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Total Fees: \$ 32.00

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**Declaration of Covenants, Conditions and
Restrictions for Spring Creek Park
City of Springdale, Benton County, Arkansas**

THIS Declaration of Covenants, Conditions and Restrictions, referred to herein as the "Declaration", is made this 2nd day of August, 2006 by WWR Investments, L.L.C., an Arkansas (limited liability company), sometimes referred to herein as "Developer", concerning the residential subdivision known as Spring Creek Park, referred to as "the Subdivision".

WITNESSETH

WHEREAS, the Developer is the Owner of real property located in Benton County, Arkansas, being more fully described in Exhibit A attached to this Declaration and incorporated herein by reference, sometimes referred to herein as the "Property"; and

WHEREAS, the Developer is in the process of developing and platting the aforesaid Property into a residential community, and contemplates subdividing such Property into individual, quality, single-family Residential Lots, and, in addition, contemplates setting aside certain tracts of land for common landscaped areas, for signs identifying the Subdivision and other amenities; and

WHEREAS, the Developer desires that the entire Subdivision constitute a single-family residential community, with rights and obligation toward the Ownership and maintenance of landscaped common areas at or near the entries to the Subdivision, as well as the signs identifying the Subdivision; and

WHEREAS, the Developer desires to provide for building and use restrictions to promote and insure that the Subdivision is a quality residential community, to protect the property values of all Owners within the Subdivision, to insure that all homes are constructed of quality materials and workmanship, and are compatible with other homes in the Subdivision.

NOW THEREFORE, in consideration of the foregoing and for the purpose of enhancing and protecting the value and desirability thereof, the Developer hereby declares and subjects all of the Property described in Exhibit A, now known as Spring Creek Park, to the covenants, charges, assessments, conditions and restrictions set forth in this Declaration, all of which shall run with said Property and shall benefit and be binding upon all parties and all persons owning all or any part thereof, and their heirs, personal representatives, successors and assigns. Any and all contracts, purchase agreements, or Deeds affecting any of the Property or Lots therein shall be deemed to have these covenants and restrictions incorporated therein by reference, and any and all such contracts, purchase agreements, or Deeds affecting any of the Property or Lots therein shall be conclusively held to have been executed, delivered, and accepted with full knowledge of all covenants and restrictions contained herein. Furthermore, it is expressly declared and agreed that these covenants also benefit the Developer and future Owners of the Property because of the interest of the Developer and such future Owners in having the entire Property maintained in an attractive manner for the benefit of all Owners of any portion of the Property.

**SECTION I
CONCEPTS AND DEFINITIONS**

The following words, whether or not capitalized, when used in this Declaration or in any amended or supplementary Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

"Amended Declaration" shall mean and refer to each and every instrument recorded in the Records which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Declaration.

"Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be from time to time duly amended or modified.

"Assessments" shall mean any charge levied against a Lot, Owner, etc. pursuant to this Declaration.

"Association" shall mean and refer to the Spring Creek Park Property Owners Association, which shall be formed as an Arkansas non profit corporation which has the power, duty and responsibility of maintaining and administering certain portions of the Subdivision and all of the Common Areas, administering and enforcing the Declaration and otherwise maintaining and enhancing the quality of life within the Subdivision.

"Board" or **"Board of Directors"** shall mean and refer to the Board of Directors of the Association.

"By-Laws" shall mean and refer to the Bylaws of the Association, as adopted and amended from time to time in accordance with the provisions of this Declaration and the Arkansas Non Profit Corporation Act of 1993 or other applicable laws promulgated by the State of Arkansas.

"City" shall mean and refer to the City of Springdale, Benton County, Arkansas.

"Common Areas" shall mean and refer to any and all areas of land within the Subdivision which are known, described or designated as green areas, common areas, the Streets, any controlled access areas and monitoring devices, Street lighting and signs (and all elements thereof), detention ponds, entryways, monuments, perimeter fences and walls, off-site monuments and directional signs, landscape easements, and any greenbelt and the like, including, without limitation, those shown on any Plat, as well as those not shown on a Plat but which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The "Common Areas" shall also include any and all public right-of-way lands for which the City has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as, but not limited to, Street medians or park areas.

"Covenants" shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration or any Amended Declaration.

"Declarant" (sometimes referred to as the "Developer") shall mean and refer to WWR Investments, L.L.C., an Arkansas limited liability company, and any or all successors and assigns thereof with respect to the voluntary disposition of all (or substantially all) of the right, title and interest of WWR Investments, L.L.C. in and to the Subdivision; provided however, no Person merely purchasing one or more Lots from WWR Investments, L.L.C. or its successors or assigns in the ordinary course of business shall be considered a "Declarant."

"Declaration" shall mean and refer to this particular instrument entitled: "Declaration of Covenants, Conditions and Restrictions for Spring Creek Park, City of Springdale, Benton County, Arkansas," together with any and all amendments or supplements hereto.

"Deed" shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

"Director" shall mean and refer to any duly elected member of the Board.

"Dwelling Unit" shall mean and refer to any building or portion of a building situated upon any Residential Lot that is designed and intended for Residential Use.

