

**DECLARATION OF FIRST AMENDMENT OF**  
**COVENANTS AND RESTRICTIONS**  
**FOR**  
**THE BLUFFS**  
**BENTON COUNTY, ARKANSAS**

2004 50602  
Recorded in the Above  
Deed, Book & Page  
10-29-2004 11:58:56 AM  
Brenda DeShields-Circuit Clerk  
Benton County, AR  
Book/Pg: 2004/50602  
Term/Cashier: CIRCLK07 / SDUNCAN  
Tran: 2339.74033.197043  
Recorded: 10-29-2004 11:59:14  
DFE Deed  
REC Recording Fee  
Total Fees: \$ 29.00

29.00  
0.00

THIS DECLARATION made this 15<sup>th</sup> Day of October by AMRI LLC, an Arkansas Limited Liability Corporation (herein "Developer").

**WITNESSETH**

WHEREAS, Developer, as owner of certain real property located in Benton County, Arkansas, desires to create thereon a development known as THE BLUFFS subdivision (sometimes herein "Development") as more particularly described on the recorded Plat of said subdivision; and

WHEREAS, Developer desires to provide for the preservation an enhancement of value when and as the property is improved and desires to subject the development to certain covenants and restrictions as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development and each and every owner of any and all parts thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Development, 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 Properties (as hereinafter defined) and 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, as herein created; and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Arkansas, THE BLUFFS PROPERTY OWNERS ASSOCIATION, INC., (herein TBPOA) an Arkansas nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter;

NOW, THEREFORE, the Developer subjects the Development property to the terms of this Declaration and declares that the same is and shall be held, transferred, sold, conveyed, occupied and used, subject to the covenants and restrictions (sometimes herein "Covenants") hereinafter set forth.

**ARTICLE I**  
**ARCHITECTURAL CONTROL**

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**1.01 Architectural and Design Review.** In order to establish and preserve a harmonious design for the Development, to promote and protect the property values, to insure that all dwellings and accessory buildings constructed or erected shall have good quality materials and workmanship and are compatible with other dwellings and accessory buildings constructed or to be constructed in the Development, the Developer or the Architectural Control Committee (herein "TBACC") of the "TBPOA" shall approve the details of construction plans including dwelling placements. The Developer shall have sole architectural and design reviewing authority for the Development until the TBACC has been established. The TBACC shall be established and the Developer shall transfer reviewing authority to it when 75% of the lots in the Development have been sold to homeowners. The TBACC shall consist of the Developer and two (2) persons appointed by the Developer during the development period. After the development period, the TBACC shall consists of three (3) persons appointed by the TBPOA Board and shall serve for a term of three (3) years. At the Board's option, the Board may act as the TBACC.

**1.02 Approval Requirements.** No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure on the lot has been approved by the Developer or TBACC. Such plans shall be submitted for approval at least 15 days prior to the planned commencement of construction of same, and the written approval of the Developer or TBACC shall be required before construction. Should any plans submitted hereunder fail to be approved or disapproved within said 15 day time period provided, the owner may submit a second request. If the TBACC fails to respond within fifteen (15) days of the actual receipt of the lot owner's second request, the lot owner's application is deemed approved. In exercising deemed approval, the burden is on the lot owner to document the Boards actual receipt of the initial application and second request. The written plans shall include, but shall not be limited to, decks, hot tubs, patios, pools, material storage buildings, accessory buildings, dog runs, gazebos, arbors, roofing material, exterior building materials, change in color on the exterior of a dwelling or other structure, fencing and other similar construction.

**1.03 Approval Guidelines and Limitations.** Approval of any proposed plans submitted shall be withheld unless such plans and specifications comply with the applicable Covenants. Approval of plans and specifications by the Developer or TBACC is for the mutual benefit of all The Bluffs property owners and is not intended to be, and shall not be construed as, an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural viewpoint. Each property owner shall be individually responsible for the technical aspect of the plans and specifications.

**ARTICLE II**  
**ARCHITECTURAL CONTROL**

**2.01 Residential Use.** All lots within the Development shall be governed by the provisions of the Southern Building Code and a regulation governing single-family residences on the date the subdivision plat was approved. No lot may be subdivided for any purpose.

**2.02 Building Limitations.** The building codes of the Southern Building Code as they presently exist or are hereinafter amended, shall be and are hereby made applicable to all lots in the Development. 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. No dwelling structure shall be constructed on any lot within the Development of a size less than 3,500 square feet of living space a minimum of 2,500 square feet on the main level. Further, each dwelling shall have a private garage for not less than two (2) cars with a total space of not less than 576 square feet and shall have a concrete driveway at least (16) sixteen feet wide. The exterior walls of each building constructed or placed on a lot must be one hundred percent (100%) masonry material, which includes brick, stone, stucco, or other similar masonry material. This restriction shall not apply to windows, dormers, and eaves or fascia of any such building. All exterior colors of any material must be compatible and approved by the TBACC. Roof pitch shall be 8/12 minimum with architectural shingles cedar shake, tile or approved equal approved by the Developer or TBACC. No metal roofs will be allowed. All front lawn areas must be fully sodded and landscaped. No seeded lawns will be allowed in the front yard. Steep slopes and natural areas do not require sod, but must be maintained with mulch or ground cover. All exterior mechanical devices must be screened from street and adjoining lots for appearance and minimization of noise. All landscaping must be completed within 90 days of construction completion or occupancy, whichever occurs first. All mail boxes shall be cast iron on masonry to match home.

**2.03 Home Occupations.** Home occupation is defined as a completely constructed building or property being used for no other purpose other than as a residence. Any other activity or use must have the written approval of the Developer or TBPOA.

**2.04 Setbacks.** At the time of the final plat, no building shall be erected on any lot in the development nearer than: (1) 25 feet to the front lot line; (2) 25 feet to the rear lot line; (3) 10 feet to the side lot line. Should any building setback line shown upon the Bluffs 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.

**2.05 Fences.** The approval requirements outlined in subsection 1.02 for buildings shall also apply to fences. Fencing of front yards is prohibited. Fencing on corner lots shall not be placed closer to the street than the front yard setbacks of adjoining lots. No fences shall exceed six (6) feet in height. All wood screening fences shall be shadow box, or approved equal. All fencing materials shall be approved by the Developer or TBACC. Acceptable fence materials include but are not limited to wood and ornamental iron. Galvanized chain link and other forms of wire fencing are specifically prohibited.

**2.06 Vehicle Parking.** All vehicles, except recreational 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 25 feet of the front lot line for a period of time exceeding seven (7) days. Provided, however, recreational vehicles and equipment may be parked in backyards for a period exceeding seven (7) days so long as they are screened by proper fencing, or a hedge composed of shrubs at least six (6) feet in height, so as to reasonably screen the sight of said vehicle or equipment from neighbors.

**2.07 Signs.** No signs, either permanent or temporary, of any kind, shall be placed or erected on any property, without the consent of the Developer or TBPOA, unless signage upon property advertises the same for sale or rent. Provided, however, that the Developer and approved builders may erect signs to advertise the Development and model homes.

**2.08 Temporary Structures.** No trailer, tent, shack, garage, barn or other outbuilding or structure erected on a building site within the Development 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 storing of recreational vehicles or equipment on the lots when done in accordance with subsection 2.06. This restriction does not prohibit the Developer or approved builders from placing temporary construction trailers and/or storage facilities on lots as deemed necessary for construction purposes.

**2.09 Accessory Structures.** 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 Developer or TBACC. The approval requirements outlined in subsection 1.02 for buildings shall apply to these structures. Accessory buildings shall be restricted to one (1) per lot, no larger than twenty (20) feet by fourteen (14) feet, and designs that are compatible with the existing dwelling. In-ground swimming pools, cabana structures and gazebos shall be restricted to one (1) each per lot and designs that are compatible with the existing dwelling. The interior area of outbuildings and cabana structures shall not be included in the determination of minimum dwelling sizes. Permanent and semi-permanent above-ground swimming pools are specifically prohibited.

**2.10 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 Development without the approval of the Developer or TBPOA; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Development lot which may unreasonably interfere with the reception of television or radio signals upon any other Development properties. EXCEPTION: Digital satellite system receivers or internet access with dual purpose dish not more than eighteen (18) inches in diameter shall be allowed provided they are not visible from the street. The Developer or TBPOA can approve exceptions at their discretion.

**2.11 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 are not 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 two (2) dogs and two (2) cats. Dogs must be considered tame.

**2.12 Easements.** Perpetual easements have been reserved, as shown on the approved 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.

**2.13 Nuisances.** No noxious or offensive activity shall be permitted upon any lot, nor shall anything be done thereupon which may be or may become an annoyance or a nuisance to the neighborhood. 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 Developer or TBPOA 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.

**2.14 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.

**2.15 Inoperative Vehicles.** No vehicle, bus, tractor or other conveyance or rig shall be left inoperative on any lot for a period of more than three (3) days.

**2.16 Sight Distance at Intersections.** No fence, wall, hedge or shrub which obstructs sight lines at intersections within the subdivision shall be permitted.

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

**2.18 Laundry.** The hanging of laundry from any area within or outside a residence which places the laundry within public view is prohibited.

**2.19 Landscaping.** Landscaping is considered a private property improvement performed by the property owner and shall be trimmed and maintained in a manner that will enhance the overall appearance of the property.

