

**AMENDED
DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
HICKORY HEIGHTS, PHASE I
A PLANNED DEVELOPMENT**

THIS DECLARATION made on the date hereinafter set forth by Josie Co. LLC and hereinafter referred to a “Declarant”.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Benton, County of Saline, State of Arkansas, which is more particularly described as:

LEGAL DESCRIPTION:

That part of the Northwest Quarter of the Southeast Quarter of Section 31, Township 1 South, Range 14 West, Saline County, Arkansas. More fully described in EXHIBIT A

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be designated as Hickory Heights Addition Phase 1, an Addition to the City of Benton, Saline County, Arkansas, and shall be held, sold and conveyed subject of the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof and does hereby dedicate the streets as shown on the Plat hereto attached as public streets for the use and benefit of the Public.

**ARTICLE I
DEFINITIONS**

Section 1. “Association” shall mean and refer to Hickory Heights Property Owner’s Association, its successors and assigns.

Section 2. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “Properties” shall mean and refer to that certain real property hereinafter described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. “Common Area” shall mean all real property (including the improvements thereto) owned by the Association for the benefit for the common use and enjoyment of the owners.

Section 5. “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. “Declarant” shall mean and refer to Josie Co. LLC their successors and assigns.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right of easement of enjoyment in and to the Common Area which shall be appurtenant in and to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge the reasonable fees for maintenance of the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period not to exceed 60 days for any infraction of its published rules and regulations.
- (c) the right of the Association to dedicate or transfers all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership.

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned, which may be voted at such time as all lots are sold by Declarant. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease on the happening of either of the following events, whichever occurs earlier:

- (a) when all lots are sold by Declarant, or
- (b) on December 31, 2010.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with the interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessments shall be \$120.00 per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a Quorum. If the required Quorum is not present, another meeting may be called subject to the same notice requirement, and the required Quorum at the subsequent meeting shall be one-half (1/2) of the required Quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots sold by Declarant on the first day of the month following the conveyance of the Lot to the new owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificated signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V RESIDENTIAL AREA COVENANTS

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes. No business of any nature or kind shall at any time be conducted in any building located on any of said Lots. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two stories in height, excluding basement area, and each dwelling must include a double enclosed garage, which must be an integral part of the dwelling or connected by an approved breezeway, except as provided in Section 9. No chain link fences shall be permitted on any Lot in said Addition. All privacy fence post shall be inside the fence. There shall be no pipe or vent of any kind allowed to be installed through roof on front of dwelling. Signs advertising fence companies are prohibited.

Section 2. Architectural Control. No dwelling or structure shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure, including landscaping, have been approved by the architectural control committee as to quality of workmanship and materials, harmony of external design with existing structure, and as to location with respect to topography and finish grade elevation, and intended objectives of the Architectural Control Committee to achieve a subdivision that accomplishes the desired architectural design in the structure and subdivision aesthetics.

No fence shall be erected, placed or altered on any Lot nearer than fifteen (15) feet to any street. The term structure is defined to include any and all types of fences, antennas, basketball goals, swimming pools, and television satellite dishes, which in no event shall be placed in front of dwellings. Each property owner requesting approval shall submit to the Architectural Control Committee at least two weeks prior to the time approval is needed, a complete set of house plans, a complete material and specifications list. Specifications shall include window type and finish color, front door style, exterior

house paint colors and roof color, roof pitch and porch posts or column diameter and style of post. Front and side elevations must be 75% brick, dryvit, stucco, and/or stone. All brick either needs to be, painted with an approved paint color that coordinates with other masonry materials used or an unpainted approved brick color. Other than rock or brick, the following materials are acceptable for use as exterior siding: vinyl siding, “dryvit” and Hardiboard cement. Any other siding material must be approved by the Architectural Control Committee. Sheathing shall be installed in accordance with FHA Standards over 2x4 minimum studs at 16 inches OC maximum spacings. Roofs running parallel with street shall have a minimum slope of 75% (9/12). Roofs running perpendicular to the street shall have a minimum slope of 75% (9/12). Minimum fascia trim shall be 6 inches.