"Improvement" shall mean any physical change to raw land or to an existing Structure which alters the physical appearance, characteristics or properties of the land or Structure, including but not limited to the new construction of a Structure or Structures and related amenities, adding or removing square footage area or space to or from a Structure, painting or repainting a Structure, or in any way altering the size, shape or physical appearance of any Structure or any building or other improvement, temporary or permanent, located on any Lot.

"Lot" or **"Lots"** shall mean and refer to a Residential Lot or any other type of Lot reflected on any Plat or all of the Residential Lots.

"Member" shall mean and refer to each Resident or Owner, who is in good standing with the Association, who has filed a proper statement of residency with the Association, who has complied with all directives and requirements of the Association, and who otherwise satisfies the requirements set forth in Section II. B. hereof.

"Owner" shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot, excluding those having any such interest merely as security for the performance of an obligation.

"Person" shall mean an individual, partnership, joint venture, corporation, limited liability company, joint stock company, trust (including a business trust), unincorporated association or other entity, or a government or any political subdivision or agency thereof.

"Plat" or **"Plats"** shall mean and refer to the final Subdivision Plat or plats of the Subdivisions, which have been approved by the City and filed and recorded in the Records.

"Property" shall mean the real property, together with all improvements, easements, rights and appurtenances thereto, located in Benton County, Arkansas, being more fully described in Exhibit A attached to this Declaration and incorporated herein by reference.

"Records" shall mean the Public Real Estate Records as maintained in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, including the Map and Plat Records of Benton County, Arkansas.

"Resident" shall mean and refer to:

(a) each Owner of the fee simple title to any Lot within the Subdivision who is residing within any part of the Subdivision; and

(b) each Person residing within any part of the Subdivision who is a bona-fide lessee pursuant to a legally cognizable lease agreement with an Owner; and

“Residential Lot” shall mean and refer to each separately identifiable portion of the Subdivision which is (a) platted into individual Lots and becomes a part of the Subdivision pursuant to a Plat filed and recorded in the Records, (b) assessed by any one or more of the applicable governmental or other taxing authorities, (c) to be used solely for a Residential Use and (d) not intended to constitute any portion of the Common Areas.

“Residential Use” shall mean and refer to any use and/or occupancy of any Residential Lot as a residence by a single person, a couple, a single family or a permitted family size group of persons approved by the Board.

“Streets” shall mean the right-of-way of all private Streets, sidewalks and other rights-of-way situated within, and shown on the Plats, together with all pavement, curbs, Street lights, signs and related facilities thereon.

“Subdivision” or **“Subdivisions”** shall mean and refer to a subdivision or subdivisions of all or a portion of the Property, in accordance with a Plat or Plats thereof heretofore or hereafter filed of record in the Records, as well as any and all revisions, modifications, corrections or clarifications thereto.

“Yard” shall mean and refer to the area of the Lot located between the dwelling exterior and the streets and/or property lines for each Lot.

SECTION II GOVERNING BODIES

- A. **GENERALLY.** These Covenants shall be implemented by the Association, the Board of Directors of the Association as established herein.
- B. **PROPERTY OWNERS ASSOCIATION.**
1. **Membership.**
 - a. Each and every Owner of each and every Lot within the Subdivision shall automatically be, and must at all times remain, a Member of the Association in good standing, and shall be bound by the terms and conditions of this Declaration, the Articles and By-Laws of the Association, and such rules and regulations as may be promulgated and adopted by the Association under such Articles and By-Laws. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to any portion of a Lot. Ownership of any Lot shall be the sole qualification for being a Member; however a Member's privileges to use the Common Areas may be regulated or suspended as provided in this Declaration, the Bylaws or the rules and regulations promulgated by the Board. Any Person who holds an interest in and to all or any part of a Lot merely as security for the performance of an obligation shall not be a Member.
 - b. The Association shall consist of all Owners of Lots; and
 - c. Except as provided in this Declaration, the Association shall be the sole judge of the qualifications of its membership and of the right to participate in and vote at its meetings, and shall have the right to prescribe the procedure to be followed concerning all such meetings and votes.
 2. **Transfers.** The membership of an Owner may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale, assignment or transfer of such Owner's interest in all or any part of such Owner's Lot and then only to the purchaser, assignee or transferee as the new Owner of the Lot in question. Each Owner shall notify the Association of any transfer or assignment of the fee title to his/her/its Lot and the name and address of the transferee or purchaser. Such transfer shall automatically operate to transfer the membership to the new Owner thereof. On transfer, conveyance, or sale by any Owner of all of his or her or interest in any Lot, such Owner's membership in the Association shall thereon cease and terminate. The Articles of Incorporation and By-Laws of the Association, as may be amended from time to time, are incorporated by this reference to the same effect as if set forth word for word herein.
 3. **Voting Rights.**
 - a. The Owners of each Lot in good standing shall be entitled to one (1) vote per Lot. Where more than one Owner owns and holds a record fee interest in a Lot, either as joint tenants, tenants in common, or tenants by the entirety, for the purposes of voting at meetings of the Association or on issues submitted to the Members, said multiple Owners shall cast one vote collectively for each Lot owned.

