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Brenda DeShields-Circuit Clerk  
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Book/Pg: 2005/26232  
Term/Cashier: CIRCLK07 / Fhendricks  
Tran: 3015.92429.250049  
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Total Fees: \$ 86.00

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR LEXINGTON SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LEXINGTON SUBDIVISION is made this 25 day of May, 2005, by and among CPP, LLC, an Arkansas limited liability company (hereinafter "Developer"), Welborn Construction, Inc., an Arkansas corporation, Welborn Homes, Inc., an Arkansas corporation, Land Marc Custom Homes LLC, an Arkansas limited liability company and Matt Miller Construction, Inc., an Arkansas corporation (collectively, the "Builders").

**WITNESSETH:**

WHEREAS, Developer owns certain real property described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Developer has executed and filed with the Recorder of Deeds for Benton County, Arkansas a plat for the subdivision of the Property to be known as Lexington Subdivision (the "Subdivision") which is composed, together with the Common Areas, of the following-described lots:

Lots 1 through 119 of Lexington Subdivision in the City of Rogers, Benton County, Arkansas, according to the recorded plat thereof; and

WHEREAS, all of the lots described in the preceding paragraph will be sold to the Builders, subsequent to recording the Subdivision plat; and

WHEREAS, Developer and Builders intend to develop the Property as a private residential subdivision and desire to provide for the orderly development of the Property by placing certain restrictions on the Property which shall be for the use and benefit of the Developer, the Builders, their future grantees, successors and assigns; and

WHEREAS, the Developer desires to provide for the preservation and enhancement of value when and as the Property is improved and desires to subject the Subdivision to certain covenants and restrictions as hereinafter set forth, each and all of which are hereby declared to be for the benefit of

the Subdivision and each and every owner of any and all parts thereof;

WHEREAS, the Developer and the Builders have deemed it desirable, for the efficient preservation of the value and amenities in the Subdivision, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering the Common Areas (as hereinafter defined), administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement; and

WHEREAS, the Developer and Builder have caused or will cause to be incorporated under the laws of the State of Arkansas, Lexington Subdivision Property Owners' Association, Inc., an Arkansas nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter;

NOW, THEREFORE, in consideration of the foregoing recitals, Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the Property, including all Lots and Common Areas as shown on the Plat (all of which are defined hereinafter), shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth and shall be subject to the covenants, conditions, easements and changes set forth below, which shall run with the land and shall be binding on all present and future owners, and shall inure to the benefit of each owner of a Lot, the Developer, the Builders and the Association.

#### **ARTICLE I DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the following meanings:

1.1 "Architectural Control Committee" shall mean (i) prior to the end of the Control Period, the Builders (or their designees or assignees from time to time) and (ii) on and after the end of the Control Period, the Board (or its designees in accordance with the Bylaws).

1.2 "Association" shall mean and refer to the Lexington Subdivision Property Owners' Association, its successors and assigns.

1.3 "Board" shall mean the Board of Directors of the Association.

1.4 "Builder" shall mean, collectively, the following: Welborn Construction, Inc., an Arkansas corporation, Welborn Homes, Inc., an Arkansas corporation, Land Marc Custom Homes LLC, an Arkansas limited liability company and Matt Miller Construction, Inc., an Arkansas corporation.

1.5 "Common Area" shall mean (i) private street right-of-ways, (ii) private streets and street islands, (iii) gateways, entrances, monuments and other ornamental areas and related utilities,

street lights, sprinkler systems and landscaping constructed or installed by or for the Division of or near the entrance of any street or along any street shown on the Plat, and any easements related thereto, (iv) any and all storm water drainage or detention areas as shown on the Plat, and (v) all other property, including any and all green space, parks, improvements, pools, fences or other structures within the designated Common Area, which are intended for the use and benefit of all of the Owners, as may be designated or shown on the Plat or any amendment thereto.

1.6 "Control Period" shall mean that period of time during which the Builders control issues related to the Subdivision, including, without limitation the Architectural Control Committee and the operation of the Association. The duration of the Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earliest of:

- (a) Ten (10) years from date this Declaration is recorded; or
- (b) One (1) month after title to all of the Lots have been conveyed to Owners other than Builders.

The rights reserved to the Builders during the Control Period are intended to preserve the orderly buildout and sellout of the Lots, which is ultimately for the benefit of the Owners.

1.7 "Corner Lot" shall mean any Lot which abuts or adjoins more than one street within the Subdivision other than at its rear boundary line.

1.8 "County" shall mean the County of Benton, Arkansas.

1.9 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Lexington Subdivision as the same may be amended from time to time, together with any and all Supplemental Declarations which may be recorded by Developer from time to time.

1.10 "Developer" shall mean CPP, LLC, an Arkansas limited liability company, its successors or assigns.

1.11 "Exterior Structure" shall mean any structure or other improvement erected or maintained on a Lot other than the main residential structure, and shall include without limitation, any deck, gazebo, greenhouse, doghouse or other animal shelter or run, outbuilding, fence, patio wall, privacy screen, boundary or retaining wall, bridge, patio enclosure, tennis court, basketball court, swimming pool, hot tub, basketball goal, swing set, trampoline, sand box, playhouse, tree house or other recreational or play structure.

1.12 "Lot" shall mean any parcel or portion of the Property designated as a lot on any recorded plat of the Subdivision, or any additions thereto, with the exception of the Common Areas.

1.13 "Mortgage" means a security interest, deed of trust, or lien granted by an Owner in and to, or against, a Lot and improvements thereon to secure the repayment of a loan, and duly filed for record in the Office of the Recorder of Deeds of Benton County, Arkansas.

1.14 "Mortgagee" means the person who holds a Mortgage as security for repayment of a debt.

1.15 "Owner" shall mean the record owner in fee of any Lot, whether one or more persons or entities, and for purposes of all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees. The foregoing does not include any persons or entities who hold an interest in a lot merely as security for the performance of an obligation.

1.16 "Person" shall mean a natural individual or any other legal entity.

1.17 "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or installation of any improvement on any Lot, or other proposal for the same, including but not limited to those indicating size, shape, location, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

1.18 "Plat" shall mean that final plat of the Property, dated the 25 day of May, 2005, and filed of record in the Office of the Recorder of Deeds of Benton County, Arkansas, covering and describing any or all of the Property referred to in this Declaration.

1.19 "Project" shall mean the Property or any additional real estate submitted or subjected to this Declaration and any improvements now or hereafter constructed thereon.

1.20 "Property" shall mean and refer to the real property more fully described on Exhibit A attached hereto and incorporated herein by reference.

1.21 "Public Purchaser" shall mean the Person who initially becomes an Owner of any Lot other than the Developer or a Builder.

1.22 "Rogers" shall mean the City of Rogers, Benton County, Arkansas.

1.23 "Rules" shall mean and refer to those rules and regulations as passed and promulgated by the Association, or the Board acting on behalf thereof, under the authority granted by this Declaration, by a Supplemental Declaration, the Articles of Incorporation or the Bylaws of the Association.

1.24 "Single-family Residence" shall refer to a structure containing one (1) dwelling unit only and occupied by not more than one (1) family.

1.25 "Supplemental Declaration" shall mean any amendment to this Declaration or any separate or additional declaration of covenants, conditions and restrictions pertaining or applicable to the Property which may hereafter be recorded pursuant to the terms of this Declaration.

1.26 "Visible from Neighboring Property" shall mean, with respect to any given object, that such object located on a Lot is or would be visible to a person six (6) feet tall, standing on any part of an adjoining Lot at an elevation no greater than the elevation of the base of the object being viewed.

The definitions in this Declaration shall apply equally to both the singular and plural forms of the terms defined.

## **ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION**

2.1 **Existing Property.** The property is and shall be held, transferred, sold, conveyed, encumbered and occupied subject to this Declaration and the Bylaws of the Association. Each grantee of a portion of the Property and each Owner of a Lot, by accepting a deed thereto, agrees to, acknowledges and accepts all terms contained in this Declaration and the Bylaws of the Association as the same may be amended from time to time.

2.2 **Covenants Running with Land; Enforcement.** The agreements, restrictions and reservations herein set forth are, and shall be, covenants running with the land into whosoever hands any of the Property shall come, for the benefit of all land in the Subdivision. The Builders, their successors and assigns, the Owner of any Lot and the Association shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions and reservations herein set forth, in addition to any action at law for damages. The failure to enforce any of the agreements, restrictions or reservations herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

## **ARTICLE III COMMON AREA**

3.1 **Grant of Easement.** The Builders and their successors, assigns and grantees, the Owners of Lots and the Association shall have the right and easement of enjoyment in and to all of the Common Areas and the improvements thereon, but only for the intended use or uses thereof. Such right and easement in favor of the Owners and the Builders shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto, this Declaration, any Supplemental Declaration, the Articles of Incorporation and the Bylaws of the Association, and any Rules adopted by the Association as amended from time to time. Each Owner

uses Common Areas and related amenities at Owner's own risk and by purchasing a Lot, each Owner releases and holds Developer, the Builders and the Association harmless with respect to any damages suffered by such Owner related to the use of the Common Areas and related amenities.