Other specifications are as follows:

- a. Dwellings shall have foundations veneered with brick or rock at all sides of the house. Minimum width of porch columns shall be 6” for wood, 8” for metal, 12” for brick and 12” for stone. Where exterior siding other than rock or brick is used, windows, doors and corners shall have trim not less than 3 1/2” on all sides of the dwelling. Architectural shingles shall be used on each dwelling.
- b. Mailbox must be purchased from Hickory Heights architectural control committee.
- c. Interior ceilings must be a minimum of 9’-0”

Section 3. Dwelling Cost, Quality and Size. No dwelling shall be permitted on any Lot at a cost of less than \$68.00 per square foot of heated space, based upon cost levels prevalent on the date these covenants are recorded, it being the intention and purpose of the covenants to assure that all dwellings shall be of a quality of workmanship and material substantially the same or better than that which can be produced on the date these covenants are recorded, at the minimum cost stated herein for the minimum permitted dwellings size. The ground floor area of the main structure of a one-story dwelling, exclusive of open porches and garages shall be not less than 1,800 square feet. A single story with bonus room in attic space is considered a single story. Two story homes must be a minimum of 1,800 square feet total for both floors, exclusive of open porches and garages.

Section 4. Building Location. No building shall be located on any lot nearer to any street line, than the minimum building set back lines as shown on the recorded plat. In any event, no building shall be located on any lot nearer than (25) feet to a front lot line or nearer than (25 feet 0 inches) to any side street line. No building shall be located nearer than 8 feet 0 inches to an interior lot line. No dwelling shall be located on any interior lot, nearer than fifteen (15) feet to the rear lot line. For the purposes of this covenant, eaves, steps, and open porches shall be considered as part of the building. No lot shall be subdivided and no more than one dwelling shall be permitted on any one lot. No driveway shall be located nearer than two (1) feet to an interior property line.

Section 5. Lot Area and Width. No dwelling shall be erected or placed on any lot having a width of less than 60 feet at the minimum set back line as shown by said plat.

Section 6. Easements. Easements for installation and maintenance of utilities, and drainage facilities are reserved as shown on the recorded plat and over the front and the rear five feet of each Lot.

Section 7. Nuisances. No noxious or offensive activities shall be carried upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 8. Temporary Structures. No structures of a temporary character, motor home, trailer, basement, tent, shack, garage, barn or other out building shall be used on any lot at any time as a

residence either temporarily or permanently, except that the developer may have a temporary construction and/or sales office.

Section 9. Out Buildings. One building for storage shall be permitted, if approved by the Architectural Control Committee and shall conform to the same architectural design, materials, and construction of the dwelling. Above ground swimming pools are prohibited.

Section 10. Signs. No sign of any kind shall be displayed to the public view on any lot, except, one professional sign of not more than one square foot; one sign or not more than five square feet advertising the property for sale or rent or signs used by a builder to advertise the property during the construction and sales period.

Section 11. Owner Responsibility. Any property owner shall insure that any contractor performing services for the property owner shall comply with the provisions of the Bill of Assurance.

Section 12. Contractor Responsibility. No contractor shall damage in any way the utilities or streets in any manner.

Section 13. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 14. Livestock and Poultry. No animals, livestock or poultry or any kind shall be raised, bred or kept on any lot except, that dogs, and cats, may be kept on any lot in a privacy fenced area, provided, that they are not kept, bred or maintained for any commercial purpose and provided, that facilities for maintenance of same are approved by the Architectural Control Committee and that the keeping of same does not constitute a nuisance. Reported nuisances of domestic pets may result in required removal from property. Hunting dog pens are prohibited, including chain links and portable pens.

Section 15. Motor Vehicle Entrances and Drives. No motor vehicle entrances or drives shall be permitted from Razorback Road, it being the intention of this covenant that motor vehicles shall not enter or exit from any Lot onto Razorback Road. Driveways shall be constructed only of concrete. Driveways and sidewalks to be constructed and finished by approved Professional Concrete Finisher.

Section 16. Curb Cuts. Concrete street curbs shall be installed by Declarant utilizing a low profile design. Cutting of curbs for driveways or placing any type of fill material in the curbs shall be strictly prohibited.

Section 17. Motor Vehicle Parking. Abandoned or unused motor vehicles shall not be parked or permitted to remain on any lot within the dedicated street. Boats, recreational vehicles and trailers cannot be parked at the front side of any dwelling or in the dedicated street, and must be parked in back of the dwelling behind a privacy fenced yard. Owners or permanent residents are prohibited from parking in the street. There shall be no Non-functioning vehicles and/or Commercial vehicles on the lot or in view of the public. There shall be no repair work done outside of the garage.