- b. Any Owner or Member shall not be in "good standing" if such Person is: (i) in violation of any portion of these Covenants or any rule or regulation promulgated by the Board or any portion of applicable laws, rules, regulations and ordinances; or (ii) delinquent in the full, complete and timely payment of any assessments or charge which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board. The Board may suspend the voting rights of any Member who is not in good standing for any period during which such Member remains not in good standing. The preceding clause shall control over any provision of this Declaration to the contrary.
- c. The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable, for: (i) any meeting of Members; (ii) proof of membership in the Association; (iii) the status of good standing; (iv) evidence of right to vote; (v) the appointment and duties of examiners and inspectors of votes; (vi) the procedures for actual voting in person or by proxy; (vii) registration of Members for voting purposes; and (viii) such other matters concerning the conduct of meetings and voting as the Board shall deem fit.
4. **Notice; Voting Procedures; Meeting.** Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and/or Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Arkansas law. The Members shall meet annually to deal with and vote on matters relating to the business of the Association, as directed by the Board, including the election of the Directors.
5. **Matters Generally Subject of the Vote of Members.** Additionally, to the extent that the Board desires to encumber any portion of the Common Areas as security for payment of indebtedness incurred in respect to improvements to the Common Areas, the Board shall obtain the prior approval of the Members.
6. **Other Matters.**
- a. The official address of the Association is to be provided to all Members by the Board of Directors of the Association, and shall remain so until changed by a majority of the Board of Directors of the Association, at which time the Association shall notify each Member thereon of the change in address.
- b. The Association shall, at all times, observe all of the laws, regulations, ordinances, and the like of all governmental authorities recognized in the City, the State of Arkansas, and of the United States of America, and if, at any time, any of the provisions of this Declaration shall be found to be in conflict with such laws, regulations, ordinances, and the like, the same shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby.
- c. By written consent of a majority of the Owners of all the Lots within the Subdivision (one per Lot), the Association may be given such additional powers and duties as may be deemed necessary and reasonable, and by such vote, this Declaration may be modified or amended in any manner.
- d. Subject to the limitations set forth in this Declaration, the Association shall have the right to make such reasonable rules and regulations and to provide such means and to employ such agents as will enable it adequately and properly to carry out the provisions of this Declaration.

SECTION III BUILDING AND USE RESTRICTIONS

- A. A "building site" shall consist of one or more numbered Lots as shown on the face of the Plat or any modifications or adjustments thereto. No individual Lot may be split to create two or more Lots.
- B. No Dwelling Units, or other buildings, Improvements or Structures shall be erected, constructed, maintained, or permitted on such Residential Lots, except on a "building site" as defined above.
- C. Easements for installation and maintenance of utilities and drainage facilities are reserved on each Lot as reflected on the recorded Plat. Within these easements, no Structure, planting or other material (except driveways across any Lot) shall be placed or permitted to remain which may interfere with the operation, installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water toward or through drainage in the easement. Driveways permitted within the easement shall be constructed so as not to prevent any flow of water or change the flow in the area of each Lot and all improvements for which a public authority, the Association, or any utility company is responsible.
- D. Each Owner shall maintain and care for all improvements and all trees, foliage, plants and lawns on his or her Lot and otherwise keep his or her Lot and all improvements thereon in a neat manner and prevent the development of

any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot, and the Owner shall keep his or her Lot in conformity with the general character and quality of properties in the immediate neighborhood. By acceptance of a Deed to any Lot, the Owner thereof covenants and agrees to mow weeds and grass and to keep and maintain said Lot in a neat and clean condition at all times.

SECTION IV ADDITIONAL BUILDING USE AND GENERAL RESTRICTIONS

- A. **OFFENSIVE ACTIVITIES.** No noxious or offensive activity shall be carried on or permitted upon any Lot or on any Street or sidewalk adjacent thereto, nor shall anything be done thereon which may be or may become an annoyance or nuisance to adjacent Lot Owners or to the Subdivision. Any Lot Owner violating this paragraph shall be required to indemnify and hold harmless the ACC for any expense it incurs in alleviating the noxious or offensive activity, annoyance or nuisance.
- B. **OIL AND MINING OPERATIONS.** No oil drilling, oil refining, quarrying, or mining operation of any kind whatsoever shall be permitted upon, about, or in any Lot, nor shall any oil well, tank tunnels, mineral excavations or shafts be permitted upon or in any Lot.
- C. **MAINTENANCE OF SURFACE.** Earth or gravel shall not be removed from the surface of any Lot, except for improvement or leveling of the Lot involved. Landfill on any Lot shall be earth only, and shall not include trash, refuse, junk, construction debris or similar materials. Stable conditions of the soil and vegetation shall not be destroyed or disturbed, nor shall the surface drainage patterns be changed, except in a fully engineered manner, which will provide adequate recognition of soil conservation requirements. All damage to soil and vegetation shall be immediately restored to a stable condition.
- D. **LOT AND GROUND MAINTENANCE.** No Lot or easement or any part of the Property shall be used or maintained as a dumping ground.

SECTION V COMMON SPACE AND AMENITIES

- A. There shall be created, as shown on the face of the Plat of the Subdivision and identified as "Common Areas", such common tracts as the Developer shall create for landscaping and signage for the Subdivision. Such tracts shall be for the benefit of all Lots and properties in the Subdivision and the landscaping and signage thereon shall be maintained by the Association as provided in this Declaration.
- B. Once 75% of the Lots in the Subdivision are occupied by Residents, the above-referenced Common Areas located in the Subdivision shall be conveyed to and accepted by the Association. Until such time as 75% of the Lots in the Subdivision are occupied by Residents, the maintenance of the Common Areas shall be the responsibility of the Developer.
- C. After the Common Areas are conveyed to the Association, maintenance of the Common Areas and landscaping and signage thereon shall be at the cost and expense of the Members of the Association (Lot Owners) within the Subdivision. All of such costs, including, but not limited to, maintenance expenses, insurance, and real property taxes, shall be borne by the Lot Owners based on the ratio of the total number of Lots they own to the total number of Lots that have been created by the filing of the final Plat and any amendments thereto.
- D. The Board of Directors of the Association shall have the authority to promulgate such rules and regulations and amendments thereto regarding the use of the Common Areas and amenities as it from time to time deems appropriate. Additionally, the Board reserves the right to make such Common Areas and amenities available to non-residents by membership subject to such terms and conditions as the Board may deem appropriate.

SECTION VI REGULAR AND SPECIAL ASSESSMENTS FOR ASSOCIATION

- A. By acceptance of the Deed or other instrument of conveyance for his or her Lot within the Subdivision, each Lot Owner shall be deemed to covenant and agree to pay the Association annual/monthly assessments and special assessments for operating expenses incurred by the Association and for maintenance and care of the Common Areas and hereby consents to the imposition of any liens provided herein in connection therewith without further notice. The first such assessments shall be due and payable at the time any Lot is transferred from a builder to a homeowner at closing and shall be that amount last approved by the Board on the question of annual assessment and shall be prorated from the date of closing. Thereafter, such assessments shall be fixed, established, and collected from time to time as provided in this Declaration and by the Association. The annual and special assessments, together with such interest thereon and costs of collection as provided below, shall be a continuing lien on the property affected and shall also be a personal obligation of the Owner of such property from the date when the assessment is due and payable until paid in full. Such personal obligation shall not pass to successors in

title to the affected Lot or property unless expressly assumed by such successors. Unless changed by a majority vote of the Lot Owners casting votes, the annual assessment for any Lot in the Subdivision shall be that amount last approved by the Board on the question of annual assessment. On vote of the Board of Directors of the Association in the manner set forth in the Articles of Incorporation and By-Laws of the Association, the assessments from time to time for the purpose of defraying, in whole or in part, the cost of reconstruction, repair or replacement of the landscaping and signage on the Common Areas in the Subdivision, as well as any common amenity owned by the Association, including fixtures and appurtenances related thereto. The Board of Directors of the Association must approve any special assessments or change in annual assessments.

- B. It shall be the duty of the Association to notify all Owners or contract purchasers of Lots within the Subdivision, whose addresses shall be supplied by the Owner or contract purchaser to the Association, by sending written notice to each of such Owners within fifteen (15) days after the date on which the assessment has been fixed or levied, giving the amount of the charge or assessment for the current year, when the same shall be due, and the amount due for each Lot. Failure of the Association to levy an assessment due to lack of address for the Owner of any particular Lot within the Subdivision or for any other reason, shall not discharge the obligation of any such Owner from paying such assessment, and it shall be the obligation of any such Owner to notify the Association of such Owner's current address.
- C. Any general or special assessment levied as set forth in this Declaration shall become a lien on the affected Lot or property as soon as such assessment is due and payable as set forth above. In the event any Owner fails to pay the assessment when due, then the assessment shall bear interest at the maximum legal rate permitted by the State of Arkansas on the date when such assessment is due and shall continue to accrue at that rate, until it is paid in full. Forty-five (45) days after the date of any such assessment has been fixed and levied, the assessment, if not paid, shall become delinquent and the payment of both principal and interest may be enforced as in the case of a laborer's lien on the affected real estate, and notice of such lien may be filed with the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, and venue shall be laid in the appropriate Court of competent jurisdiction in Benton County, Arkansas. It shall be the duty of the Board of Directors of the Association, as provided below, to bring actions to enforce such liens before they expire. For each notice of lien so filed, or for any lien so filed, the Association shall be entitled to collect from the Lot Owner or Owners of the Lot described in such notice of lien a fee of \$50.00, and shall be collectible in the same manner as the original assessment provided for in this Declaration. Any such lien shall continue for a period of five (5) years from the date of delinquency and no longer, unless within such time period legal proceedings shall be instituted to collect such assessments, in which event, the lien shall continue therewith, the non-paying Owner or Owners shall be obligated to pay all costs incurred, plus reasonable attorney fees, which costs and fees shall become a portion of the lien and may be foreclosed on in the same manner as the assessment provided above.
- D. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, enjoyment, and welfare of the residents of the Subdivision, and, in particular, for the improvement and maintenance of property, services and facilities devoted to the above stated purpose and related to the use and enjoyment of the Common Areas and of the Dwelling Units situated in the Subdivision. Without limiting the generality of the foregoing statement of purpose, such assessments shall be applied by the Association to the payment of the costs of the following:
1. To enforce any and all building and land-use restrictions that exist as of the date of this Declaration or which may be lawfully imposed hereafter on or against any of the Property in the Subdivision.
 2. To maintain the Common Areas and amenities and improvements thereon as provided in this Declaration.
 3. To pay expenses to carry out the above, such as attorney's fees, manager's fees, expenses of liability, fire and other insurance, bookkeeping and accounting expenses, and any and all other expenses that may from time to time be deemed necessary to carry out the intent of this Declaration by the Association.
 4. To protect property values in the Subdivision by promoting pride in and enthusiasm for it; to work for improved transportation, schools, libraries, and recreation facilities within the community in which the Subdivision is located, and to do all lawful things and tasks that the Association, in its discretion, may deem to be in the best interest of the Subdivision and the Owners of the Lots in the Subdivision.
- E. Individual builders and/or Owners shall be responsible for reimbursements billed to the Declarant of any and all maintenance, repair or utilities as necessary to protect the Common Areas, until the Association is organized and formed.

SECTION VII ENFORCEMENT

- A. Any dispute between an Owner and the Association, shall be resolved by a Committee of three (3) Arbiters, with one Arbiter to be designated by the Owner and one to be designated by the Association. The two (2) Arbiters so appointed shall agree on the selection of a third Arbiter, and if agreement cannot be reached within fifteen (15)

- days after their appointment, the two shall request appointment of a third Arbitrator by a Court of competent jurisdiction in Benton County, Arkansas, or its successor.
- B. The arbitration shall generally follow the procedure prescribed in Arkansas Code Annotated §16-1018-201, et seq., and the decision of the Committee of Arbiters, which shall be made in writing and signed by at least two Arbiters, shall be final and binding on all interested persons.
- C. In the event a party fails to comply with the decision of the Arbiters within the time period specified in the decision, any Owner or the Association may seek confirmation of the decision in a Court of competent jurisdiction in Benton County, Arkansas, as provided in the above-referenced Arkansas Code provisions.

**SECTION VIII
DURATION AND AMENDMENT**

- A. **DURATION.** The Covenants of this Declaration shall run with and bind the Property subject to this Declaration, and shall be binding on and inure to the benefit of and be enforceable by the Association and/or the Owners and Residents of any Lot or any of the Property subject to this Declaration, their respective legal representatives, heirs, devisees, personal representatives, successors and assigns, for an original Ten (10) year term expiring on the tenth (10th) anniversary of the date of recordation of this Declaration, unless an instrument is signed by the Owners of at least seventy-five percent (75%) of all Lots within this Subdivision and recorded in the Records, which contains and sets forth an agreement to abolish these Covenants.
- B. **AMENDMENT OR MODIFICATION.** The Covenants, restrictions and other terms contained herein may be altered, amended, modified or abolished by written declaration, signed and acknowledged by the Owners of 75% or more of the Lots and recorded in the Records.

**SECTION IX
MISCELLANEOUS**

- A. The consent to any act or the waiver of breach of any provision of this Declaration, shall not operate or be construed as a consent or waiver of act or breach by any party, or as a waiver or modification of the provisions of this Declaration.
- B. In the event any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Declaration and this Declaration shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

**SECTION X
GOVERNING LAW
CHOICE OF FORUM, VENUE, AND CONSENT TO JURISDICTION**

- A. This Declaration and the Covenants, terms and provisions hereof shall be construed in accordance with and governed by the laws of the State of Arkansas in the same manner as any other similar instruments or agreements that are made and to be performed wholly within such jurisdiction, without regard to the conflicts of laws provisions thereof.
- B. Any and all claims or causes of action shall and must be filed only in the courts of the State of Arkansas for Benton County or the United States District Court for the Western District of Arkansas, which shall have exclusive jurisdiction over any and all disputes which arise between the parties under this Agreement, whether in law or in equity. Each of the parties mentioned herein, including the Developer, Board, Committees, Owners, Residents and Members, expressly agrees, consents, and stipulates that venue shall be exclusively within said courts. Each of the parties mentioned herein expressly agrees, consents and stipulates to the exercise of personal jurisdiction over them or it and subject matter jurisdiction over any such controversy arising between the parties being only in the courts listed herein.

Witness our hands and seals on behalf of said limited liability company on the date first set out above.

WWR INVESTMENTS, L.L.C.
an Arkansas limited liability company

By: _____

Justin E. Bryan, Member

Brenda DeShields-Circuit Clerk
Benton County, AR
Book/Pg: 2007/22887
Term/Cashier: CASH5/KJACKSON
06/06/2007 12:44:54PM
Tran: 3956
Total Fees: \$41.00

**AMENDED AND RESTATED DECLARATION OF COVENANTS OF ASSURANCE
AND RESTRICTIONS OF THE SPRING CREEK PARK SUBDIVISION
TO THE CITY OF SPRINGDALE, ARKANSAS**

KNOW ALL MEN BY THE PRESENTS:

WITNESS:

Book 2007 Page 22887
Recorded in the Above
DEED Book & Page
06/06/2007

WHEREAS, the undersigned are now the owners of all of property referenced hereinbelow, which property has been subdivided into the lots of the Spring Creek Park Subdivision and is reflected upon a plat of said subdivision which plat has been recorded and filed in the Plat Records of Benton County, Arkansas, in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, and bears document number 2006-934, and which plat is made a part of this Declaration, by reference, and this Declaration is likewise made a part by reference of said plat;

WHEREAS, this Amended and Restated Declaration of Covenants of Assurance and Restrictions of Spring Creek Park Subdivision hereby replaces the Declaration of Covenants of Assurance and Restrictions of Spring Creek Park Subdivision previously filed in the Plat Records of Benton County, Arkansas, in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, and bears document number 2006-38031;

NOW, THEREFORE, the undersigned declare that the real property described herein, and the lots on such property and in said Spring Creek Park Subdivision are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth or as hereinafter changed or amended.

ARTICLE I

PROPERTY SUBJECT TO THIS DECLARATION

1.1. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, is located and situated in Benton County, Arkansas, and which subdivision is located on the following lands, to-wit:

All that part of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, All that part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, All that part of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and All that part of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 17, Township 18 North, Range 30 West, Benton County, Arkansas, described as follows: COMMENCING at the Southeast Corner of said SW $\frac{1}{4}$ of the SE $\frac{1}{4}$; THENCE North 86°07'50" West, 101.85 feet for a TRUE POINT OF BEGINNING; THENCE continuing North 86°07'50" West, 298.78 feet; THENCE North 86°06'59" West a distance of 676.39 feet to a point on a curve; THENCE along a curve to the left having a radius of 220.00 feet, a delta of 29°15'11", an arc length of 112.32 feet, and a chord which bears North 10°44'35" West having a chord distance of 111.11 feet to a point of tangency; THENCE North 25°22'10" West a distance of 327.26 feet to a point of curve; THENCE along a curve to the right having a radius of 280.00 feet, a delta of 21°24'28", an arc length of 104.62 feet, and a chord which bears North 14°39'56" West having a chord distance of 104.01 feet to a point of tangency; THENCE North 03°57'43" West a distance of 279.63 feet to a point of curve; THENCE along a curve to the left having a radius of 220.00 feet, a delta of 43°43'15", an arc length of 167.88 feet, and a chord which bears North

25°49'20" West having a chord distance of 163.83 feet to a point of tangency; THENCE North 47°40'59" West a distance of 205.07 feet to a point of curve; THENCE along a curve to the right having a radius of 280.00 feet, a delta of 93°37'38", an arc length of 457.55 feet and a chord which bears North 00°52'09" West, a chord distance of 408.31 feet to a point on a line; THENCE North 37°52'30" West a distance of 790.33 feet to a point for corner; THENCE North 62°40'14" East a distance of 212.17 feet to a point for corner; THENCE North 52°00'04" East a distance of 343.17 feet to a point for corner; THENCE South 37°40'50" East a distance of 517.30 feet to a point for corner; THENCE South 37°52'30" East a distance of 808.11 feet to a point for corner; THENCE South 42°43'31" East a distance of 288.14 feet to a point for corner; THENCE South 59°50'38" East a distance of 233.90 feet to a point for corner; THENCE South 63°07'02" East, 147.43 feet; THENCE South 63°12'12" East, 118.59 feet; THENCE South 56°09'26" East, 63.82 feet; THENCE South 03°57'44" West, 946.88 feet to the TRUE POINT OF BEGINNING, and containing 50.1403 acres of land, more or less. Being subject to all easements, rights-of-way and restrictions of record.

ARTICLE II

DEFINITIONS

2.1. The following terms as used in this Declaration of Covenants of Assurance and Restrictions are defined as follows:

- a. "Declaration" means this Declaration of Covenants of Assurance and Restrictions for the Spring Creek Park Subdivision to the City of Springdale, Arkansas.
- b. "Property" means the Spring Creek Park Subdivision to the City of Springdale, Arkansas, as the same may be shown on the plat referenced hereinabove and recorded in Benton County, Arkansas.
- c. "Lot" means any numbered Lot designated on the Plat of the property, except as may be herein excepted.
- d. "Plat" means the map of the plat of the Spring Creek Park Subdivision to the City of Springdale, Arkansas, as it is recorded.
- e. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot subject to this Declaration, except that such term shall not mean Developer regardless of whether Developer has a fee simple interest in any lot.
- f. "Developer" shall mean and refer to Carpenter Construction, Inc.
- g. "Subdivision" shall mean the Spring Creek Park Subdivision to the City of Springdale, Arkansas, as per plat on file in the office of the Circuit Clerk, and Ex-Officio Recorder of Benton County, Arkansas.

ARTICLE III

RESTRICTIONS ON RESIDENTIAL LOTS

3.1. Fences: Only fences constructed of wood may be installed. There shall be no other fences allowed. In no event shall any fence be built which would detract from the appearance or obstruct visibility of the entry signs to the Property. None of the front yard may be enclosed by fence. Any fence shall not extend past the side yard toward the front of the lot. All privacy fences shall be constructed so that the framing shall be toward the inside of the owner's Lot and shall be constructed at a height of six (6) feet to maintain uniformity. Any fence, once constructed, must be maintained by the property owner who had it constructed or their successor-in-interest.

3.2. Nuisances: No noxious or offensive activities or nuisances shall be permitted on any Lot or Parcel.

3.3. Signs: No person shall erect or maintain upon any Lot, or improvement thereto, any sign or advertisement, except a real estate sign when the property is listed for sale or for rent, provided, however, that this restriction shall not apply to Developer or Builders during development and construction of the Subdivision.

3.4. Animals: No animals shall be kept or maintained on any Lot except the usual household pets which shall be kept reasonably confined so as not to become a nuisance and all Owners shall comply with applicable laws, ordinances and regulations concerning animals.

3.5. Garbage and Refuse Disposal: No Owner shall accumulate on his or her Lot litter, refuse or garbage, except in approved receptacles. All Owners shall be required to have a mandatory trash pick up as provided or required by the City of Springdale, Arkansas.

3.6. Limited Access: There shall be no access to any Lot on the perimeter except from designated streets or roads within the Subdivision.

3.7. Drilling and Mining: No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot.

3.8. Communication Towers and Satellite Dishes: No communications mast, tower, or structure may be installed on any Lot, except that satellite dishes may be installed only on the rear roof of a dwelling and shall not exceed the height of the lowest roof ridge line of such dwelling.

3.9. Parking on the Streets: No vehicles may be parked overnight in the streets of the Subdivision. Owners shall provide sufficient off-street parking to accommodate the vehicles used by their families and guests. Furthermore, no semi-trailer trucks or commercial vehicles shall be allowed to park in the Subdivision, either on the streets or on the Lots, provided, however, that this restriction shall not apply to Developer during construction and development of the Subdivision.

3.10. Structures other than Dwellings: No trailer, mobile home, tent, shack, or other unsightly building or structure, temporary or permanent, shall be erected or used on said lots. However, it is permissible to have a storage building in the rear yard of a Dwelling provided that

the square footage of such storage building does not exceed 250 square feet; is constructed of a material that complements the Dwelling which it accompanies; and is constructed within a privacy fence. The restrictions contained in this section shall not apply to the Developer during construction and development of the Subdivision.

3.11. Recreational Vehicles and Boats: Recreational and camping vehicles, trailers and boats may not be stored and parked on the Lots.

3.12. Minimum Square Footage: All Dwellings in the Subdivision shall have a minimum of thirteen hundred (1,300) square feet of heated area. The minimum square footage requirements is exclusive of garages, porches, patios and decks.

3.13. Restriction of Type of Dwelling: There shall be no Dwellings erected on any Lot other than a detached single family dwelling having at least a two-car enclosed garage. The garage may be detached but the exterior materials must be the same as is used on the dwelling.

3.14. Exterior of Dwellings: The exterior of all Dwellings erected on the Lots shall be of a masonry veneer construction to the extent that the exterior of each such Dwelling is at least sixty percent (60%) masonry veneer, excluding windows and doors. All roof pitches shall be a minimum of 8/12 pitch. Any composition roof on any dwelling in the subdivision shall be a thirty (30) year architectural shingle roof.

3.15. Lot maintenance and sod: All Lots shall be maintained, mowed and kept free of noxious weeds whether they be improved or unimproved. Further, upon construction of a dwelling, the Owner shall sod the lawn area of the Lot from the front of such dwelling to the curb line and the remaining areas of the lot shall be either be sodded, sown with grass seed and mulch, or hydroseeded; provided, however, that this section shall not apply to Developer during construction and development of the Subdivision.

3.16. Platted easements: All Lots are subject to easements that are shown on the Plat, including, but not limited to, easements for fences and entry signs.

3.17. Covenants to Run with the Land: All covenants and restrictions set forth in this Declaration are to run with the land and shall be binding on all parties, their successors, heirs and assigns, for a period of thirty (30) years from the date this Declaration is recorded; provided, however, that after the date this Declaration is recorded, the covenants and restrictions may be amended at any time by the record owners of at least fifty-one (51) percent of the total Lots in the Subdivision. Such amendments shall be made and executed by said record owners so as to be recorded with the registrar of deeds of Benton County, Arkansas.

Provided, further, that after the expiration of the thirty (30) year period set forth above and any time within six (6) months from said expiration, a majority of the Lots, through their record owners, may express their intention, in writing, so drafted and executed as to be recorded with the registrar of deeds in Benton County, Arkansas, that they no longer care for the covenants, and the same shall then be terminated. In the event that no action is taken within the prescribed time, this Declaration shall continue for additional periods of ten years, and for any such ten year period, said covenants may be terminated in accordance with the terms for the original termination. It is further provided that this Declaration may be amended after the expiration of the time periods as set forth in this paragraph, either by adding to or taking from said Declaration in their present form, providing that said amendment or amendments shall be

incorporated in a written instrument executed by no less than a majority of the Lots, through their record owners, and which instrument shall be capable of being recorded as above referred to under the same terms and conditions thereof.

ARTICLE IV

MISCELLANEOUS

4.1. Violations: If the parties hereto, or their heirs, successors or assigns or any other person shall violate or attempt to violate any of the covenants or restrictions herein while said covenants or restrictions are still in force, it shall be lawful for any person or persons owning any interest in any Lot or Lots in the Subdivision to prosecute any violation or attempted violation of any such covenant or restriction, either to prevent the person from doing so or to recover damages or other penalties and costs, including reasonable attorney's fees for such violation.

4.2. Notices: Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the County Assessor at the time of such mailing.

4.3. Additional Phases: The Developer reserves, unto itself, the right, without joinder or consent of any Owner, Builder or Mortgagee, to file additional plats in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas to add additional phases which shall be subject to this Declaration.

4.4. Severance: Invalidation of any one of these covenants by judgment or court order shall, in no way, affect any other provisions herein contained.

4.5. Waiver: Failure of any of the parties, their heirs, successors or assigns, to exercise any of the options contained herein upon breach by the other party, its heirs, successors or assigns, subject to this Declaration, shall not constitute a waiver of that party's right to exercise such option upon future breach.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this 2nd day of April, 2007.

DEVELOPER:

CARPENTER CONSTRUCTION, INC.

By: Tad L. Carpenter
Tad L. Carpenter, President

Book 2007 Page 22892
Recorded in the Above
DEED Book & Page
06/06/2007

ACKNOWLEDGMENT

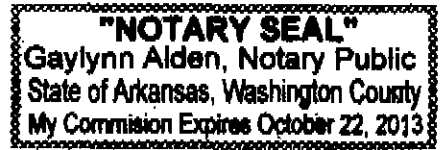
STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)


BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, appeared in person the within named Tad L. Carpenter, to me personally known, who stated that he is the President of Carpenter Construction, Inc., 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 instrument for the consideration, uses and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public this 2nd day of April, 2007.


My Commission Expires:
10/22/2013

Gaylynn Alden
Notary Public





Michael J. Scott



Marla J. Scott

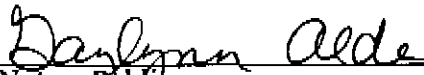
ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

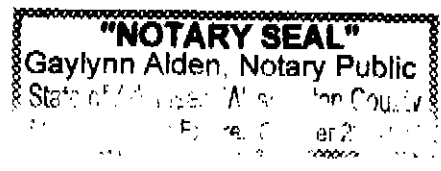
BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, Michael J. Scott and Marla J. Scott, husband and wife, to me well known in the foregoing as the owners of Lot 71 of Spring Creek Park Subdivision, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public this 16th day of March, 2007.

My Commission Expires:
10/22/2013



Notary Public



Joby Ray Elsea
Joby Ray Elsea

Holly Elizabeth Elsea
Holly Elizabeth Elsea

ACKNOWLEDGMENT

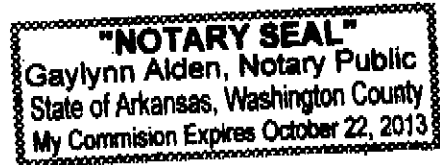
STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, Joby Ray Elsea and Holly Elizabeth Elsea, husband and wife, to me well known in the foregoing as the owners of Lot 137 of Spring Creek Park Subdivision, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public this 17th day of March, 2007.

My Commission Expires:
10/22/2013

Gaylynn Aiden
Notary Public



Doug W. Marx
[Handwritten Signature]

ACKNOWLEDGMENT

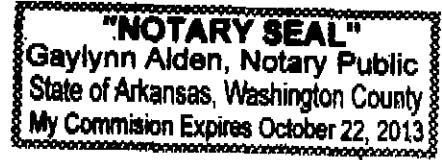
STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)


BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, Doug W. Marx, to me well known in the foregoing as the owner of Lot 72 of Spring Creek Park Subdivision, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public this 3rd day of April, 2007.

My Commission Expires:
10/22/2013

Gaylynn Aiden
Notary Public





Aaron Simmons


ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

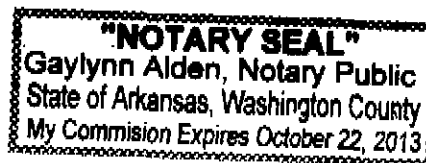
BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, Aaron Simmons, to me well known in the foregoing as the owner of Lot 139 of Spring Creek Park Subdivision, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public this 18th day of March, 2007.

My Commission Expires:
10/22/2013



Notary Public



Heath Scott Schultz
Heath Scott Schultz

Amy Louise Schultz
Amy Louise Schultz

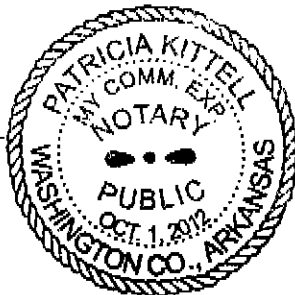
ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, Heath Scott Schultz and Amy Louise Schultz, husband and wife, to me well known in the foregoing as the owners of Lot 68 of Spring Creek Park Subdivision, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public this 10th day of May, 2007.

My Commission Expires:
10/1/12



Patricia Kittell
Notary Public
Patricia Kittell


Michael T. Simmons, II


ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, Michael T. Simmons, II, to me well known in the foregoing as the owner of Lot 140 of Spring Creek Park Subdivision, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public this 5th day of June, 2007.

My Commission Expires:
10/22/2013


Notary Public

"NOTARY SEAL"
Gaylynn Alden, Notary Public
State of Arkansas, Washington County
My Commission Expires October 22, 2013

Benton County, AR
I certify this instrument was filed on
06/06/2007 12:45:40PM
and recorded in DEED Book
2007 at pages 0022887 - 0022898
Brenda DeShields-Circuit Clerk