compliance with Applicable Law. A copy of the replat will be provided to the Association, provided that replating with not affect or alter the number of votes or assessments allocated to the Lots as originally platted.

7.26 Drainage Alteration Prohibited. Unless approved by the ACA, no Owner will (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling, or (ii) install landscaping or other improvements that may interfere with, obstruct or divert drainage flows established by the Declarant or any Builder. The foregoing shall not prevent or limit the Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot.

7.27 Construction Activities. This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board in its sole good faith judgment, the Board will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

7.28 Declarant and Builder Development and Construction. Notwithstanding any other provision herein, Declarant, and its successors and assigns, and any Builders will be entitled to conduct on the Property all activities normally associated with, and convenient to, the development of the Property and the construction and sale of Dwellings on the Property.

7.29 **Roofing.** The ACA may restrict the installation of roofing shingles that are primarily designed to be wind and hail resistant, provide heating and cooling efficiencies or provide solar generation capabilities ("Specialized Shingles") on any Dwelling if such Specialized Shingles do not resemble shingles used on other Dwellings, are less durable than shingles used on other Dwellings, or do not match the aesthetics of the property surrounding the Lot on which such Dwelling is located.

7.30 **Rainwater Harvesting Systems.** Rain barrels or rainwater harvesting systems (a "Rainwater Harvesting System") may be installed with the advance written approval of the ACA but may not be seen from the street.

a. To obtain ACA approval of a Rainwater Harvesting System, the Owner shall provide the ACA with (i) the proposed installation location of the Rainwater Harvesting System, and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction thereof (the "Rain System Application"). A Rain System Application may only be submitted by an Owner.

b. The decision of the ACA will be made in accordance with this Declaration. Any proposal to install a Rainwater Harvesting System on Common Areas must be approved in advance and in writing by the Board, and the Board need not adhere to this Section 7.30 when considering any such request.

c. Unless otherwise approved in advance and in writing by the ACA, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

- i. The Rainwater Harvesting System must be consistent with the color scheme of the Dwelling constructed on the Owner's Lot, as reasonably determined by the ACA.
- ii. The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.
- iii. The Rainwater Harvesting System is in no event located between the front of the Dwelling constructed on the Owner's Lot and any adjoining or adjacent street.
- iv. There is sufficient area on the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the ACA.
- d. If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Areas or any other Owner's Lot, the ACA may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, the Rain System Application should describe the methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, Common Areas, and other Lots. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Areas, or any other Lots, any additional requirements imposed by the ACA to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the ACA.

ARTICLE VIII. COMMON AREAS

8.1 **Association to Hold and Maintain.** The Association will own all Common Areas in fee simple title. The Association shall maintain, at the Association's cost, the Common Areas and any improvements and

landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas, at the Association's cost, to the extent the Board determines that such maintenance is desirable or is required by this Declaration or Applicable Law. The costs of such maintenance for the Common Areas and Common Maintenance Areas shall be the Association's responsibility, regardless if such cost was incurred during the Development Period. Without limitation of the foregoing, the Association is responsible for maintenance of all landscaping, buffering, screening, irrigation and associated improvements within the Common Areas as reflected in the recorded plat for the Property.

8.2 Use of Common Areas at Own Risk. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, the Board, ACA, all committees, Declarant, and the Builders are not insurers of personal safety, and that each person using the Common Areas assumes all risks of personal injury and loss or damage to property resulting from the use and enjoyment of any portion of the Common Areas.

8.3 Condemnation of Common Areas. In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be payable to the Association and will be used by the Association as the Board determines, in its business judgment, including, without limitation, (i) to purchase additional Common Areas to replace that which has been condemned, (ii) to reconstruct or replace on the remaining Common Areas any improvements that were on condemned Common Areas, (iii) to pay for Common Expenses, or (iv) to be distributed to each Owner on a pro rata basis.