### ARTICLE III

#### COMMON PROPERTIES

**3.01 Common Properties Defined.** "Common Properties" shall mean and refer to those tracts of land and any improvements thereon which are deeded to the TBPOA and designated in said deed as "Common Properties" and any personal property acquired by the TBPOA if said property is designated as "Common Property". All Common Properties are intended for and are to be devoted to the common use and enjoyment of the owners of The Bluffs properties and their guests. The Common Properties shall include but not be limited to the entry to the Development.

### ARTICLE IV

#### ASSESSMENTS

**4.01 Amount of Annual Assessments.** On or before the first day of December of each year, the TBPOA Board (or the Developer if the transfer of governing authority from the Developer to the TBPOA has not yet taken place as described in the TBPOA Bylaws) will adopt a budget for the upcoming year. The budget will establish the total amount of annual assessments on all lots in the Development. The amount of annual assessments for the individual lots will be the same for the Developer, Developer approved builders and homeowners and shall not exceed \$500.00 before the assessment duties are turned over to the TBPOA Board.

**4.02 Changes in Annual Assessments.** The amount of the annual assessments on all lots may be increased or decreased by the written vote of at least 75% of all lot owners (or) at least thirty (30) days prior to the effective date of an increase/decrease in annual assessments, the TBPOA Board will notify the owner of each lot of the amount of, the budgetary basis for, and the effective date of the increase/decrease. The increase will automatically become effective unless owners representing at least a 75% majority of the votes in the TBPOA disapprove the increase/decrease by written petition or at a meeting of the Association. In the event, the last approved budget will continue in effect until a revised budget is approved.

**4.03 Commencement of Assessments.** The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Developer to be the date of commencement, but not earlier than January 1, 2005.

**4.04 Pro Rata Assessments.** The amount of the first annual assessment shall be based pro rata upon the balance of the calendar year and shall become due and payable by the Developer approved builders and homeowners on the closing of the lot. The assessments for any year, after the first year, shall become due and payable the first day of January of said year.

**4.05 Statements.** On the first business day after adoption of the budget for the upcoming year (or as soon as practicable thereafter) the TBPOA or Developer shall mail a statement to each owner informing him or her of their annual assessment and the due date for payment thereof.

**4.06 Late Fees.** The Developer or TBPOA shall be authorized to charge a late fee to any lot owner who fails to pay any assessment on or before the due date thereof.

## **ARTICLE V**

### **GENERAL PROVISIONS**

**5.01 Duration of Covenants.** These Covenants shall run with and bind the land and shall inure to the benefit of and be enforceable by the TBPOA, the Developer or owners, their respective legal representatives, heirs, successors and assigns, and shall be effective for a period of twenty (20) years following the effective date hereof, and may be continued thereafter as provided by Arkansas law.

**5.02 Amendments.** These Covenants may be amended upon the affirmative vote of a quorum of at least 75% of lot owners. Lot owners may vote in person or by proxy at any annual or special meeting of the TBPOA duly called for such purpose, provided that no amendments shall be allowed which would be in violation of any federal, state or county regulation.

**5.03 Severability.** Invalidation of any restriction set forth herein, or any part thereof, by any order, judgment, or decree of any court, or otherwise, shall not invalidate or affect any of the other restrictions or any part thereof, as set forth herein, but they shall remain in full force and effect.

**5.04 Violations.** In the event of any violation or attempt to violate any of the Covenants herein, it shall be lawful for any person, persons or entity owning any lots in The Bluffs, including the Developer and TBPOA, to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate such Covenants, and either prevent him or them from so doing and/or to recover damages for such violations. Provided further, however, that the Developer or TBPOA shall first advise any violator of said violations prior to legal action being taken. The Developer or TBPOA shall receive from residents any complaints as to violations of the Covenants, and shall reasonably notify any violator prior to legal actions being taken.

Signed, sealed and delivered this 1<sup>st</sup> day of October, 2004.

AMRI LLC

By: Amy Brassart  
Signature  
Amy Brassart, Manager

2004 50609  
Recorded in the Above  
Deed Book & Page  
10-29-2004 11:58:56 AM  
Brenda DeShields-Circuit Clerk  
Benton County, AR

State of Arkansas     )  
                                   ) ss.  
County of Benton     )

**ACKNOWLEDGMENT**

Benton County, AR  
I certify this instrument was filed on  
10-29-2004 11:58:56 AM  
and recorded in Deed Book  
2004 at pages 50602 - 50609  
Brenda DeShields-Circuit Clerk

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004 came before the undersigned, a Notary Public within and for the State and County aforesaid, duly commissioned and acting, Amy Brassart, to me well known as the Manager of AMRI LLC and executed the above and foregoing Declaration of Covenants and Restrictions for The Bluffs on behalf of the limited liability corporation.

WITNESS my hand, at office, this 1 day of Oct, 2004.

Judy Hadley Notary Public

My Commission Expires: 8-29-2014