**3.2 Conveyance of Common Areas.** The Developer covenants and agrees to convey all of its right, title and interest in the Common Areas (except any part thereof that is within any Lot) to the Association, without any cost to the Association, not later than one month after the Plat is recorded. In the event Developer shall fail to execute and record a separate deed conveying the Common Areas to the Association within thirty (30) days following the recording of the Plat, this Article III of the Declaration shall be deemed a conveyance of all of the Developer's right, title and interest in and to the Common Areas to the Association. **Except for initial improvements to entryways (which shall be constructed by the Builders), any improvements to be constructed on the Common Areas shall be constructed and paid for by the Association, utilizing funds from assessments as described in Article IV hereof. Except for the improvements specifically described in this subparagraph 3.2, the Developer and the Builders make no representations as to any improvements of amenities to be constructed or made available on the Common Areas.**

**3.3 Maintenance of Common Areas.** The Association, by and through the Board, shall have the authority and the responsibility, for the term of this Declaration and all renewals or extensions thereof, to provide for the maintenance and repair of the Common Areas (including the purchase of liability insurance providing coverage to the Common Areas and the payment of real estate taxes assessed to the Common Areas), to contract with such firms or Persons as it deems necessary and desirable, and to hire Persons to perform such functions, including management, clerical and administrative duties, as it deems necessary and desirable for the maintenance and repair of the Common Areas, in accordance with the terms of this Declaration, the Bylaws, and the requirements of Rogers or the County. The Association is granted an easement of access and entry to every Lot and Common Area to perform maintenance, enforce architectural and use restrictions and to perform any other duties required of the Association.

**3.4 Utility Easements.** Notwithstanding any term or provision of this Article III to the contrary, the right and easement of enjoyment of the Owners as to any Common Area shall be subject to the right of the Builders to convey sewer, water, drainage, maintenance, access, utility or other easements over, under, upon and through the Common Area or any portion thereof, as is necessary for the proper operation and development of the Property. Companies, both public and private, furnishing utility services to the Property are granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair or replacement of utility lines and equipment and for other purposes proper and necessary to provide utility services to the Property. Any such easement in favor of a utility company shall, however, be subject to the approval of the Board.

#### **ARTICLE IV ASSESSMENTS FOR MAINTENANCE OF COMMON AREAS**

4.1 **Obligation and Lien for Assessments.** Except for the Developer and Builders, each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges as set forth in this Declaration and the Bylaws of the Association and as the Association may fix and determine from time to time; and (b) such special assessments as the Association may fix and determine in accordance with the terms of this Declaration and the Bylaws of the Association. The annual and any special assessments, together with interest thereon, costs of collection and attorney fees incurred in the collection thereof, shall be the personal obligation of the Owner of each Lot at the time when each such assessment is due and payable. Such personal obligation for such assessments shall not pass to such Owner's successors in title unless expressly assumed by such successors. However, each such annual and special assessment, together with interest accruing thereon, costs of collection and attorney fees incurred in the collection thereof, shall to the full extent permitted by law, be a charge on each Lot and shall be a continuing lien upon each Lot against which each such assessment is made. During the Control Period, Lots owned by the Developer and Builders are not subject to any assessments until such Lots are transferred to a Public Purchaser.

4.2 **Purpose of Assessments.** The assessments levied by the Association shall be used for the maintenance, repair and upkeep of the Common Areas and for promoting the general benefit, recreation, health, safety, property values and welfare of the residents in the Subdivision (including any additions thereto). Such purpose shall include (in addition to the rights and powers set forth in this Declaration and in the Association's Bylaws) provisions for the improvement, construction, repair, maintenance, care, upkeep and management of the Common Areas and the improvement and facilities thereon, including Common Area fences within and along the perimeter of the Subdivision, maintenance of private Subdivision roads, the payment of any taxes and assessments by any governmental agency, the payment of insurance premiums on the Common Areas and any improvements thereon, and all other costs and expenses related to the management and maintenance of the Common Areas. Nothing contained herein shall limit the Association's rights and powers granted in this Article or granted elsewhere in this Declaration and the Bylaws of the Association.

4.3 **Annual Assessment.** In order to provide the Association with a general fund with which to exercise the powers, maintain the Common Areas and improvements located thereon, and to render the services provided for herein and under the Association's Bylaws, all Lots, other than Lots then owned by the Developer or Builders, shall be subject to an annual assessment to be paid to the Association as set forth in the Association's Bylaws. The annual assessment for 2005 and thereafter (unless amended by the Association) shall be Three Hundred No/100 Dollars (\$300.00).

4.4 **Special Assessments.** In addition to the annual assessment provided for in Section 4.3 above, the Association may levy, in any assessment year, a special assessment for capital improvements to the Common Areas or for such emergency purposes or otherwise as the Board may recommend and the Association may approve. Any special assessment shall require the affirmative vote of a majority of the Owners, one vote per Lot. The Developer and the Builders shall not be considered Owners for purposes of approval of any special assessment nor shall Developer, the Builders or any Lots then owned by Developer or the Builders have any liability for any special assessment. Special assessments are due on the date stated in the notice of assessment.

4.5 **Commencement of Assessments.** The annual assessment per Lot shall be made at the time the initial Public Purchaser of each Lot receives a deed from a Builder for their respective Lot and shall be due at the time of delivery of the deed to each initial Public Purchaser, provided, however, the same shall be prorated as of the date the deed is recorded, and provided further, the Board may, at its discretion, allow or permit such annual assessment or any special assessment to be paid in quarterly installments. All annual assessments thereafter shall be paid on or before the 31<sup>st</sup> day of January in the year for which the assessment applies (e.g. 2006 annual assessment is due and payable on or before January 31, 2006). In January of each year, the Board shall send a notice to each Owner providing for the amount then due, as well as the address to which payment should be made.

4.6 **Remedies.** In the event any Owner fails to pay any assessment as and when the same shall be due (a "Delinquent Owner") the Association may take such action as the Board may determine necessary for collection of the same including suit for collection and foreclosure of the lien for assessments provided for herein. In the event the Board employs an attorney for collection of any unpaid assessment or foreclosure of such lien, the Delinquent Owner shall, in addition to the amount of unpaid assessments then due, also pay all reasonable attorney fees and costs of collection or foreclosure incurred by the Association in connection therewith. Each assessment that remains unpaid for a period of more than thirty (30) days shall, at the election of the Board, bear interest at the rate of eight percent (8%) per annum, or the highest rate allowable under applicable law. The Board may also suspend the Delinquent Owner's right to vote on Association matters and the Delinquent Owner's right to use Common Areas and the amenities relate thereto. The remedies provided for herein are not exclusive and are in addition to any and all other remedies available at law or in equity.

4.7 **Foreclosure of Lien.** Each Owner, by accepting a deed to such Owner's respective Lot, acknowledges that a continuing lien with power of sale is hereby created for securing payment of any and all assessments due with respect to such Lot, together with any and all interest accrued upon a delinquent assessment and all costs of collection, including all reasonable attorney fees incurred by the Association in collection of such delinquent assessment or foreclosure of the lien provided for herein. At any time after thirty (30) days from the date any assessment shall be due, the Board may, but shall not be required, to make written demand for payment to the Delinquent Owner, setting forth the amount then due. If such amount is not paid within ten (10) days after delivery of such demand, the Board may then cause a Notice of Delinquent Assessment to be recorded in the Office of the Recorder of Deeds for Benton County, Arkansas with copies thereof to be delivered by the Board to the then Owner of such Lot. The Notice of Delinquent Assessment shall be executed and acknowledged by a member of the Board and shall state the following:

- (1) The name and last known address of the Delinquent Owner;
- (2) The legal description and street address of the Lot to which such delinquent assessment pertains;



(3) The amount due as of the date such Notice is executed and acknowledged; and

(4) That a lien exists against the Lot in favor of the Association pursuant to this Declaration for which the Association may foreclose pursuant to the power of sale granted herein.

Following the recording of the Notice of Delinquent Assessment, the Board may proceed with foreclosure of the lien provided for herein in the same manner as provided by the laws of the State of Arkansas for foreclosure of a mortgage with power of sale, or by appropriate action for judicial foreclosure and sale. At any such sale the Association may purchase the Lot and the Delinquent Owner shall remain liable for any deficiency resulting from any sale by foreclosure.

**4.8 Subordination of Lien for Assessments.** The lien for assessments provided for herein shall be subordinate to the lien of any deed of trust or mortgage granted by the Owner for the purchase of such Owner's respective Lot, provided, however, no sale, grant of a deed of trust or mortgage or other transfer of any interest in any Lot shall relieve such Lot from liability for any assessments then or thereafter becoming due or from the lien therefore.

## ARTICLE V USE AND BUILDING RESTRICTIONS

**5.1 Applicability.** The following restrictions are imposed on Lots 1 through 119 as designated, shown and described on the Plat, as the same may be amended, (hereinafter referred to as the "Single-family Residence Lots").

**5.2 Single-family Residence Use.** Each Single-family Residence Lot shall be used, improved and devoted exclusively for single-family residential use in accordance with the restrictions, conditions and covenants set forth in this Declaration. No duplex, flat, boarding house, rooming house, apartment house or other multi-family or multi-unit residential structures, or any nonresidential structures or other improvement (except Exterior Structures approved by the Architectural Control Committee as set forth herein) may be erected on any Single-family Residence Lot. No Single-family Residence shall be used as a rental property. No more than one (1) Single-family residence shall be located on any Lot and no such residence shall exceed two (2) stories in height. Each such residential structure shall have an attached garage for not less than two motor vehicles and shall have a concrete driveway at least 18 feet wide. All residential structures shall be of new construction on-site; no residential building or structure which has previously been at another location shall be moved onto any Lot, and no "prefabricated", "modular", or "manufactured" or otherwise pre-assembled or pre-constructed homes or structures of any nature or kind whatsoever (except Exterior Structures approved by the Architectural Control Committee) shall be erected, stored or placed on any Single-family Residential Lot. All building exteriors must be at least 85% brick, stone, stucco or other material specifically approved by the Architectural Control Committee. No vinyl or plastic materials will be allowed on the exterior of any residence. No camper, trailer, mobile home, vehicle, tent, outbuilding, Exterior Structure or any other apparatus or structure whatsoever except a permanent residence (the Plans and Specifications for which have been

approved by the Architectural Control Committee as set forth herein) shall at any time be used for human habitation, temporarily or permanently, nor shall any residence or other structure or improvement of a temporary character be erected, moved onto or maintained upon any Single-family Residential Lot or any Common Areas. Notwithstanding the foregoing, nothing herein shall prevent or prohibit the Developer or its designees authorized by the Developer from placing and using temporary buildings, structures or any residence for model, office, sales or storage purposes prior to the end of the Control Period. Further, nothing herein shall be deemed to prevent the leasing of any single-family residence from time to time by the Owner thereof, subject to all of the provisions of this Declaration. The provisions of the City of Rogers/ Lowell codes and regulations in effect on the date the Plat was approved regarding single-family residences shall govern all Lots within the Subdivision.

**5.3 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept and maintained provided that they not be kept, bred or maintained for any commercial purposes. Household pets shall be maintained in a clean and sanitary situation and shall not be noxious or a nuisance to the surrounding owners. Each household shall be limited to not more than 3 dogs and/or cats. Dogs must be considered tame. No reptiles shall be kept as pets. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether a particular animal is a common household pet, a nuisance, or whether the number of animals kept on any Lot is reasonable. Any decision rendered by the Board on such matters shall be as enforceable and in the same manner as any other restriction contained herein. No pet or animal shall be allowed to run loose or unsupervised within the Subdivision.

**5.4 Antennas.** No television antenna, dish, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any dwelling or other structure within the Subdivision without the approval of the Architectural Control Committee; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other Lot or Common Area, provided, however, that digital satellite system receivers not more than 18 inches in diameter shall be allowed provided they are not visible from the street.

**5.5 Construction of Residence, Improvements and Alterations.** No building, residence, fence, wall, swimming pool, drive, Exterior Structure or other structure or improvement shall be commenced, constructed, improved or altered, without the prior written approval of the Architectural Control Committee as set forth herein.

**5.6 Trailers and Motor Vehicles.** All vehicles, and equipment, owned by lot owners, shall be parked only in the lot owner's garage or driveway. Recreational vehicles and equipment, including but not limited to boats, motor homes, travel trailers, campers and the like shall not be parked or stored within the subdivision. Small boats may be stored in owner's garage or behind privacy fence as long as boat is not visible by neighbors or not visible from the street. The Board may provide in the Rules such other and further restrictions, prohibitions and conditions pertaining to the storage, maintenance, keeping and use of such motor vehicles, trailers, boats and watercraft

which shall be deemed incorporated herein by reference and as effective and binding as set forth expressly herein.

**5.7 Inoperative Vehicles.** No vehicle, bus, tractor, or other conveyance or rig, other than a lawn grass apparatus, shall be left inoperative on any lot for a period of more than 3 days.

**5.8 Common Area Lawns and Plantings.** Developer or the Association shall have the right at any time, to plant, replace, maintain, and cultivate shrubs, trees, grass, and plantings within the Common Areas and on such easements as may be granted to or reserved by the Developer or the Association over and across each Lot. No Owner or other Person shall remove, alter, injure or interfere in any way with such shrubs, trees, grass and plantings without the prior approval of the Developer or the Board. The Developer or the Association shall have the right to enter any Lot at any reasonable time, for the purpose of maintaining, placing or replacing such shrubs, trees, grass and plantings.

**5.9 Nuisances.**

(a) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereupon which may be or may become an annoyance or a nuisance to the neighborhood. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or noxious fumes shall be permitted to emanate therefrom so as to render any Lot, or portion thereof, unsanitary, unsightly, offensive or detrimental to any other Lot or its occupants. Without limiting the generality of the foregoing, no exterior speakers, excessive exterior lights, horns, whistles, bells or other sound devices, except those designed solely for security purposes, shall be used, placed or located on any Lot. The Board in its sole discretion shall have the right to determine whether any of the foregoing conditions or circumstances not specifically described herein constitutes a nuisance to any other Lot or the Subdivision and may require the removal or remediation of such condition. Any such Board decision shall be conclusive.

(b) Grass, trees and various vegetation shall be kept neatly cut and maintained. Lawns shall not be allowed to exceed six (6) inches from the ground surface. Fences or other outside structures or outdoor decorations shall be maintained so as not to become unsightly or an annoyance or a nuisance to the neighborhood. Upon owner's failure to comply with this subsection, the Association may perform, or have performed, the necessary action to remedy the problem, and shall be entitled to recover the expense associated with such remedial action from the offending owner.

**5.10 Repair and Maintenance of Buildings.** No building, residence or structure within any Lot shall be permitted to fall into a state of disrepair and the same shall at all times be kept in good condition and repair and adequately painted. The Board may determine violations of this Section to constitute a nuisance within Section 5.9 above subject to remediation by the Association in the manner provided for in Section 5.9(a).

**5.11 Trash Containers and Collection.** No garbage or trash shall be placed, permitted or kept on any Lot except in covered containers of a standard residential type. Such containers shall not

be visible from Neighboring Property except at such time as to make the same available for collection and then only for the time reasonably necessary to allow for such collection. All rubbish, trash and garbage shall be removed from each Lot least once per week either by or on behalf of each Owner.

**5.12 Clothes Drying Facilities.** The hanging of laundry from any area within or outside a residence, which places the laundry within public view, is prohibited.

**5.13 Encroachments.** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet, without the prior approval of the Architectural Control Committee. No fence, wall, hedge or shrub, which obstructs sight lines at intersections within the Subdivision, shall be permitted.

**5.14 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of the improvements on such Lot, and except that which Developer or the Association may require for the operation and maintenance of the Common Area.

**5.15 Restrictions on Further Subdivision.** No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner without the prior written approval of the Board.

**5.16 Signs.** No signs, either permanent or temporary, of any kind, shall be placed or erected on any property, without the consent of the Architectural Control Committee unless signage upon property advertises the same for sale, and does not exceed 6 square feet in area. Provided, however, that the Builders may erect signs to advertise the Subdivision and model homes.

**5.17 Dwelling Size.** The Architectural Control Committee shall exercise its best judgment to see that all structures, as to size, conform to and harmonize with the existing surroundings and structures. No permanent residence to be constructed on a Lot shall contain less than 2,000 square feet of heated and cooled living space, without approval of Developer.

**5.18 Building Location.** No building shall be erected on any Lot in Rogers nearer than: (1) 25 feet to the front lot line; (2) 20 feet to the rear lot line; (3) 7½ feet to the interior side lot line. For the purposes of this Covenant, eaves, steps and open porches shall not be considered as part of the building, providing, however, this shall not be construed to permit any portion of the building on a Lot to encroach upon another Lot. Should any building setback lines shown upon the Plat vary from the setback requirements required herein, the building setback lines shown upon said plat shall control and take precedence over those stated herein. Variances to the setback requirements established herein as may from time to time be permitted by Rogers shall take precedence and be controlling.

5.19 **Fences.** The approval requirements outlined in subsection 6.2 for approval of structures shall also apply to fences. Fencing of front yards is prohibited. Fencing on corner lots may extend to, but not beyond, the exterior side setback lines established herein. No fences shall exceed 6 feet in height. All fences shall be 6 feet wood privacy fences. All fences shall be consistent in style as all other fences in the Subdivision. The Architectural Control Committee shall approve all fencing materials. Supporting structures on all fences shall be placed on the side of the fence facing the property of the Owner building the fence. Chain link and other forms of wire fencing are specifically prohibited.

5.20 **Easements.** Perpetual easements have been reserved, as shown on the Plat, for the construction and maintenance of utilities and drainage, and no permanent structure of any kind shall be erected or maintained upon or over said easements.

5.21 **Soil Removal.** Soil may not be removed from any Lot or Common Area without consent of the Developer or the Architectural Control Committee.

5.22 **Garage Doors.** The doors of all garages shall be kept closed at all times except when necessary for ingress and egress. The doors of all garages shall be installed with electric or battery powered opening and closing devices.

5.23 **Improvements.** Each Owner shall, within one (1) year after the date of commencement of construction of any improvements on their Lot, complete said improvements. If said improvements are not completed within said one (1) year period, the Developer shall have the option to repurchase said Lot for a sum equal to the original purchase price.

5.24 **Outside Lighting.** Except as may be initially installed by a Builders or Developer, no spotlights, floodlights or similar type high intensity lighting (including mercury vapor or sodium vapor lighting) shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon or upon the Common Areas or any part thereof without the written authorization of the Architectural Control Committee. Other types of low intensity lighting which do not cast excessive light onto adjoining Lots are allowed. No lighting shall be installed on or around the Common Areas, except that deemed necessary by the Association. Christmas lights must be removed from houses by January 31<sup>st</sup> of each year.

5.25 **Mailboxes.** To enhance the appearance of the Subdivision as much as possible with United States Postal Service regulations, mailboxes in the Subdivision will be located as required by the United States Postal Service. A decorative mailbox will be supplied and installed by the Builders (of design materials and specifications approved by the Architectural Control Committee) within 2 feet of the nearest property line. All mailboxes will be the same. With respect to Lots with frontage on a cul-de-sac, Developer may, in its discretion, require that one or more residences located on such Lots locate their respective mailbox on a common pedestal or structure shared with other mailboxes for other residences located on such cul-de-sac.

5.26 **Roofs.** All roofs shall have an exterior surface that shall be approved by the Architectural Control Committee, in its sole discretion. All roofs must have a pitch of at least 12/12 and consist of architectural roofing shingles or other roofing material specifically approved by the Architectural Control Committee. No standard 3-tab roofing material will be allowed.

5.27 **Swimming Pools.** Accessory buildings, in-ground swimming pools, cabana structures and gazebos may be built within the building area on any Lot subject to the approval of the Architectural Control Committee. The approval requirements outlined in subsection 6.2 for buildings shall apply to these structures. Permanent and semi-permanent above-ground swimming pools shall be prohibited.

5.28 **Solar Collectors.** The construction, installation and location of solar collectors shall be permitted only upon advance approval by the Architectural Control Committee.

5.29 **Building Limitations.** The building codes of the Rogers as it presently exists or is hereinafter amended, shall be and is hereby made applicable to all Lots. All dwellings and other improvements shall comply with said ordinances as they exist on the date of such construction. Any conflict between such ordinances and the provisions of these Covenants shall be resolved in favor of the more restrictive provisions.

5.30 **Home Occupations.** Home occupations and professions shall be prohibited, notwithstanding the allowance of such by Rogers or other governmental authority.

5.31 **Temporary Structures.** No trailer, tent, shack, garage, barn, or other outbuilding or structure erected on a building site within the Subdivision shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. This restriction does not prohibit the Builders from placing temporary construction trailers and/or storage facilities on Lots as deemed necessary.

5.32 **Building Materials.** No building material of any kind or character shall be placed or stored upon any lot until the owner is ready to commence construction of the improvements requiring such materials. Building materials shall not be placed or stored in the street or between the curb and property lines. Upon completion of the improvements requiring such materials, all remaining building materials and refuse shall be removed from the subdivision.

5.33 **Sound Devices.** No exterior speaker, horn, whistle, bell or other sound device that is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used or placed upon Lots. The playing of loud music from porches or decks shall be considered offensive, obnoxious activity constituting a nuisance.

5.34 **Basketball Goals.** The placement and quality of all basketball goals must be approved by the Association.

5.35 **Garage Sales.** Garage sales shall only be held semi-annually and only as a neighborhood event. The dates of the sale will be determined by the Association.

5.36 **Remedies.** In the event that an Owner (or guest, invitee, licensee, tenant, lessee, family member, agent or employee thereof) shall violate, or permit to be violated, any of the provisions set forth in this Article, the Board shall cause to be delivered to said Owner a written Notice of Violation. Said Notice of Violation shall set forth the nature of the alleged violation and shall request that the violation be voluntarily terminated and remedied within a reasonable time as determined by the Board from the mailing of said notice. If, after a reasonable time has lapsed from the date of said Notice, the violation has not been voluntarily terminated by the Owner, the Board shall have the authority to pursue and effect any and all procedures which may be calculated as reasonably necessary to remove and/or terminate the cause of said violation. This authority shall include, but shall not be limited to, the power to employ laborers to enter upon the premises of said Owner for the purpose of removing and/or terminating said violation, the collection of said expenses so incurred may be effected in the manner provided in Article IV for the collection and enforcement of assessments. For purposes of administering this Section, the determination of whether a violation has been, or is being committed, and the determination of what time period constitutes a "reasonable time" allowable for voluntary termination of the same, shall be made by the Board after taking into consideration the facts and circumstances surrounding the particular violating situation, condition or occurrence. In the event that the Board does not elect to exercise its authority of enforcement as set forth above, then the Builders or any other Owner or Owners shall have the right to pursue, at law or in equity, any remedy for enforcement of these covenants which remedy is hereby specifically granted by this section. In the event that it is necessary for the Association, Developer, the Builders or any Owner or Owners to retain the services of legal counsel in an attempt to enforce these covenants, the enforcing parties or party shall be entitled to reimbursement of all litigation costs, including reasonable attorney's fees and court costs, with such reimbursement being awarded by way of judgment against the Owner or Owners responsible for any such violation or violations.

## **ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE**

6.1 **Membership.** From the date of this Declaration to the end of the Control Period the Builders shall be the Architectural Control Committee. The Builders may appoint such person or persons to act as the Architectural Control Committee on their behalf during the period in which the Builders are the Architectural Control Committee. Thereafter, the Board shall comprise the Architectural Control Committee unless the Board shall see fit to delegate this function to a Committee appointed by the Board which shall be comprised of three (3) Owners.

6.2 **Architectural Control Function.** No structure, whether a residence, Exterior Structure, accessory building, mailbox, awning, swimming pool, fence, wall, lot, drainage works, exterior area lighting or any other improvement whatsoever shall be constructed, reconstructed, repaired or maintained upon any Lot, and no alteration to the exterior of a structure shall be undertaken unless complete Plans and Specifications and plot plans therefore showing the exterior design, height, building material and color scheme thereof, the location of the structure on the Lot

plotted horizontally and vertically, the location of driveways and fencing, shall have been approved in writing by the Architectural Control Committee and a copy of such Plans and Specifications and plot plans as finally approved shall be deposited with the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the properties conform to and harmonize with the existing surroundings and structures.

**6.3 Liability.** The Architectural Control Committee shall not be liable for damages to any person who has submitted a request for approval by reason of any action, failure to act, approval or disapproval, or failure to approve or disapprove such request. No approval of Plans and Specifications by the Architectural Control Committee shall be construed to mean that such Plans and Specifications are technically correct from an architectural or engineering perspective or comply with applicable governmental requirements.

**6.4 Restrictions on Builders.** The Builders reserve the right to implement and enforce such rules, regulations and policies as may be reasonable and necessary during the developmental stage of the Subdivision regarding the original construction of improvements within the Subdivision. Any Builder constructing improvements within the project shall be bound by such rules, regulations and policies, including, without limitation, the following:

(a) Each Builder shall remove rubbish and debris and otherwise clean each Lot on which it is constructing a residence at least one (1) time each week;

(b) Builder shall construct, at its earliest convenience, a gravel driveway or approach, the purpose of which shall be to prevent Builder's employees, agents, subcontractors and others under its control from transferring soil and mud from a Lot to the Subdivision streets and roads; and

(c) Builder shall prevent its employees, agents, subcontractors and all others under its control from parking on a portion of the Lot not specifically designed for parking (e.g. gravel driveway). Unless Builder has constructed an appropriate gravel driveway or approach, Builder and its employees, agents, subcontractors and others under its control shall park only on the paved roadway adjoining the Lot on which Builder is constructing the residence.

## ARTICLE VII PERMITTED USE AND RESTRICTIONS AS TO COMMON AREAS

**7.1 Maintenance by Association.** The Board of the Association may, at any time, as to any Common Area owned, leased or otherwise controlled by it, take the following actions without any approval of the Owners being required.

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area in accordance with (1) the last plans thereof approved by the Board, (2)



the original plans for the improvements, or (3) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed.

(b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a private road, street, walk, driveway, or parking area.

(c) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes.

(d) Place and maintain upon any such area such signs as the Board of Directors may deem appropriate for the proper identification, use and regulation thereof.

(e) Do all such other and further acts which the Board of Directors deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

(f) The Board shall be the sole judge as to the appropriate maintenance of all grounds within and improvements upon the Common Area, including common area fences.

**7.2 Damage or Destruction of Common Area by Owners.** In the event any Common Area is willfully or maliciously damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a workmanlike manner in conformance with the original plans and specifications for the area involved or as the area may have been modified or altered subsequently by the Association. The cost for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

## **ARTICLE VIII**

### **LEXINGTON SUBDIVISION PROPERTY OWNERS' ASSOCIATION**

#### **8.1 Organization.**

(a) The Association shall be a not-for-profit corporation organized and existing under the not-for-profit corporation law of the State of Arkansas, charged with the duties and invested with the powers prescribed by law and set forth in its Articles of Incorporation, Bylaws, this Declaration and any Supplemental Declarations. Neither the Articles nor the Bylaws shall, for any reason, be amended, or otherwise changed or interpreted so as to be inconsistent with this Declaration, or any amendments thereto.

(b) The affairs of the Association shall be conducted by a Board of Directors, and such Officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws.

**8.2 Powers and Duties of the Association.** The Association shall have the power and obligation to provide for the maintenance, repair, replacement, administration, insuring and operation of the Subdivision and Common Areas as herein provided and as provided in the Bylaws.

**8.3 Rules.** By majority vote of the Board, the Association may from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations covering the use of any Common Area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that such rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of such rules as they may from time to time be adopted, amended or repealed, shall be made available to each Owner, at said Owner's request. Upon enactment, said rules shall have the same force and effect as if they were set forth in and were part of this declaration.

**8.4 Personal Liability.** No member of the Board of Directors or any committee of the Association, or any officers of the Association shall be personally liable to any Owner, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board or any other representative or employee of the Association or the Architectural Control Committee, or any other committee, or any Officer of the Association, provided that such person has, upon the basis of such information as may be possessed by such person, acted in good faith, without willful or intentional misconduct.

**8.5 Responsibility for Common Areas.** The Association shall have the responsibility for maintaining and insuring the Common Areas and the Common Area improvements, and shall be responsible for the payment of taxes (if any) and insurance on the Common Areas.

**8.6 Indemnification by Association.** The Association hereby agrees and covenants to indemnify the Developer and the Builders from any and all claims for personal or property damage which may result from the use, ownership, possession, control or maintenance of the Common Areas, including any drainage detention area, and hold Developer and Builders harmless therefrom on a continuing basis.

**8.7 Insurance.** The cost of insurance for the Common Areas is a cost of the Association. The Association shall be named as an insured on all policies. The Association shall, through its Board, maintain the following insurance policies:

(a) Insurance on all improvements in Common Areas which have insurable value against loss or damage by fire or by any and all other risks insured by standard extended coverage policies in use in the State of Arkansas, with such endorsements as the Board

deems advisable, but in any event in an amount not less than the full insurable replacement cost thereof.

(b) Comprehensive general liability insurance, including medical payments insurance, against claims for personal injury or death (minimum coverage of One Million Dollars (\$1,000,000.00) per occurrence) and property damage (minimum coverage of Two Hundred Thousand Dollars (\$200,000.00) per occurrence) (or such other amounts as the Board deems sufficient) suffered by the public or any Owner, the family, agent, employee, or invitee of any Owner, occurring in, on, or about any Common Area. Any policy obtained pursuant to this Subsection (b) shall, if possible and practical considering the cost thereof, contain a cross-liability endorsement whereby the rights of a named insured shall not prejudice his, her, or their action or actions against another named insured, and shall contain a "severability of interest" type of endorsement precluding the insurer from denying a claim of an Owner or the Association because of the negligent acts of other Owners, or the Association.

(c) Director's and Officer's liability insurance for the directors and officers of the Association against any liability arising out of such party's status as a director or officer is suggested, but not required.

(d) Such other insurance as the Board deems appropriate to protect the Association and the Owners.

All insurance provided for in this Article shall be obtained from responsible insurers authorized to do business in the State of Arkansas.

**8.8 Board of Directors.** The initial Board, to consist of three (3) members, shall be designated by the Builders and shall serve until the end of the Control Period. Thereafter, the Owners shall elect the Board. Elections of the Board by the Owners shall be held in accordance with the Bylaws. The Board's responsibilities, as set forth herein and in the Bylaws, shall include the following:

(a) During the first week in December of each year, the Board shall meet and establish a budget for the next succeeding calendar year for the maintenance of the Common Areas and other obligations of the Association as described herein and in the Bylaws. Each annual budget shall be effective the first calendar month of the succeeding year unless Owners (eligible to vote) holding at least a majority of the votes in the Association, in writing or by a majority at any regular or special meeting of the Owners, reject the budget; provided, however, that if a budget increase is ten percent (10%) or less, from one year to the next, then the budget shall be effective the first calendar month of the succeeding year unless Owners (eligible to vote) holding at least seventy-five (75%) of the votes in the Association, in writing or by a majority at any regular or special meeting of the Owners, reject the budget. The Owners' right to reject a budget shall not apply during the Control Period.

(b) After each budget is established, the Board shall determine the annual assessment required to be paid by each Owner, which shall be paid in accordance with Subsection 4.5 hereof.

## **ARTICLE IX MEMBERSHIP AND VOTING RIGHTS**

9.1 **Membership.** Every Owner, either of a fee or undivided interest of a Lot, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment of the Association.

9.2 **Voting Rights.** Each Owner shall be entitled to one vote for each Lot owned by such Owner. If more than one person owns an interest in a Lot which qualifies them for membership, then all such persons shall be members, but shall only be entitled to one vote for each Lot owned. The vote for each such Lot shall be cast as they, among themselves, may determine, but in no event shall more than one vote be cast with respect to any Lot. In the event an agreement is not reached as to how joint owners of a Lot will vote, the joint owners of such Lot shall have no vote as to such matter.

9.3 **Management of Association.** Owners shall have no rights to manage the business affairs of the Association except as provided in the Articles of Incorporation and Bylaws. The management of the Association shall be vested entirely in the Board as provided in said Articles of Incorporation and Bylaws.

## **ARTICLE X GENERAL PROVISIONS**

10.1 **Enforcement.** The Association, Developer, the Builders or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and any subsequently recorded Supplemental Declarations. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2 **Severalty.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

10.3 **Amendment.**

(a) The covenants and restrictions of this Declaration shall run with and bind the land, in perpetuity, or if not permitted by operation of law to run in perpetuity, for a term of

thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless otherwise amended as herein provided or terminated by the unanimous vote of all of the then existing members of the Association.

(b) This Declaration may be amended in whole or in part at any time during the Control Period by an instrument in writing executed by the Builders. The Builders may release and relinquish their right to amend this Declaration earlier than the end of the Control Period, by a writing recorded in the deed records of Benton County, Arkansas.

(c) This Declaration may be amended at the end of the Control Period (or earlier, if Builders relinquish their amendment rights early) by an instrument in writing executed by the Association, with the approval of a majority of the votes of the members voting in person or by proxy at a meeting called for that purpose.

(d) No amendment shall be effective until it is recorded in the deed records of Benton County, Arkansas.

**10.4 Violations and Nuisances.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Builders, the Association, or any Owner. However, any other provision to the contrary notwithstanding, only the Builders, the Association, the Board, or the duly authorized agent of any of the above, may enforce by self-help any of the provisions of these restrictions.

**10.5 Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Subdivision is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

**10.6 Remedies Cumulative.** Each remedy provided by this Declaration is cumulative and not exclusive.

**10.7 Delivery of Notices and Documents.** Any written notice or other document relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage pre-paid, as to any Owner, to the address of any lot within the Subdivision, owned, in whole or in part, by him or her, or to any other address last furnished by an Owner to the Association.

**10.8 The Declaration.** By acceptance of a deed or by acquiring any ownership interest in any of the real property, included within this Declaration, each person or entity, for himself, herself or itself, and their heirs, personal representatives, successors, transferees and assigns, binds them and the subject lot(s) to the covenants, conditions, rules and regulations now or hereafter imposed by this

Declaration and any amendments thereto. In addition, each such person by so doing hereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby.

**10.9 Mortgage Protections.** This Declaration may not be amended in a manner that materially affects the rights or security interest of a Mortgagee without the Mortgagee's consent. Notwithstanding the Builders' right to amend this Declaration, unless at least fifty-one percent (51%) of the Mortgagees in the Subdivision have given prior written approval, neither the Owners nor the Association shall be entitled to abandon or terminate the legal status of the Subdivision and Property. Approval is implied if Mortgagee fails to respond within thirty (30) days of written request, sent by certified or registered mail. If a Mortgagee requests from the Association compliance with the guidelines of an underwriting lender, the Board, without approval of the Owners or Mortgagees, may make reasonable amendments to this subsection to meet the requirements of the underwriting lender.

IN WITNESS WHEREOF, the undersigned, being the Developer and Builders, have hereunto set their hands and seals this 26 day of May, 2005.

CPP, LLC

By: 

Printed Name: Paul Pinkley

Title: \_\_\_\_\_

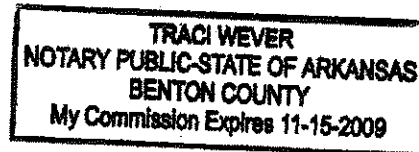
STATE OF ARKANSAS     )  
                                      )  
COUNTY OF BENTON    )     SS

On this the 26<sup>th</sup> day of May, 2005, before me,  
Traci Wever, the undersigned officer, personally appeared Paul Pinkley,  
who acknowledged himself to be the President of CPP,  
LLC, an Arkansas limited liability company, and that he, as such Paul Pinkley,  
being authorized so to do, executed the foregoing instrument for the purposes therein contained, by  
signing the name of the limited liability company by himself as President.

In witness whereof I hereunto set my hand and official seal.

Traci Wever  
Notary Public

My commission expires:  
November 15, 2009



Welborn Construction, Inc.

2005 26255

Recorded in the Above

Deed Book & Page

05-26-2005 03:35:08 PM

By: Sammy Welborn

Printed Name: Sammy Welborn

Title: President

STATE OF ARKANSAS )

COUNTY OF BENTON )

SS

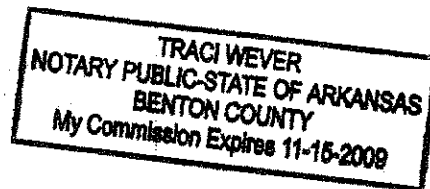
On this the 06<sup>th</sup> day of May, 2005, before me, Traci Wever, the undersigned officer, personally appeared Sammy Welborn who acknowledged himself to be the President of Welborn Construction, Inc., an Arkansas corporation, and that he, as such Sammy Welborn being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

In witness whereof I hereunto set my hand and official seal.

Traci Wever  
Notary Public

My commission expires:

November 15, 2009





2005 26256  
Recorded in the Above  
Deed Book & Page  
05-26-2005 03:35:08 PM

Welborn Homes, Inc.

By: [Signature]  
Printed Name: SAM WELBORN  
Title: Pres

STATE OF ARKANSAS     )  
                                      )  
COUNTY OF BENTON    )     SS

On this the 26<sup>th</sup> day of May, 2005 before me,  
Traci Wever, the undersigned officer, personally appeared SAM WELBORN  
who acknowledged himself to be the PRESIDENT of  
Welborn Homes, Inc., an Arkansas corporation, and that he, as such SAM WELBORN,  
being authorized so to do, executed the foregoing instrument for the purposes therein contained, by  
signing the name of the corporation by himself as PRESIDENT.

In witness whereof I hereunto set my hand and official seal.

[Signature]  
Notary Public

My commission expires:  
November 15, 2009



2005 26257

Recorded in the Above

Deed Book & Page

05-26-2005 03:35:08 PM

Land Marc Custom Homes LLC

By: Tim Boudrey

Printed Name: Tim Boudrey

Title: \_\_\_\_\_

STATE OF ARKANSAS )

SS

COUNTY OF BENTON )

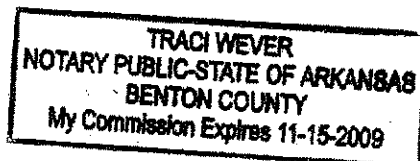
On this the 26th day of May, 2005, before me,  
Traci Wever, the undersigned officer, personally appeared Tim Boudrey  
who acknowledged himself to be the Partner of Land Marc Custom  
Homes LLC, an Arkansas limited liability company, and that he, as such Tim Boudrey  
being authorized so to do, executed the foregoing instrument for the purposes therein contained, by  
signing the name of the limited liability company by himself as Partner.

In witness whereof I hereunto set my hand and official seal.