8.4 Damage to Common Areas. If any of the Common Areas or improvements on the Common Maintenance Areas are damaged and if there are insurance proceeds sufficient to repair such damage to its prior condition, then the Association shall cause such damage to be repaired or reconstructed unless there is a 67% or greater vote of all outstanding votes entitled to be cast within 90 days after the loss not to repair or reconstruct. If said 67% vote is cast not to repair or reconstruct such damage and no alternative improvements are authorized, the damaged property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association.

8.5 Conveyance of Common Areas by Declarant to Association. Declarant shall have the right to convey title to any portion of the Property owned by Declarant, or any easement interest therein, to the Association as Common Areas, and the Association shall be required to accept such conveyance. Property conveyed by Declarant to the Association as Common Areas shall be conveyed free and clear of monetary liens and encumbrances other than taxes and assessments imposed by governmental entities or districts authorized by Arkansas law. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the Records. Without limiting the foregoing, Pheasant Plot shall convey to the Association all Common Areas with thirty (30) days after the Effective Date hereof.

8.6 Annual Inspection of Common Areas - Budget. From the period commencing at the expiration of the Development Period until 10 years thereafter, the Association shall at least annually examine the condition of the Common Areas to evaluate the quality, frequency, and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer, or professional contractors such as landscapers and brick masons. Within 15 days after performing the inspection, the expert should submit to the Board a written report with findings and recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair, and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. An expert's report is a record of the Association that is available to Owners for inspection and copying.

ARTICLE IX. EASEMENTS

9.1 **Easement for Utilities on Common Areas.** During the Development Period, the Declarant, on behalf of itself, reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Areas for the construction, installation, use and maintenance of utilities, including, without limitation, water, , electric, cable television, telephone, natural gas and storm water and drainage related structures and improvements. The Association will also have the right to grant the easements described in this Section 9.1.

9.2 **Easement to Correct Drainage on Property.** For a period of 5 years after the Development Period, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property (excluding the area where a Dwelling is located) to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.3 **Easement for Right to Enter Lot.** If an Owner fails to maintain its Lot as required herein, or in the event of emergency, the Declarant and the Association will have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein will not be deemed a trespass, and the Declarant and the Association will not be liable for any damage so created unless such damage is caused by the Declarant's and the Association's willful misconduct or gross negligence. EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 9.3 (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH, EXCEPT TO THE EXTENT SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISES BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

9.4 **Easement for Right to Enter and Inspect Common Areas.** For a period of 10 years after the date of the expiration of the Development Period, Declarant shall have the right, but not the obligation, to enter upon the Common Areas for purposes of inspecting and repairing the Common Areas and/or any improvements thereon at Declarant's expense; provided; however, nothing contained herein shall obligate Declarant to make any inspections or repairs.

9.5 **Temporary Easement to Complete Construction.** All Lots will be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors, and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Dwellings and landscaping upon adjacent Lots, provided that such easement will terminate as to any Lot 24 months after the date such Lot is conveyed to an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.6 **Association Easement.** Declarant hereby reserves the Association Easement over, upon and across each Lot for the benefit of the Declarant and the Association for the purpose of placing, constructing and maintaining the Entry Signs, the Association Maintenance Features, and landscaping owned and/or maintained by the Association in a Common Areas.

ARTICLE X.

ANNEXATION AND WITHDRAWAL; SUPPLEMENTAL DECLARATIONS

10.1 **Annexation by Declarant.** While Declarant owns any real property subject to this Declaration, Declarant may, at its sole option, annex real property into the Association and subjecting such real property to the terms hereof, including, without limitation, any property platted as part of the Avere Estates community, in which case such additional property and any common areas therein will be included in the definition of "Property" or "Common Areas" as appropriate, and any reference to "Avere Estates" will include such additional property; provided, however, Declarant shall not have the right to annex real property that is located more than 1 mile from the Property (as such term may be amended), without a vote as provided in Section 10.2 below.

10.2 **Annexation by Association.** The Association may annex any real property into the Association and subject such real property to the terms hereof by an affirmative vote of 67% or greater of all outstanding votes that are entitled to be cast.

10.3 **Recording of Annexation.** The annexation of such real property shall be evidenced by a written Recorded document.

