

# **DECLARATION OF COVENANTS OF ASSURANCE AND RESTRICIONS OF THE COPPER CREEK SUBDIVISION OF THE CITY OF FAYEITEVILLE, ARKANSAS**

WITNESS:

WHEREAS, the undersigned (herein referred to as Developer) Is now the owner of all the lots of the Copper Creek Subdivision as reflected upon a plat of said subdivision filed in Plat Book 19 at Page No. 1 of the Plat Records of Washington County, Arkansas, In the office of the Circuit Clerk and which plat is, by referenced, made a part of this Declaration, and the Declaration Is likewise made a part by reference of said plat;

NOW, THEREFORE, the Developer declares the lots in said Copper Creek Subdivision are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, changes 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 includes all Lots in the Copper Creek Subdivision in the City of Fayetteville, Arkansas, and which Subdivision is filed In Plat Book 19 at Page No. 1 of the Plat Records of Washington County, Arkansas, in the office or the Circuit Clerk and Ex-officio Recorder of Washington County, Arkansas and more particularly described in Exhibit "A; which Is attached hereto and made a part hereof. Additional plats of new phases of this Development may be, at the sole discretion of Developer, filed from time-to-time hereafter.

## **ARTICLE II DEFINITIONS**

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

- a. "Declaration" means the Declaration of Covenants of Assurance and Restrictions for the Copper Creek Subdivision to the City of Fayetteville, Arkansas.
- b. "Property" means the Copper Creek Subdivision to the City of Fayetteville, Arkansas, as the same may be shown on the plat referenced hereinabove and recorded in Washington County, Arkansas, and any additions thereto as may hereafter be brought within the jurisdiction of this Declaration.
- 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 Copper Creek Subdivision to the City of Fayetteville, Arkansas, as it is recorded, and any other plats of additional phases subsequently filed by Developer to be under the Jurisdiction of this Declaration.

- e. "Owner" shall mean and refer to the record owner, whether one or more persons or entitles, 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 Gary Brandon Enterprises, Inc.
- g. "Subdivision" shall mean the Copper Creek Subdivision to the City of Fayetteville, Arkansas, as per plat on file in the office of the Circuit Clerk, and Ex-Officio Recorder of Washington County, Arkansas.
- h. "Association" shall mean and refer to the Copper Creek Homeowners' Association, Inc., a non-profit corporation organized and existing pursuant to the laws of the State of Arkansas.
- i. "Common Properties" shall mean and refer to those real properties owned by or hereafter acquired by the Association, including, but not limited to, the existing pond and the detention pond to be constructed. Common Properties shall not include any property dedicated or conveyed to the City of Fayetteville, Arkansas. Common Properties are intended to be devoted to the common and private use and enjoyment of owners of the properties.
- j. "ARC" shall mean and refer to the Architectural Review Committee as established and maintained by the Association.

### ARTICLE III RESTRICTIONS AND RESIDENTIAL LOTS

3.1. Fences: Before any privacy fence may be constructed on any residential Lot, plans must be submitted to the ARC (as hereinafter defined) showing the materials to be used and the location of the fence and such plans must be approved by the ARC in accordance with the procedures set forth herein. 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. Fences shall be constructed of wood, wrought iron or masonry. There shall be no chain link or cyclone fences allowed.

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, provided, however, that this restriction shall not apply to Developer during development and construction of the Subdivision.

3.4. Animals: No animals shall be kept or maintained on any Lot except the usual house hold 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 receptacle. All Owners shall be required to

have mandatory trash pickup as provided or required by the City of Fayetteville, Arkansas.

3.6. Limited Access: There shall be no access to any Lot on the perimeter except for 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 street or in 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 and is constructed of a material that complements the Dwelling which it accompanies. All plans will be submitted to the Architectural Review Committee for review. Submitting plans to the ARC shall not apply to the developer during construction and development of subdivision.

3.11. Recreational Vehicles and Boats: Recreational and camping vehicles, trailers and boats may be stored and parked on the Lots. However, these vehicles, trailers and boats shall be located behind the house or fences, or in or behind the garage, or otherwise screened so that they are not readily visible from the street or adjoining Lots. Screening walls and fences must be approved by the ARC before being constructed.

3.12. Minimum Square footage: All Dwellings In the Subdivision shall have a minimum of two thousand (2,000) square feet of heated area. The minimum square footage requirement is exclusive of garages, porches, patios and decks.