Traci Wever  
Notary Public

My commission expires:

November 15, 2009



2005 26258

Recorded in the Above

Deed Book & Page

05-26-2005 03:35:08 PM

Brenda DeShields-Circuit Clerk

Benton County, AR

Matt Miller Construction, Inc.

By: [Signature]

Printed Name: MATT MILLER

Title: \_\_\_\_\_

STATE OF ARKANSAS )

SS

COUNTY OF BENTON )

On this the 26th day of May, 2005, before me,  
Traci Wever, the undersigned officer, personally appeared Matt Miller  
who acknowledged himself to be the President of Matt Miller  
Construction, Inc., an Arkansas corporation, and that he, as such Matt Miller,  
being authorized so to do, executed the foregoing instrument for the purposes therein contained, by  
signing the name of the corporation by himself as President.

In witness whereof I hereunto set my hand and official seal.

[Signature]  
Notary Public

My commission expires:

November 15, 2009



Benton County, AR

I certify this instrument was filed on

05-26-2005 03:35:08 PM

and recorded in Deed Book

2005 at pages 26232 - 26258

Brenda DeShields-Circuit Clerk

Brenda DeShields-Circuit Clerk  
Benton County, AR  
Book/Pg: 2010/21988  
Term/Cashier: CASH5/RPENNINGTON  
05/06/2010 10:25:14AM  
Tran: 111905  
Total Fees: \$65.00  
Book ~~2010~~ Page ~~21988~~  
Recorded in the Above  
DEED Book & Page  
05/06/2010

**THIRD AMENDMENT  
OF  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LEXINGTON SUBDIVISION**

**WHEREAS**, CPP, LLC, the Developer of Lexington Subdivision, caused to be recorded a Declaration of Covenants, Conditions and Restrictions for Lexington Subdivision, Rogers, Arkansas (the "Declaration"), on the 26<sup>th</sup> day of May 2005, and recorded at Book 2005, Page 26232, in the records of the Clerk and Ex-Officio Recorder of Benton County, Arkansas; and

**WHEREAS**, an Amendment of Declaration of Covenants, Conditions and Restrictions Lexington Subdivision, Rogers, Arkansas (the "First Amendment"), was recorded on the 9<sup>th</sup> day of June 2006 at Book 2006, Page 29282, in the records of the Clerk and Ex-Officio Recorder of Benton County, Arkansas; and

**WHEREAS**, an Amendment of Declaration of Covenants, Conditions and Restrictions Lexington Subdivision, Rogers, Arkansas (the "Second Amendment"), was recorded on the 18<sup>th</sup> day of October 2007 at Book 2007, Page 42963, in the records of the Clerk and Ex-Officio Recorder of Benton County, Arkansas; and

**WHEREAS**, the undersigned, pursuant to authority granted in Section 10.3(b) of the Declaration, desire and by these presents do hereby amend the Declaration, First Amendment and Second Amendment as follows:

1. Section 1.4, in Article I, titled Definitions, is amended to read as follows:

1.4 "Builder" shall mean, the following: Land Marc Custom Homes, LLC, an Arkansas limited liability company and Wellborn Construction, Inc., an Arkansas corporation.

2. Section 4.3, in Article IV, titled Annual Assessment, is amended to read as follows:

4.3 **Annual Assessment.** In order to provide the Association with a general fund with which to exercise the powers, maintain the Common Areas and improvements located thereon, and to render the services provided for herein and under the Association's Bylaws, all Lots, other than Lots then owned by the Developer or Builders, shall be subject to an annual assessment to be paid to the Association as set forth in the

Association's Bylaws. The annual assessment for 2010 and thereafter (unless amended by the Association) shall be Two Hundred and No/100 Dollars (\$200.00) for an unimproved Lot and Four Hundred Fifty and No/100 Dollars (\$450.00) for a Lot containing a residential structure. Additionally, upon the transfer of ownership of a Lot, there shall be a one-time initiation assessment of One Hundred and No/100 Dollars (\$100.00).


3. Section 5.9(b), titled Nuisances, is amended to read as follows:

**5.9 Nuisances.**

(b) Grass, trees and various vegetation shall be kept neatly cut and maintained. Lawns shall be mowed at least once a month and shall not be allowed to exceed six (6) inches from the ground surface. Fences or other outside structures or outdoor decorations shall be maintained so as not to become unsightly or an annoyance or a nuisance to the neighborhood. Upon Owner's failure to comply with this subsection, the Association may perform, or have performed the necessary action to remedy the problem, and shall be entitled to recover, from the Owner, the sum of \$200 for each time it takes such remedial action. Such sum shall be considered an assessment and collection and enforcement of said assessment shall be effected in the manner provided in Article IV.

IN WITNESS WHEREOF, the undersigned, being the Builders, have hereunto set their hands and seals this 5<sup>th</sup> day of May 2010.

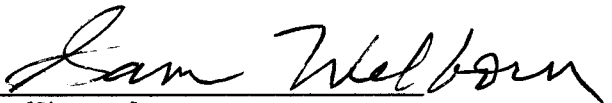
**WELBORN CONSTRUCTION, INC.**

By:   
[Signature]

Sammy Welborn  
[Printed Name]

President  
[Title]

**WELBORN HOMES, INC.**

By:   
[Signature]

Sam Welborn  
[Printed Name]

President  
[Title]

**LAND MARC CUSTOM HOMES, LLC**

By:   
[Signature]

Chris Bradley  
[Printed Name]

Manager  
[Title]

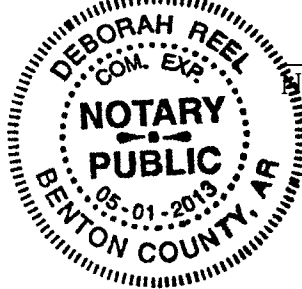
ACKNOWLEDGEMENT

STATE OF ARKANSAS     )  
  )ss.  
COUNTY OF BENTON     )

On this 5<sup>th</sup> day of May 2010, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Sammy Welborn, being the person authorized by Welborn Construction, Inc. to execute such instrument, who stated that he was the President of Welborn Construction, Inc., an Arkansas corporation, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 5<sup>th</sup> day of May 2010.

My Commission Expires:  
5-1-13



[Signature]  
Notary Public

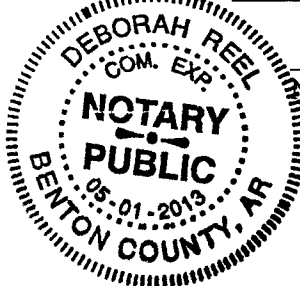
ACKNOWLEDGEMENT

STATE OF ARKANSAS     )  
  )ss.  
COUNTY OF BENTON     )

On this 5<sup>th</sup> day of May 2010, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Sam Welborn, being the person authorized by Welborn Homes, Inc. to execute such instrument, who stated that he was the President of Welborn Homes, Inc., an Arkansas corporation, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 5<sup>th</sup> day of May 2010.

My Commission Expires:  
5-1-13



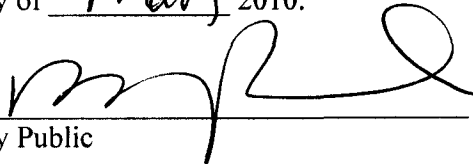
[Signature]  
Notary Public

ACKNOWLEDGEMENT

STATE OF ARKANSAS     )  
  )ss.  
COUNTY OF BENTON     )

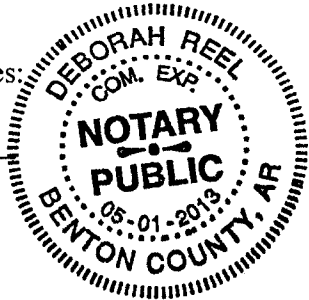
On this 5<sup>th</sup> day of May 2010, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Chris Bradley, being the person authorized by Land Marc Custom Homes, LLC to execute such instrument, who stated that he was the Manager of Land Marc Custom Homes, LLC, an Arkansas limited liability company, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 5<sup>th</sup> day of May 2010.

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

My Commission Expires:

5-1-13



**DESIGNATION OF BOARD OF DIRECTORS AND  
MEMBERS OF ARCHITECTURAL CONTROL COMMITTEE**

**OF**

**LEXINGTON SUBDIVISION PROPERTY OWNERS' ASSOCIATION, INC.**

Pursuant to the Declaration of Covenants, Conditions and Restrictions for Lexington Subdivision as recorded at Book 2005, Page 26232, in the records of the Clerk and Ex-Officio Recorder of Benton County, Arkansas on May 26, 2005, and as amended (the "Covenants"), the Builders are authorized to serve as Directors of the Lexington Subdivision Property Owners' Association, Inc. and the Architectural Control Committee thereunder, or to appoint such person or persons to serve in said positions.

Therefore, pursuant to Article 6 of the Covenants, the Builders appoint the following persons to serve as the sole members of the Architectural Control Committee of Lexington Subdivision, to serve until the end of the Control Period (as defined in the Covenants) or until a successor is appointed:

Chris Bradley  
Ryan Richie

Tiffany Chapman

Further, pursuant to Article 8 of the Covenants, the Builders appoint the following persons to serve as the sole members of the Board of Directors of Lexington Subdivision Property Owners' Association, Inc., to serve until the end of the Control Period (as defined in the Covenants) or until a successor is appointed:

Chris Bradley  
Ryan Richie

Tiffany Chapman

IN WITNESS WHEREOF, the undersigned, being the Builders, have hereunto set their hands and seals this 5<sup>th</sup> day of May 2010.

**WELBORN CONSTRUCTION, INC.**

**WELBORN HOMES, INC.**

By: Sammy Welborn  
Sammy Welborn, President

By: Sam Welborn  
Sam Welborn, President

**LAND MARC CUSTOM HOMES, LLC**

By: Chris Bradley  
Chris Bradley, Manager

Benton County, AR  
I certify this instrument was filed on  
05/06/2010 10:25:37AM  
and recorded in DEED Book  
2010 at pages 0021988 - 0021992  
Brenda DeShields-Circuit Clerk



**AMENDMENT  
OF  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
LEXINGTON SUBDIVISION**

2006 29282  
Recorded in the Above  
Deed Book & Page  
06-09-2006 03:08:41 PM  
Brenda DeShields-Circuit Clerk  
Benton County, AR

Book/Pg: 2006/29282  
Term/Cashier: CIRCLK04 / swhite  
Tran: 4264.126293.353281  
Recorded: 06-09-2006 15:09:08  
DFE Deed  
REC Recording Fee  
Total Fees: \$ 17.00

17.90  
0.00

WHEREAS, CPP, LLC, the Developer of Lexington Subdivision, caused to be recorded a Declaration of Covenants, Conditions and Restrictions for Lexington Subdivision, Rogers, Arkansas (the "Declaration"), on the 27<sup>th</sup> day of April, 2005, and recorded at Book 2005, Page 26232, in the records of the Clerk and Ex-Officio Recorder of Benton County, Arkansas; and

WHEREAS, the undersigned, pursuant to authority granted in Section 10.3(b) of the Declaration, desire and by these presents do hereby amend the Declaration as follows:

1. Section 5.17, titled Dwelling Size, is amended to read as follows:

5.17 **Dwelling Size.** The Architectural Control Committee shall exercise its best judgment to see that all structures, as to size, conform to and harmonize with the existing surroundings and structures. No permanent residence to be constructed on a Lot shall contain less than 1,800 square feet of heated and cooled living space, without approval of Developer.

2. Except as herein specifically amended, all other covenants, conditions and restrictions contained in the Declaration shall remain in full force and effect.

DATED this 9 day of June, 2006.

WELBORN CONSTRUCTION, INC.

By: [Signature]  
[Signed]  
Sammy Welborn  
[Print Name]  
President  
[Title]

WELBORN HOMES, INC.

By: [Signature]  
[Signed]  
SAM WELBORN  
[Printed Name]  
President  
[Title]

[continued on next page ...]

LAND MARC CUSTOM HOMES, LLC

MATT MILLER CONSTRUCTION, INC.

By: *Chris Bendley*  
[Signed]  
CHRIS BENDLEY  
[Print Name]  
President  
[Title]

By: *Matt Miller*  
[Signed]  
MATT MILLER  
[Printed Name]  
President  
[Title]

ACKNOWLEDGMENT

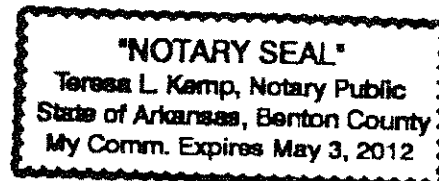
STATE OF ARKANSAS )  
                                  )ss.  
COUNTY OF BENTON )

On this 9 day of June, 2006, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Sammy Welborn, being the person authorized by said corporation to execute such instrument, who stated that (s)he was the President of Welborn Construction, Inc., an Arkansas corporation, and was duly authorized in his/her capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that (s)he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 9 day of June, 2006.

*Teresa L. Kamp*  
Notary Public

My Commission Expires  
May 3, 2012



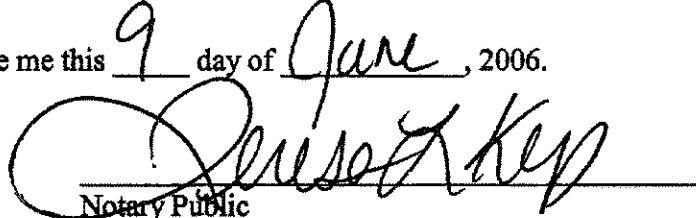
[continued on next page ...]

ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
                                      )ss.  
COUNTY OF BENTON     )

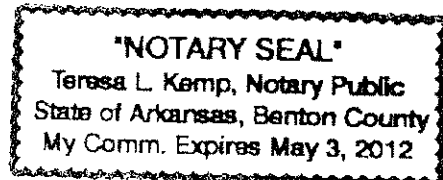
On this 9 day of June, 2006, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Sam Welborn, being the person authorized by said corporation to execute such instrument, who stated that (s)he was the President of Welborn Homes, Inc., an Arkansas corporation, and was duly authorized in his/her capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that (s)he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 9 day of June, 2006.

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

My Commission Expires:

May 3, 2012

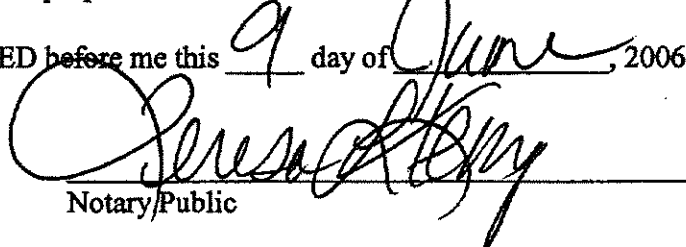


ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
                                      )ss.  
COUNTY OF BENTON     )

On this 9 day of June, 2006, before me, the undersigned Notary Public, duly commissioned, qualified, and acting, within and for said county and state, appeared in person the within named Chris Bradley, being the person authorized by Land Marc Custom Homes, LLC, an Arkansas limited liability company, to execute such instrument, who stated that (s)he was the President of the Company and was duly authorized in his/her capacity to execute the foregoing instrument for and in the name and on behalf of said Company, and further stated and acknowledged that (s)he had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

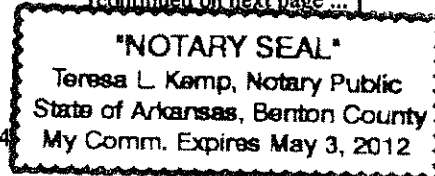
SWORN TO AND SUBSCRIBED before me this 9 day of June, 2006.

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

My Commission Expires:

May 3, 2012

[continued on next page ...]



2006 29285  
Recorded in the Above  
Deed Book & Page  
06-09-2006 03:08:41 PM  
Brenda DeShields-Circuit Clerk  
Benton County, AR

ACKNOWLEDGMENT

STATE OF ARKANSAS )

)ss.

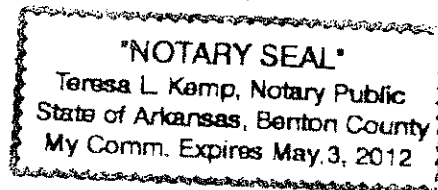
COUNTY OF BENTON

On this 9 day of June, 2006, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Matt Miller, being the person authorized by said corporation to execute such instrument, who stated that he was the President of Matt Miller Construction, Inc., an Arkansas corporation, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 9 day of June, 2006.

  
Notary Public

My Commission Expires:  
May 30, 2012



Howard\Miller Const\Amend\_Covenants\_0506

Benton County, AR  
I certify this instrument was filed on  
06-09-2006 03:08:41 PM  
and recorded in Deed Book  
2006 at pages 29282 - 29285  
Brenda DeShields-Circuit Clerk

**FOURTH AMENDMENT  
OF  
DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
LEXINGTON SUBDIVISION**

**WHEREAS**, CPP, LLC, the Developer of Lexington Subdivision, caused to be recorded a Declaration of Covenants, Conditions and Restrictions for Lexington Subdivision, Rogers, Arkansas (the "Declaration"), on the 26<sup>th</sup> day of May, 2005, an recorded a Book 2005, Page 26232, in the records of the Clerk and Ex-Officio Recorder of Benton County, Arkansas; and,

**WHEREAS**, Amendments of said Declaration of Covenants, Conditions and Restrictions were recorded on June 9, 2006 at Book 2006, Page 29282, and on October 18, 2007, at Book 2007, Page 42963, and on May 6, 2010, at Book 2010, Page 21988, in the records of the Clerk and Ex-Officio Recorder of Benton County, Arkansas; and,

**WHEREAS**, the undersigned, pursuant to authority granted in Section 10.3 (b) of the Declaration, desire and by these presents do hereby amend the Declaration, First, Second, and Third Amendments, as follows:

1. Section 5.2 of Article V, titled Use and Building Restrictions, is amended to:

5.2 Single-Family Residence Use. Each single-family residence lot shall be used, improved and devoted exclusively for single-family residential use in accordance with the restrictions, conditions and covenants set forth in this Declaration. No duplex, flat, boardinghouse, rooming house, apartment house or other multi-family or multi-unit residential structures, or any non-residential structures or other improvement (except Exterior Structures approved by the Architectural Control Committee as set forth herein) may be erected on any single-family residence lot.

No more than one (1) single family residence shall be located on any lot and no such residence shall exceed two (2) stories in height. Each such residential structure shall have an attached garage for not less than two motor vehicles and shall have a concrete driveway at least eighteen (18) feet wide. All residential

structures shall be of new construction, on-site; no residential building or structure which has previously been at another location shall be moved onto any land no prefabricated, modular, manufactured, or otherwise pre-assembled or pre-constructed homes or structures of any nature or kind whatsoever (except Exterior Structures approved by the Architectural Control Committee) shall be erected, stored or placed on any Single-family residential lot.

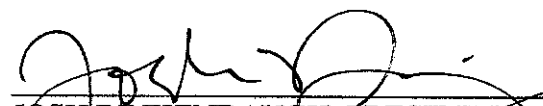
All building exteriors must be at least 85% brick, stone, stucco or other material specifically approved by the Architectural Control Committee. No vinyl or plastic materials will be allowed on the exterior of any residence. No camper, trailer, mobile home, vehicle, tent, outbuilding, exterior structure or any other apparatus or structure whatsoever except a permanent residence (the Plans and Specifications for which have been approved by the Architectural Control Committee as set forth herein) shall at any time be used for human habitation, temporarily or permanently, nor shall any residence or other structure or improvement of a temporary character be erected, moved onto or maintained upon any single-family residential lot or any common areas.