10.4 **No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of the Declarant, any Member or the Association to annex any real property, and no owner of any property excluded from the Association shall have any right to have such property annexed thereto.

10.5 **Withdrawal of Property.** While Declarant owns any real property subject to this Declaration, Declarant may amend this Declaration to withdraw any real property that does not have a Recorded Plat from the definition of the Property and from the coverage of this Declaration, provided that the owner of real property to be withdrawn consents to such withdrawal.

10.6 **Supplemental Declarations.** From time-to-time while Declarant owns any real property subject to this Declaration, Declarant may file one or more Supplemental Declarations that may contain such other provisions established by Declarant in Declarant's sole and absolute discretion.

ARTICLE XI. DISPUTE RESOLUTION

11.1 **Introduction & Definitions.** The Association, the Owners, Declarant, and all persons subject to this Declaration (individually a "Party" and collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Association and/or the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article XI applies to all Claims as hereafter defined. As used in this Article XI only, the following words, when capitalized, have the following specified meanings:

a. **"Claim"** means any claim, grievance, or dispute between the Parties arising from or related to this Declaration, the ACA Standards, the By-laws or the Property or related to the Common Areas or any improvements of any kind to the Common Areas, except Exempt Claims as defined below. Claims include, without limitation: (i) Claims arising out of or relating to the interpretation, application or enforcement of the Declaration, the ACA Standards, the By-laws, the Certificate or any rules, regulations or guidelines of

any type promulgated by or on behalf of the Association (the "Documents"); (ii) Claims relating to the rights and/or duties of Declarant as Declarant under the Documents; and (iii) Claims relating to the design, construction or maintenance of the Common Maintenance Areas and/or the Property.

b. "Claimant" means any Party having a Claim against any other Party.

c. "Exempt Claims" means the following claims or actions, which are exempt from this Article XI: (i) the Association's claim for assessments, or other amounts due hereunder and any action by the Association to collect assessments or other amounts due hereunder, (ii) an action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of the Documents, (iii) enforcement of the easements, architectural control, ACA, maintenance, and use restrictions of this Declaration, (iv) a suit to which an applicable statute of limitations would expire within the notice period of this Article XI, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article XI, and (v) a dispute that is subject to alternate dispute resolution (such as mediation or arbitration) by the terms of Applicable Law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article XI, unless the Parties agree to have the dispute governed by this Article XI.

d. "Respondent" means the Party against whom the Claimant has a Claim.

11.2 **Mandatory Procedures.** It is intended that all Claims will attempt to be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, Declarant, the Association, the Board, and all Owners shall be bound by the dispute resolution procedures of this Article XI.

11.3 **Notice.** Claimant must notify Respondent in writing of a Claim (the "Notice"), stating plainly and concisely (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim, (2) the basis of the Claim (i.e., the provision(s) of the Declaration, By-laws, Certificate or other authority out of which the Claim arises), (3) what Claimant wants Respondent to do or not do to resolve the Claim, and (4) that the Notice is given pursuant to this Section 11.3.

11.4 **Right to Cure.** If the Notice sets forth a Claim regarding an alleged defect or defects (whether one or more, the "Alleged Defects") in any improvements on any portion of the Common Areas or the Property, Respondent shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

a. **Notice of Alleged Defect.** If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof, Claimant shall give written notice of the Alleged Defect ("Notice of Alleged Defect") to the other Party who constructed the improvement with respect to which the Alleged Defect relates.

b. **Right to Enter, Inspect, Repair and/or Replace.** Within a reasonable time after the receipt by a Party of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Party, such Party shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Areas, areas of Association responsibility, or any other portion of the Property for the purposes of inspecting and/or conducting testing and, if deemed necessary by such Party at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

c. **No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in this Article XI shall be construed to impose any obligation on a Party to inspect, test, repair, or replace any

item or Alleged Defect for which such Party is not otherwise obligated under Applicable Law or any warranty provided by such Party. The right reserved to a Party to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to such Party except by a Recorded, written document executed by such Party.

11.5 Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to this Article XI. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, or mediation alleging (1) damages for costs of repairing an Alleged Defect ("Alleged Defect Costs"), (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid in to the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Owners prior to initiation of any legal action, regulatory action, cause of action, proceeding, mediation or arbitration which notice shall include at a minimum (1) a description of the Alleged Defect, (2) a description of the attempts of the other Party to correct such Alleged Defect and the opportunities provided to the other Party to correct such Alleged Defect, (3) a certification from an architect or engineer licensed in the State of Arkansas that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer, (4) the estimated Alleged Defect Costs, (5) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the Claim, and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

11.6 Alternative Dispute Resolution.

a. Negotiation. Each Party to a Claim shall make every reasonable effort to meet in person and confer for the purpose of resolving a Claim by good faith negotiation. Each Party to the Claim shall bear their own attorneys' fees and costs in connection with such negotiation.

b. Mediation. If the Parties cannot resolve their Claim within such time period as may be agreed upon by such Parties (the "Termination of Negotiations"), the Party instituting the Claim (the "Disputing Party") shall have thirty (30) days after the Termination of Negotiations within which to submit the Claim to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the Parties to the Claim may mutually agree. No person shall serve as a mediator in any Claim in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all Parties to the Claim. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Claim, and all other Parties to the Claim shall be released and discharged from any and all liability to the Disputing Party on account of such Claim; provided, nothing herein shall release or discharge such Party or Parties from any liability to persons or entities not a Party to the foregoing proceedings.

c. **Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each Party to the Claim shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference, and all Parties to the Claim shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the Parties to the Claim mutually agree to extend the mediation period. The mediation shall be held in the County where the Property is located or such other place as is mutually acceptable by the Parties to the Claim.

d. **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the Parties to the Claim and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties to the Claim agree to obtain and assume the expenses of obtaining such advice as provided in Section 11.6.g below. The mediator does not have the authority to impose a settlement on any Party to the Claim.

e. **Exclusion Agreement.** Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

f. **Parties Permitted at Sessions.** Persons other than the Parties to the Claim may attend mediation sessions only with the permission of all Parties to the Claim and the consent of the mediator. Confidential information disclosed to a mediator by the Parties to the Claim or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic record of the mediation process.

g. **Expenses of Mediation.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any expert advice produced at the direct request of the mediator, shall be borne equally by the Parties to the Claim unless agreed to otherwise. Each Party to the Claim shall bear their own attorneys' fees and costs in connection with such mediation.

11.7 **General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not a party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article XI.

11.8 **Litigation Approval and Settlement.** In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial, arbitration or administrative proceeding without the prior approval of Owners representing at least seventy five percent (75%) of the votes eligible to vote on such matter, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments, (2) to challenge condemnation proceedings, (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association, (4) to defend claims filed against the Association or to assert counterclaims in a proceeding instituted against the Association, or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. Also, the Association may not initiate any judicial, arbitration or administrative proceeding against Declarant without the approval of Owners representing at least seventy five percent (75%) of the votes eligible to vote on such matter. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims. This Section 11.8 may not be amended without the approval of Owners representing at least seventy five percent (75%) of the votes eligible to vote on such matter, and the Declarant (during the Development Period).

11.9 **Waiver of Trial by Jury.** EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS DECLARATION AND ANY CLAIM (AS DEFINED IN **ARTICLE XI** OF THIS DECLARATION) ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. EACH OWNER AGREES THAT ANY SUCH CLAIM, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

ARTICLE XII. OTHER DEVELOPMENT RESTRICTIONS

12.1 **Xeriscaping.** Drought-resistant landscaping or water-conserving turf known as xeriscaping ("Xeriscaping") may be installed on a Lot. Approval by the ACA is required prior to installing Xeriscaping:

- a. To obtain ACA approval of Xeriscaping, the Owner shall provide a request to the ACA in accordance with the Declaration, including the following information: (a) the proposed site location of the Xeriscaping on the Owner's Lot; (b) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction, and (c) the percentage of yard to be covered with gravel, rocks and cacti (the "Xeriscaping Application").
- b. The decision of the ACA will be made in accordance with **Article VI**. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by Members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.
- c. Each Owner is advised that if the Xeriscaping Application is approved by the ACA, installation of the Xeriscaping must (i) strictly comply with the Xeriscaping Application, (ii) commence within thirty (30) days of approval, and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the ACA may require the Owner to (1) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property, or (2) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this policy and may subject the Owner to fines and penalties. Any requirement imposed by the ACA to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.
- d. Unless otherwise approved in advance and in writing by the ACA, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must be aesthetically compatible with other landscaping in the Property as reasonably determined by the ACA. For purposes of this Xeriscaping policy, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the Property. For example, an Owner's Lot plan may be denied if the ACA determines that (i) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall Property, and/or (ii) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent Owner and/or would result in a reduction of aesthetic appeal of the adjacent Owner's Lot.

Adjacent Lot may be in the form of an agreement to be signed and acknowledged by the Owner and by the ACA or the Association, and Recorded in the County.

ARTICLE XIII. MISCELLANEOUS

13.1 Declaration Term - Perpetual. Unless ninety percent (90%) of all outstanding votes that are entitled to be cast approve the termination of this Declaration, the provisions of this Declaration shall run with and bind the Property and shall be and remain in effect perpetually to the extent permitted by law. A written instrument terminating this Declaration shall not be effective unless Recorded.

13.2 Amendments to Declaration.

a. Amendment by Declarant. This Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by (i) Declarant acting alone during the Development Period, or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast by Members of the Association. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. Specifically, and not by way of limitation, during the Development Period, Declarant may unilaterally amend this Declaration (a) to bring any provision into compliance with any Applicable Law or judicial determination, (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot, (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the FHLMC, to make, purchase, insure or guarantee mortgage loans on Lots, (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, HUD, or (e) as Declarant may otherwise determine.

b. Amendment by Association. The Association may amend this Declaration by an affirmative vote of sixty seven percent (67%) or greater of all outstanding votes entitled to be cast.

13.3 Enforcement by Association and/or Owner. The Association and/or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed now or in the future by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction of this Declaration will in no event be deemed a waiver of the right to do so in the future.

13.4 Remedies; Cumulative. In the event any Lot does not comply with the terms herein or any Owner fails to comply with the terms herein, the Association and/or any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the By-laws, the Documents and any rules and regulations, and those which may be available at law or in equity, including, without limitation, enforcement of any lien, damages, injunction, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy, but instead shall be cumulative.

13.5 Notice to Association of Sale or Transfer. Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board written notice of the name and address of the purchaser or transferee, within 30 days after the date of such transfer of title, and such other information as the Board may reasonably require. With the Board's approval, and subject to Applicable Laws, a number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of this Declaration, the By-laws, and/or Certificate, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local

12.2 Solar Energy Device and Energy Efficiency Roofing.

a. A "Solar Energy Device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power. "Energy Efficiency Roofing" means shingles that are designed primarily to (i) be wind and hail resistant, (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles, or (iii) provide solar generation capabilities. In connection with the residential development of the Lots, Declarant may offer Solar Energy Devices and/or Energy Efficient Roofing (Solar Energy Devices and Energy Efficient Roofing are collectively referred to as, "Solar Energy Systems").

b. Approval by the ACA pursuant to Article VI is required prior to installing a Solar Energy Device or Energy Efficient Roofing. The ACA is not responsible for (i) errors in or omissions in the application submitted to the ACA for approval, (ii) supervising the installation or construction to confirm compliance with an approved application, or (iii) the compliance of an approved application with governmental codes and ordinances, state and federal laws.

c. During the Development Period, the ACA need not adhere to the terms and provisions of this Section 12.2 and may approve, deny, or further restrict the installation of any Solar Energy Device.

i. To obtain ACA approval of a Solar Energy Device, an Owner shall provide a request to the ACA in accordance with Article VI, including (A) the proposed installation location of the Solar Energy Device, and (B) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "Solar Application"). A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application.

ii. The decision of the ACA will be made in accordance with Article VI. The ACA will approve a Solar Energy Device if the Solar Application complies with this Section 12.2 UNLESS the ACA makes a written determination that placement of the Solar Energy Device, despite compliance with this Section 12.2, will create a condition that substantially interferes with the use and enjoyment of the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The ACA's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant's Lot provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this Section 12.2 when considering any such request.

iii. Each Owner is advised that if the Solar Application is approved by the ACA, installation of the Solar Energy Device must (A) strictly comply with the Solar Application, (B) commence within thirty (30) days of approval, and (C) be diligently prosecuted to completion. If the Owner fails to cause the Solar Energy Device to be installed in accordance with the approved Solar Application, the ACA may require the Owner to (1) modify the Solar Application to accurately reflect the Solar Energy Device installed on the Lot, or (2) remove the Solar Energy Device and reinstall the device in accordance with the approved Solar Application. Failure to install a Solar Energy Device in accordance with the approved Solar Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Section 12.2 and may subject the Owner to fines and penalties. Any requirement imposed by the ACA to

resubmit a Solar Application or remove and relocate a Solar Energy Device in accordance with the approved Solar Application shall be at the Owner's sole cost and expense.

d. Unless otherwise approved in advance and in writing by the ACA, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

i. The Solar Energy Device must be located on the roof of the residence located within the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located within the Owner's Lot. If the Solar Energy Device will be located on the roof of the residence, the ACA may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten (10%) percent above the energy production of the Solar Energy Device if installed in the location designated by the ACA. If the Owner desires to contest the alternate location proposed by the ACA, the Owner should submit information to the ACA which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

ii. If the Solar Energy Device is mounted on the roof of the Dwelling located within the Owner's Lot, then (A) the Solar Energy Device may not extend higher than or beyond the roofline, (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline, (C) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black, and (D) the Solar Energy Device shall not reflect on any other Dwelling or Lot, and (E) the Solar Energy Device shall not be visible from any subdivision street or Highway 112 without the prior written consent of the ACA.

e. The ACA will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles (i) resemble the shingles used or otherwise authorized for use within the community, (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community, and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in Article VI.

12.3 **Adjacent Lots with Identity of Ownership.** This Section 12.3 pertains to the situation where (a) a vacant Lot (the "Adjacent Lot") is located adjacent to a Lot with a Dwelling (the "Dwelling Lot") and is used in conjunction with the Dwelling Lot, and (b) both Lots have the same Owner. An Adjacent Lot may be used by the Owner of the Dwelling Lot only for "residential purposes" as defined by Applicable Law, or for any additional purpose permitted by the ACA. Notwithstanding provisions (if any) specific to vacant Lots in the Property, an Adjacent Lot is subject to the same assessment provisions (if any) specific to vacant Lots in the Property, an paired. On a case-by-case basis and to the full extent permitted by Applicable Law, the ACA may establish and enforce additional or different criteria and specifications for every aspect of the use, maintenance, appearance, and improvement of the Adjacent Lot, including (without limitation) screening, landscaping, and construction specifications. By owning a Dwelling Lot and an Adjacent Lot, the Owner acknowledges that (to the full extent permitted by Applicable Law) (1) this Section 12.3 applies to the Adjacent Lot and controls over any provision to the contrary elsewhere in this Declaration, (2) an Adjacent Lot may not be used or improved without the prior written approval of the ACA, (3) in reviewing an application for uses or improvements on the Adjacent Lot, the ACA may require additional information specific to the proposed use or improvement, (4) the ACA may establish lot-specific criteria and specifications that are different from or in addition to requirements for Lots improved with Dwellings, and tailored to the location and visibility of the Adjacent Lot, and (5) the conditioned approval for the

marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular, special or specific assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; transfer to, from, or by the Association; voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section 13.5 does not obligate the Board or the manager to levy transfer-related fees.

13.6 Transfer Fees and Fees for Issuance of Resale Certificates. The Board may, at its sole discretion, enter into contracts with third parties to oversee the daily operation and management of the Association. These third parties may, and probably will, have fees, which will be charged to an Owner for the transfer of a significant estate or fee simple title to a Lot and the issuance of a Resale Certificate. The Association or its agent shall not be required to issue a Resale Certificate until payment for the cost thereof has been received by the Association or its agent. The initial fee for a Resale Certificate shall be Two Hundred and No/100 Dollars (\$200.00), provided that the Association reserves the right to increase the Resale Certificate fee. Transfer fees including fees for the issuance of a Resale Certificate are not refundable and may not be regarded as a prepayment of or credit against any other assessments, and are in addition to the working capital contribution. This Section 13.6 does not obligate the Board or any third party to levy such fees.

13.7 Limitation on Interest. All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected, or received on account of such agreement shall never exceed the maximum amount permitted by Applicable Law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to Owner.

13.8 Construction and Interpretation. This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law.

13.9 Notices. Except as otherwise provided in the By-laws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given on the earlier of receipt or, whether received or not, three (3) days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members shall be deemed the equivalent of proper notice

13.10 Not a Condominium or Apartment. This document does not and is not intended to create a condominium or apartment within the meaning of the Arkansas Horizontal Property Act, Ark. Prop. Code Ann., Section 18-13 et. seq.

13.11 Severability. Invalidation of any one of these covenants, conditions, easements or restrictions by judgment or court order will in no manner affect any other provisions which will remain in full force and effect.

13.12 Rights and Obligations Run With Land. The provisions of this Declaration are covenants running with the Property and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed. Notwithstanding any provision herein, the rights of Declarant as provided herein shall not run with the land, but instead may only be transferred or assigned as provided in Section 13.12 herein.

13.13 Assignment of Declarant's Rights. Declarant may assign, in whole or in part, its rights as Declarant by executing a document assigning such rights. There may be more than one Declarant if Declarant makes a partial assignment of the Declarant status. Upon designation of a successor Declarant, all rights, obligations and responsibilities of the former Declarant in and to such status as "Declarant" shall cease (but only to the extent assigned, in the case of a partial assignment); provided, however, the former Declarant shall continue to be afforded the protections granted herein to Declarant for actions performed by a former Declarant during the time period that the former Declarant was Declarant.

13.14 Disclaimer Regarding Security. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees, and licensees that the Association, its Board and committees and the Declarant are not insurers and that each person using any portion of the Property assumes all risks for loss or damage to persons, to Lots and to the contents of Lots resulting from acts of third parties.

13.15 Adjacent Land Use. Although this Declaration may contain disclosures about the Property or its location on the date of this Declaration, Declarant makes no representation that these are the only noteworthy features of the Property or its location. A prospective Owner or resident must make his own inspection of the Property, its location and nearby land uses, and make inquiries of anything that concerns him. Declarant makes no representation of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property, regardless of what a Plat shows as potential uses of adjoining land. Declarant and the Association cannot and do not guaranty scenic views or that views will be preserved without impairment, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air.

13.16 Mortgage Provisions. An institutional holder, insurer, or guarantor of a first lien mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot ("Mortgage") which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or
- (b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty

(60) days, or any other violation of the Declaration relating to such Lot or the Owner or occupant which is not cured within sixty (60) days after notice by the Association to the Owner of such violation; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

13.17 Attorneys' Fees and Court Costs. If litigation is instituted to enforce any provision herein, then the prevailing party shall be entitled to all attorneys' fees and court costs related to such legal action.

13.18 Gender. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

13.19 Headings. The headings contained in this Declaration are for reference purposes only and will not in any way affect the meaning or interpretation of this Declaration.

13.20 Conflicts. In the event of conflict between this Declaration and any By-laws, rules, regulations or Certificate, this Declaration will control.

13.21 Exhibits. All exhibits referenced in this Declaration as attached hereto are hereby incorporated by reference.

Signatures on following page.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed effective as of the Effective Date written below.

DECLARANT:

SLO-HKO, LLC,
an Arkansas limited liability company

By: _____

Scott Owen, Manager

Date: _____

12/18, 2019 (the "Effective Date")

PHEASANT PLOT, LLC,
An Arkansas limited liability company

By: _____

Name: _____
Title: _____

Powell McKimney
Manager Member

Date: _____

12/18/18

STATE OF ARKANSAS

COUNTY OF Benton

§
§
§
The foregoing instrument was acknowledged before me on this the 18th day of December, 2019, by Scott Owen, Manager of SLO-HKO, LLC, an Arkansas limited liability company, on behalf of said company.

Katharine Peterson
Notary Public, State of Arkansas

STATE OF ARKANSAS

COUNTY OF Benton

OFFICIAL SEAL
KATHERINE PETERSON
NOTARY PUBLIC ARKANSAS
BENTON COUNTY
COMMISSION# 12703114
COMMISSION EXP 01/16/2026

§
§
§
The foregoing instrument was acknowledged before me on this the 18th day of December, 2019, by Powell McKimney, Manager Member of PHEASANT PLOT, LLC, an Arkansas limited liability company, on behalf of said company.

Katharine Peterson
Notary Public, State of Arkansas

OFFICIAL SEAL
KATHERINE PETERSON
NOTARY PUBLIC ARKANSAS
BENTON COUNTY
COMMISSION# 12703114
COMMISSION EXP 01/16/2026

The Property

[illegible]

1. The first step in the process of creating a new product is to identify a market need. This involves conducting market research to understand what customers want and what problems they are facing.

2. Once a market need has been identified, the next step is to develop a concept for a product that addresses this need. This involves brainstorming ideas and creating a rough sketch of the product.

3. The third step is to create a prototype of the product. This is a physical model of the product that can be used to test the concept and gather feedback from potential customers.

4. The fourth step is to conduct a feasibility study. This involves evaluating the technical, financial, and market viability of the product.

5. The fifth step is to develop a business plan. This document outlines the company's goals, strategies, and financial projections.

6. The sixth step is to secure funding. This can be done through various means, such as venture capital, angel investors, or crowdfunding.

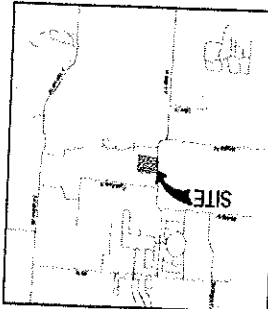
7. The seventh step is to manufacture the product. This involves sourcing materials, hiring workers, and setting up a production line.

8. The eighth step is to launch the product. This involves marketing the product to potential customers and distributing it to retail outlets.

9. The ninth step is to monitor the product's performance. This involves tracking sales, customer feedback, and market trends to ensure the product is meeting its goals.

10. The tenth step is to iterate on the product. This involves making improvements based on customer feedback and market trends to ensure the product remains competitive.

VICINITY MAP



**PRELIMINARY PLAT
PHEASANT RUN
RESIDENTIAL SUBDIVISION
CAVE SPRINGS, ARKANSAS**

4. INTERVIEWING TECHNIQUES
5. INTERVIEW PLAN
6. INTERVIEW PROCEDURE
7. INTERVIEW PLAN
8. INTERVIEW
9. DEBRIEF
10. DEBRIEF
11. DEBRIEF SHEET
12. INTERVIEWING TECHNIQUES

SURVEY DESCRIPTION

Fieldwork for this project was conducted during the summer of 2012. The project was designed to collect data on the distribution and abundance of the American Cootie in the Great Lakes region. The project was designed to collect data on the distribution and abundance of the American Cootie in the Great Lakes region. The project was designed to collect data on the distribution and abundance of the American Cootie in the Great Lakes region.

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Know what's below.
Call before you dig.



INTELLIGENCE GOOD

1. The first step in the process of the investigation is to identify the problem. This is done by the investigator who is responsible for the investigation. The investigator will identify the problem and then will determine the scope of the investigation. The investigator will then determine the objectives of the investigation and will then determine the methods of the investigation. The investigator will then determine the results of the investigation and will then determine the conclusions of the investigation. The investigator will then determine the recommendations of the investigation and will then determine the actions of the investigation. The investigator will then determine the follow-up of the investigation and will then determine the final report of the investigation.

[illegible][illegible][illegible]

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