3.13. Restrictions of Type of Dwelling: There shall be no Dwelling erected on any Lot other than a detached single-family dwelling having at least a two-car enclosed garage with entrances from the front or side.

3.14. Approval of Plans by ARC: All plans for Improvements to be constructed on each Lot shall be first submitted for review and approval by the ARC. Approval by the

ARC must be obtained in writing before construction of any improvement on any Lot begins and any variances to the improvement initially approved must be authorized in writing by the chairman or the ARC.

3.15. 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 eighty percent (80%) masonry veneer (masonry to be defined as brick, may be amended by ARC on case-by-case review), excluding windows and doors. Stucco-like EIFS materials may be used on dwellings below the plate line if approved by the ARC. There shall be no man-made siding, such as Masonite, metal, vinyl, etc., however, such siding restrictions shall not apply to gables, dormers, or rear of houses. All roof pitches shall be a minimum of 8/12 pitch. Any composition roof on any dwelling in the subdivision shall be a 25-year architectural shingle roof and must have a minimum 300-pound architect design.

3.16. 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 or the Lot from the front of such dwelling to the curb line, provided, however, that this section shall not apply to Developer during construction and development of the Subdivision.

3.17. 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.

3.18. 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 for thirty (30) years from the date this Declaration is recorded; provided, however, that after a period of three (3) years from the date this Declaration is recorded, the covenants and restrictions may be amended at any time by the record owners of at least sixty (60) 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 Washington 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 Washington 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 instruments shall be capable of being recorded as above referred to under the same terms and conditions thereof.

ARTICLE IV  
HOMEOWNERS ASSOCIATION AND  
COVENANT ANP PLAN FOR MAINTENANCE AND OTHER ASSESSMENTS

4.1. Homeowners' Association: The Copper Creek Homeowners' Association, Inc. (referred to herein as "Association") has been formed and incorporated by the Developer and Developer is a member thereof. All Lot Owners must be members of the Association and each shall automatically be governed by By-Laws accepted and approved by the Association.

All association memberships will pass with Lot ownership in the Subdivision. All Lots will carry one (1) vote in the Association, except that the Developer shall have four (4) votes per Lot which Developer owns.

4.2. Improvements to Common Properties: It is contemplated that certain improvements may be made to the common properties in the subdivision by the Developer including, but not limited to, entry signs, shell islands, landscaping and street lights. At such time as the common properties are conveyed by the Developer to the Association, the cost, maintenance, capital Improvements, operation, taxes, and other expenses incident to the common properties shall be the obligation of the Association and shall be paid from assessments against each lot as herein provided.

4.3. Creation of Lien: Each Owner of any Lot of the Subdivision, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, contract of purchase, or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges; (2) Special assessments for capital improvements and other purposes, such assessments to be fixed, established and corrected from time to time as hereinafter provided. The annual and special assessments, together with such Interest thereon and costs or collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. In no event shall an annual or special assessment be applicable at any time to any Lot owned by the Developer and the Developer shall not be obligated to pay any annual or special assessment.

4.4. Purpose of Assessments: The assessments levied pursuant hereto by the Association shall be used for the purposes of acquisition, improvement and maintenance of "the common properties, services and facilities devoted to this purpose and related to the use and enjoyment of the common properties, insurance thereon, and repair, replacement, and modifications thereto, and for the cost of labor, equipment,

materials, management and supervision thereof. In addition, assessments may also be used for expenses related to the necessary and reasonable operation of the Association, including but not limited to, collection of assessments and related costs and enforcement of the covenants and restrictions of the Subdivision.

4.5. Basis and Maximum of Annual Assessments: The annual assessment for each lot shall be ~~\$250.00~~ \$300.00. An owner's first such assessment shall be prorated and paid to the Association at closing according to time of conveyance of a Lot to the owner. The annual assessment may be increased, as hereinafter provided, by a

majority vote of the votes entitled to be cast by the members of the Association for the next succeeding "assessment year" (beginning January 1) and at the end of each such period of one year for each succeeding period of one year. At no time shall the annual assessment per lot be increased more than twenty-five percent (25%) above the prior year's annual assessment. Said annual assessment shall be payable in advance on the 1<sup>st</sup> day of January each year. The Board of Directors may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

4.6. Special Assessments for Capital Improvements: In addition to the annual assessments authorized hereinabove, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement or a described capital improvement upon the common properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of 2/3 of the votes entitled to be cast by members of the Association who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to all members at the last known address of each member at least fifteen (15) days in advance and shall set forth the purpose of the meeting.

4.7. Change In Basis of Maximum of Annual Assessments: Subject to the limitations of section 4.5. hereof, and for the purposes therein specified, the Association may change the maximum and basis of the assessments fixed by section 4.5. hereof prospectively for any such period, provided that any such change shall have the assent of 2/3 of the votes entitled to be cast by members who are voting in person or by proxy, at a meeting duly called for this purpose, where a quorum is present, written notice of which shall be mailed to all members at the last known mailing address of each voting member at least fifteen (15) days in advance and shall set forth the purpose of the meeting.

4.8. Quorum for any Action Authorized Under Section 4.6. and 4.7: The quorum of any action authorized by Sections 4.6. and 4.7 hereof, the presence at the meeting of members, or of proxies, entitled to cast fifty percent (50%) of all votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in sections 4.6 and 4.7.

4.9. Late Payment of Assessments: As hereinabove provided, each annual assessment shall be due and payable on the 1<sup>st</sup> day of January of each year. In the event of default as to any payment (annual or special), and if the default is not remedied within ninety (90) days, the Association shall have the option of taking such action as permitted by Law or Equity and by this Declaration and the By-Laws of the Association. An additional late charge of ten percent (10%) shall be assessed on any payment which is more than ninety (90) days delinquent. Costs of collection of the assessment, including reasonable attorney's fees therefore, shall also be assessed.

The due date of any special assessment under Section 4.6 hereof shall be fixed in the resolution of the members of the Association authorizing such assessments, with the same option on the part of the Association in the event of default

4.10. Duties of the Board of Directors: In addition to the other duties of the Board of Directors as may be set forth herein or in the By-Laws of the Association, the said Board of Directors shall fix the date of any special assessment against each Lot for any special assessment period at least thirty (30) days in advance of such special assessment, written notice of the special assessment shall thereupon be sent to every member subject thereto at the last known mailing address of such members.

The Secretary of the Association, upon demand at any reasonable time shall furnish to any member liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessments have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

4.11. Effect of Non-Payment of Assessment and the Lien Remedies of the Association: If the assessments (annual or special) are not paid on the date when due, then such assessment shall become delinquent as provided in section 4.5 hereof and shall, together with such interest, late charges thereon and costs of collection thereof as herein provided, thereupon, become a continuing lien on the lot which shall bind such lot in the hand of the then owner, its successors, heirs, devisees, personal representatives and assigns. If the assessment is not paid as provided herein, it shall bear interest from date of delinquency at the maximum rate of interest allowed by law, not to exceed ten percent (10%) per annum, and the Association may foreclose the lien against said lot, and there shall be added to the amount of such assessment, the cost of attorney fees in connection with any court proceedings arising therefrom, together with all court costs, late charges and expenses incurred by the Association.

4.12. Subordination of the Lien or Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust now or hereafter placed upon the lots subject to assessment; provided however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such lot pursuant to a Decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such lot from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment

4.13. Suspension of Rights of Membership: Prior to the foreclosure or any lien upon any Lot subject to this Declaration, the Board of Directors of the Association may elect to suspend all membership rights of any member or members of the Association for more than thirty (30) days, with such suspension to continue for so long as any such delinquency exists. Further, the Board of Directors may suspend membership rights for a period of thirty (30) days for the infraction of any rules or regulations by the member, family of the member or guest of the member, related to the use of any of the common properties. Suspension of membership rights shall be effective from the date that notice

of suspension is mailed to the member via U.S. Certified mail, return receipt requested, postage prepaid, to the last known address of the said member.

4.14. Cancellation and Hearing: The said Board of Directors may elect to permanently cancel the membership and all membership rights of any member who is delinquent in any payment due to the Association for more than ninety (90) days or when such member, family of the member, or guest of the member are guilty of repeated or flagrant violation(s) after a hearing conducted by said Board of Directors, which notice of such hearing mailed to such member at least thirty (30) days In advance or said hearing date, and further provided that such member may appeal any such decision of said Board of Directors to the membership of the Association by such affected member called a special meeting of the membership or the Association by notice mailed to each member at least ten (10) days in advance of the desired special meeting date, and said notice setting forth the time, date, place and purpose of said meeting. A majority vote of the votes entitled to be cast by the members of the Association attending such special meeting shall be necessary to override the decision of the Board of Directors, and all votes shall be by secret ballot. Notice shall be mailed by the member via U.S. Certified mail, postage prepaid, return receipt requested.

## ARTICLE V PROPERTY RIGHTS OF THE COMMON PROPERTIES

5.1. Member's Easement for Enjoyment: Subject to the provision of this Article and related provisions set forth elsewhere herein, every member shall have a right of enjoyment in and to the common properties and the areas, subject to the rules and regulations governing such use as promulgated, from time to time, by the Association. Such rights and easement shall be appurtenant to and shall pass with the conveyance of title to every lot.

5.2. Extent of Members' Rights of Enjoyment: The rights of easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Association to borrow money for the purpose of acquiring, constructing, improving and maintaining the common properties and in aid thereof to mortgage said properties or execute a deed of trust or other instrument covering said properties. In the event of default upon any such mortgage, the lender shall have a right, after taking possession of such properties, to charge service or use charges, admission and other fees as a condition to continued enjoyment by the members, and if necessary to have other relied as permitted by law; and,
- b. The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and,
- c. The right of the Association to suspend or permanently cancel the rights of any member and membership in the Association as hereinafter provided; and,



- d. The right of the Association to charge reasonable service or use charges, admission and other fees for the use, service and enjoyment of the common properties; and,
- e. The right of the Association to limit the number of members per lot who may be entitled to the benefits of the easement of enjoyment of the common properties by reason of ownership of a lot; and,
- f. The right of individual members to have exclusive use of any of the common properties as from time to time may be granted by the Board or its designate; and,
- g. The right of the Association to pass and enforce rules and regulations related to use, control and maintenance of the common properties and the areas situated thereon.

## ARTICLE VI ADDITIONAL PHASES

### 6.1. Annexation:

a. Notwithstanding any other provisions herein, Developer shall have the sole right and privilege, without the consent of any other Owners or any Mortgagee, to bring additional property within the scheme of the Declaration, in one (1) or more future stages, sections or additions, within fifteen (15) years of the date of recording of this Instrument. Further, any land annexed to the Property and subject to this Declaration may be acquired (by gift, purchase or otherwise) and/or designated as Common Areas by the Association without the consent of any Owners or any Mortgagee. Additional land that is added or annexed shall become subject to the annual assessment in accordance with Article IV.

b. The additions authorized under this Section shall be made by filing of record:

(a) Supplementary Declaration(s) of Covenants, Conditions and Restrictions with respect to the additional lands which shall (i) extend the scheme of the covenants and restrictions of this Declaration to such lands and (ii) provide, if applicable, that the proportionate ownership interests in the Common Areas of the Owners by virtue of Association membership immediately prior to the filing of such Supplementary Declaration shall be equal to the number of Lots owned by such Owner divided by the total number of Lots within the lands then subject to this Declaration after such annexation; and (b) a deed from Developer to the Association which shall convey to the Association the area within such additions (except for the Lots therein) as Common Areas for the sole benefit and use of the Owners, with reservation of Developer's rights set forth herein.

## 6.2. De-annexation:

a. Land or lands may be de-annexed from the Property with the consent of two-thirds (2/3) of each class of members and the approval of the owner(s) of the land to be de-annexed.

b. Notwithstanding anything contained in Subparagraph (a) above, or any other provision herein, Developer shall have the right, without the consent of any other Owners or any Mortgagee, to de-annex land from the scheme of the Declaration of the Owner of the land is agreeable to the de-annexation and if the de-annexation would benefit the general development process or general development plan.

c. The de-annexations authorized under this Section shall be filed of record.

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

## ARTICLE VII MISCELLANEOUS

7.1. 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, as well as the Association, to prosecute any violation or any 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 violations.

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

7.3. 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 rights to exercise such options upon future breach.

IN WITNESS WHEREOF, the undersigned have set their hand and seal this 3<sup>rd</sup> day of April, 2002.

GARY BRANDON ENTERPRISES, INC.  
By: Gary L. Brandon, President

By: Sherri D. Brandon, Secretary