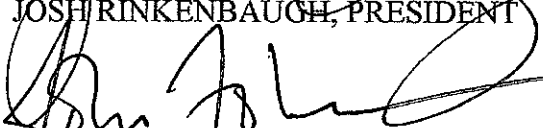
The provisions of the City of Rogers/Lowell codes and regulations in effect on the date the Plat was approved regarding single-family residences shall govern all lots within the Subdivision.


Leasing and/or renting of homes within the Subdivision is hereby prohibited as of August 9, 2020. Except, the Association will honor ("grandfather in") any lease agreement currently in place. The right to lease any grandfathered in property does not run with the land. Any currently leased or rented property may only continue as a lease or rental until said property is transferred to a new owner. This restriction is put in place to maintain and safeguard subdivision property values and promote community standards. Future lease agreements on grandfathered in properties must include a term assuring the tenant's compliance with the terms of this Declaration.

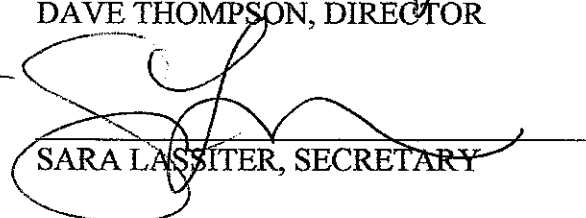
**IN WITNESS WHEREOF**, the undersigned, being the Officers and Directors, have hereunto set their hands and seals this 26 day of AUGUST, 2020.

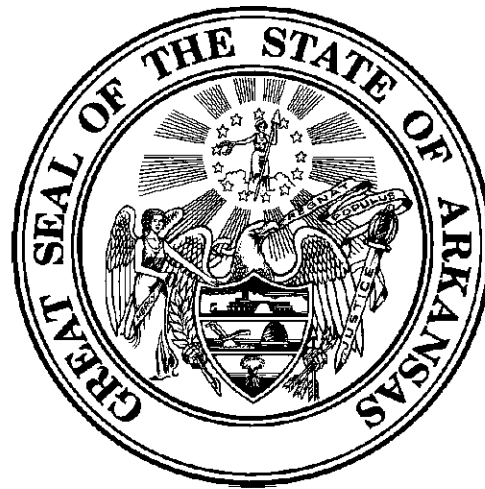
**OFFICERS AND DIRECTORS:**

  
JOSH RINKENBAUGH, PRESIDENT

  
JOHN FOHNER, TREASURER

  
DAVE THOMPSON, DIRECTOR

  
SARA LASSITER, SECRETARY



CERTIFICATE OF RECORD  
STATE OF ARKANSAS, COUNTY OF BENTON  
I hereby certify that this instrument was  
Filed and Recorded in the Official Records  
in **Doc Num L202054220**  
**08/31/2020 04:04:42 PM**  
Brenda DeShields  
BENTON COUNTY Circuit Clerk & Recorder

Brenda DeShields-Circuit Clerk  
Benton County, AR  
Book/Pg: 2007/42963  
Term/Cashier: CASHE/D JONES  
10/18/2007 1:23:59PM  
Fees: \$83.00  
BOOK 2007 Page 42963  
Recorded in file above

**SECOND AMENDMENT  
OF  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LEXINGTON SUBDIVISION**

**WHEREAS**, CPP, LLC, the Developer of Lexington Subdivision, caused to be recorded a Declaration of Covenants, Conditions and Restrictions for Lexington Subdivision, Rogers, Arkansas (the "Declaration"), on the 26<sup>th</sup> day of May 2005, and recorded at Book 2005, Page 26232, in the records of the Clerk and Ex-Officio Recorder of Benton County, Arkansas; and

**WHEREAS**, an Amendment of Declaration of Covenants, Conditions and Restrictions Lexington Subdivision, Rogers, Arkansas (the "First Amendment"), was recorded on the 9<sup>th</sup> day of June 2006 at Book 2006; Page 29282, in the records of the Clerk and Ex-Officio Recorder of Benton County, Arkansas; and

**WHEREAS**, the undersigned, pursuant to authority granted in Section 10.3(b) of the Declaration, desire and by these presents do hereby amend the Declaration and First Amendment as follows:

1. Section 1.4, in Article I, titled Definitions, is amended to read as follows:

1.4 "Builder" shall mean, collectively, the following: Welborn Construction, Inc., an Arkansas corporation, Welborn Homes, Inc., an Arkansas corporation and Land Marc Custom Homes, LLC, an Arkansas limited liability company.

2. Section 5.5, titled Construction of Residence, Improvements and Alterations, is amended to read as follows:

**5.5 Construction of Residence, Improvements and Alterations.** No building, residence, fence, wall, swimming pool, drive, Exterior Structure or other structure or improvement shall be commenced, constructed, improved or altered, without the prior written approval of the Architectural Control Committee as set forth herein. No residence, or other structure or improvement being constructed on a previously unimproved lot, shall be commenced or constructed without the prior payment to the Association of a \$2,000.00 landscape deposit to be held in escrow by the Association, until completion of construction and proper landscaping of the Lot as approved by the Architectural Control Committee.




3. Section 5.17, titled Dwelling Size, is amended to read as follows:

**5.17 Dwelling Size.** The Architectural Control Committee shall exercise its best judgment to see that all structures, as to size, conform to and harmonize with the existing surroundings and structures. No permanent residence to be constructed on a Lot shall contain less than 2,000 square feet of heated and cooled living space.

IN WITNESS WHEREOF, the undersigned, being the Builders, have hereunto set their hands and seals this \_\_\_\_ day of October 2007.


**WELBORN CONSTRUCTION, INC.**

By:   
[Signature]

Sammy Welborn  
[Printed Name]

President  
[Title]


**WELBORN HOMES, INC.**

By:   
[Signature]

Sam Welborn  
[Printed Name]

President  
[Title]

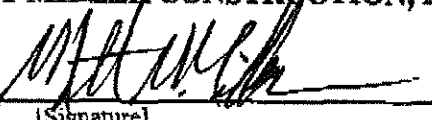
**LAND MARC CUSTOM HOMES, LLC**

By:  Pres  
[Signature]

Chris Bradley  
[Printed Name]

Manager  
[Title]

**MATT MILLER CONSTRUCTION, INC.**

By:   
[Signature]

Matt Miller  
[Printed Name]

President  
[Title]

[rest of page intentionally left blank]

ACKNOWLEDGEMENT

STATE OF ARKANSAS     )  
                                      )ss.  
COUNTY OF BENTON     )

On this \_\_\_\_ day of October 2007, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Sammy Welborn, being the person authorized by Welborn Homes, Inc. to execute such instrument, who stated that he was the President of Welborn Construction, Inc., an Arkansas corporation, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 18<sup>th</sup> day of October 2007.

*Katheryn J. Welborn*  
Notary Public

My Commission Expires:

2-15-16

OFFICIAL SEAL  
KATHERYN J. WELBORN  
BENTON COUNTY  
NOTARY PUBLIC - ARKANSAS  
MY COMMISSION EXP. FEB. 15, 2016  
COMMISSION# 12347120

ACKNOWLEDGEMENT

STATE OF ARKANSAS     )  
                                      )ss.  
COUNTY OF BENTON     )

On this \_\_\_\_ day of October 2007, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Sam Welborn, being the person authorized by Welborn Homes, Inc. to execute such instrument, who stated that he was the President of Welborn Homes, Inc., an Arkansas corporation, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 18<sup>th</sup> day of October 2007.

*Katheryn J. Welborn*  
Notary Public

My Commission Expires:

2-15-16

OFFICIAL SEAL  
KATHERYN J. WELBORN  
BENTON COUNTY  
NOTARY PUBLIC - ARKANSAS  
MY COMMISSION EXP. FEB. 15, 2016  
COMMISSION# 12347120

ACKNOWLEDGEMENT

STATE OF ARKANSAS     )  
                                      )ss.  
COUNTY OF BENTON     )

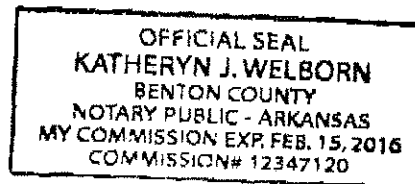
On this \_\_\_ day of October 2007, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Chris Bradley, being the person authorized by Land Marc Custom Homes, LLC to execute such instrument, who stated that he was the Manager of Land Marc Custom Homes, LLC, an Arkansas limited liability company, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 18<sup>th</sup> day of October 2007.

  
Notary Public

My Commission Expires:

2-15-16




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ACKNOWLEDGEMENT

STATE OF ARKANSAS     )  
                                      )ss.  
COUNTY OF BENTON     )

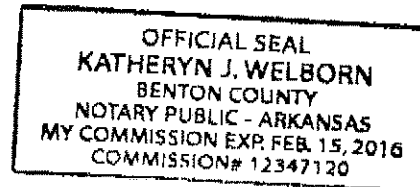
On this \_\_\_\_ day of October 2007, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Matt Miller, being the person authorized by Matt Miller Construction, Inc. to execute such instrument, who stated that he was the President of Matt Miller Construction, Inc., an Arkansas corporation, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Sworn to and subscribed before me this 18<sup>th</sup> day of October 2007.

  
Notary Public

My Commission Expires:

2-15-16



Benton County, AR  
I certify this instrument was filed on  
10/18/2007 4:19:22PM  
and recorded in DEED Book  
2007 at pages 0042963 - 0042967  
Brenda DeShields-Circuit Clerk