Section 18. Mailboxes. Mailboxes shall be of the design and construction described by the Architectural Control Committee. Newspaper boxes or other receptacles for deposit of newspapers or circulars are prohibited.

Section 19. Exterior Lighting. No pole mounted lights shall be permitted. All exterior lighting must be approved by the Architectural Control Committee.

Section 20. Sidewalks. THE OWNER OF A LOT IS RESPONSIBLE FOR INSTALLATION OF A FOUR FOOT WIDE SIDEWALK IN FRONT OF THEIR LOT FOUR (4) FEET FROM BACK OF CURB. THE SIDEWALK SHALL RUN FROM PROPERTY LINE EXTENDED TO PROPERTY LINE EXTENDED, PARALLEL TO THE STREET AND MAY BE INTERRUPTED BY THE DRIVEWAY. THE SIDEWALK IS TO BE CONSTRUCTED OF 3000 PSI NORMAL WEIGHT CONCRETE WITH TOOLED OR SAWED CONTROL JOINTS, FOUR FEET ON CENTER AND 3/4 INCH EXPANSION JOINT AS EACH NEIGHBORING SIDEWALK CONNECTION. THE SIDEWALK IS TO BE NORMAL CONCRETE COLOR AND SHALL RECEIVE A BROOM FINISH.

Section 21. Garbage and Refuse Disposal. No lot or easement shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. There shall be no burning of trash, rubbish, leaves or yard waste.

Section 22. Site Distance and Intersections. No fence, wall hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any lot corner which the triangular area formed by the street property lines and the line connecting them at points 15 feet from the intersection of street right of way lines, or in the case of a rounded property corner, from the intersection of the street property line extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of the street property line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances or such intersections unless the foliage line is maintained at sufficient height to prevent obstruction or such sight lines.

Section 23. Lot, Yard, and Home Maintenance. All property owners, after acquisition of any lot, shall keep all grounds and yards mowed, trimmed and clean. All houses shall be painted and stained. No deviation from the original plans shall be permitted without approval of the Architectural Control Committee. No children's play equipment, grills, and un-kept materials allowed in view of the public.

Section 24. Commencement of Construction. A property owner must start construction of an approved dwelling within a period of one (1) year from date of purchase. The developer reserves the option to repurchase any lot for the amount of the original purchase price if construction is not commenced within such period of time. This option shall be exercised in writing within a period of thirty (30) days after the one (1) year period.

Section 25. Completion of Construction. Any dwelling must be completed in its entirety within a period of once year from date such construction commenced.

Section 26. Minimum Floor Level Elevations. The Architectural Control Committed reserves the right to prescribe the minimum floor elevations for lots. All homes shall have a minimum floor elevation of one foot above the back of the curb unless waived in writing by the Architectural Control Committee.

Section 27. ADEQ Compliance. The owner of a lot is responsible for proper installation, maintenance, and monitoring or erosion control per ADEQ.

**ARTICLE VI
ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Membership. The Architectural Control Committee shall be composed of three members to be selected by the Declarant. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee nor of its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The members of this Committee shall in no event be personally liable or responsible to any owner in this Addition for their actions. After all Lots are sold by Declarant the Architectural Control Committee shall be the Hickory Heights Property Owners Association.

Section 2. Procedure. The association's approval or disapproval as required in these covenants shall be in writing. In the event the committee or its representative fails to approve or disapprove within 30 days after plans and specifications have been submitted to it or in the event no suit to enjoin the construction or compliance with these covenants has been commenced within 180 days after the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

**ARTICLE VII
GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so hereafter.

Section 2. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of the Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by Declarant until all Lots are sold and thereafter during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of Declarant until all Lots are sold and thereafter two-thirds (2/3) of each class of members.

**ARTICLE VIII
SPECIAL IMPROVEMENT DISTRICT**

Section 1. It is agreed and understood that all lots in this subdivision are part of the Saline County Property Owners' Improvement District No. 58 Improvement Bonds Hickory Heights and are subject to a special tax assessment to repay the District debt.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal of this _____ day of _____, 200__.

By:
Member

BY: _____

Partnership, and was duly authorized in his capacity to execute the foregoing instrument for and in the name of said partnership, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and official seal this _____ day of _____, 200__.

Notary Public

My Commission Expires:

ACKNOWLEDGEMENT

STATE OF ARKANSAS)

COUNTY OF SALINE)

On this day personally appeared before me _____ and _____ known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

WITNESS my hand and official seal this _____ day of _____, 200__.

Notary Public

My Commission Expires:
