

DECLARATION OF COVENANTS AND RESTRICTIONS

OF

CLABBER CREEK SUBDIVISION PHASE I

This Declaration of Covenants and Restrictions is made this 9th day of October, 2003, by CB Ventures, LLC, (Developer or the Declarant).

WITNESSETH:

WHEREAS, Developer is the owner of the real property described on Exhibit A attached to this Declaration, shown and described on the plat, hereinafter mentioned as Lots 1-112, Clabber Creek Subdivision, Fayetteville, Washington County, Arkansas (hereinafter the Property or Clabber Creek) and desires to create a residential subdivision community with open spaces, landscaped entrances and other Common Use Areas for the benefit of the community, which shall be known as Clabber Creek.

WHEREAS, Developer desires to provide for the preservation of the values and amenities in Clabber Creek and for the maintenance of the open spaces, landscaped entrances and other Common Use Areas; and to this end, desires to subject the Property to these covenants, restrictions, easements, charges and liens, each of which is for the benefit of the Property, each owner of any Lot in Clabber Creek, and the Clabber Creek Property Owners Association, Inc.; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in Clabber Creek, to create an association which shall be assigned the powers of maintaining, administering and enforcing these covenants and restrictions and doing all other things necessary to preserve the values and amenities of this community; and

WHEREAS, Developer has caused to be incorporated under the laws of the State of Arkansas, as a nonprofit corporation, Clabber Creek Property Owners Association, Inc., for the purpose of exercising these functions; and

WHEREAS, the Property is subjected to the covenants and restrictions to insure proper use and appropriate development and improvement of the Property and every part thereof; to guard against the erection thereon of buildings, structures or improvements built of improper or unsuitable materials; to insure adequate and reasonable development of the Property and the use and enjoyment of property ownership therein; to encourage the erection of attractive improvements thereon, with appropriate locations thereof; to prevent haphazard and inharmonious improvement; to secure and maintain proper setbacks from streets, and adequate free spaces between structures; and in general to provide adequately for a type and quality of improvement in Clabber Creek consistent with the

covenants and restrictions; and to insure desired standards of maintenance and operation of the Common Use Areas for the benefit of all owners of Lots in Clabber Creek. It is the intention and purpose of these covenants and restrictions to assure that all dwellings in Clabber Creek shall be of a quality of design, workmanship, and materials approved by the Architectural Control Committee. It is understood and agreed that the purpose of architectural control is to secure an attractive harmonious residential development having continuing appeal, and in an effort to assure the same, the quality of architectural design will be considered.

WHEREAS, the Property shown on the plat hereinafter mentioned, has been subdivided into building lots, tracts and streets as shown on the plat filed herewith, and it is deemed advisable that said Property be held, owned and conveyed subject to the protective covenants, restrictions, easements and charges herein contained, in order to enhance the value of Clabber Creek.

NOW THEREFORE, Declarant, for and in consideration of the benefits to accrue to it, its successors and assigns, which benefits it acknowledges to be of value, has caused to be made a plat, showing a survey made by David Jorgensen, Registered Land Surveyor dated Sept 11, 2003 and showing the boundaries and dimensions of the Property that has since been subdivided into lots, tracts and streets (the Plat).

There are shown on said Plat certain easements for drainage, access, landscape and construction which Declarant hereby reserves to and for the use of Declarant, its successors and assigns, and/or the Association which are more specifically defined in Article V hereof. There are shown on said Plat certain easements for utilities which Declarant hereby grants to and for the use of public utilities, the same being, without limiting the generality of the foregoing, electric power, gas, telephone, water, sewer and cable television with the right hereby granted to the persons, firms or corporations engaged in the supplying of such utilities to use and occupy such easements, and to have free ingress and egress there from for the installation, maintenance, repair and replacement of such utility services.

The areas designated on the Plat as Common Use Areas are hereby donated and dedicated by Declarant and an easement is hereby granted to the Owners of all lots within Clabber Creek with the right to use these areas for pedestrian and aesthetic purposes and the Clabber Creek Property Owners Association, Inc. shall maintain such areas and improvements at its sole cost. Additionally, Declarant hereby grants to the public utilities the right to use this area only for utility easements provided such improvements are maintained by said public utilities. No improvements shall be placed on the areas designated as Common Use Areas, other than improvements for those designated purposes, unless first approved by governmental agencies, if required, Clabber Creek Property Owners Association, Inc. and the Architectural Control Committee established pursuant to these Covenants and Restrictions and By-Laws of Clabber Creek Property Owners Association, Inc. (the Architectural Control Committee).

The filing of this Declaration of Covenants and Restrictions for record in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County shall be a valid and complete grant, delivery and dedication of the easements subject to the limitations herein set out.

The lands embraced in the Plat shall be forever known as Lots 1-112, Clabber Creek Subdivision, Washington County, Arkansas; and any and every deed of conveyance of any lot in Clabber Creek describing the same by the number shown on said Plat shall always be deemed a sufficient description thereof.

NOW, THEREFORE, the Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements and charges and liens (sometimes referred to as Covenants and Restrictions) herein set forth:

ARTICLE I **DEFINITIONS**

ASSOCIATION. The Clabber Creek Subdivision Phase I., described in Article XIII hereof.

ARCHITECTURAL CONTROL COMMITTEE. The committee so designated and described in Article IV hereof.

BOARD. Board shall mean the Board of Directors of the Association.

BUILDING. Any structure having a roof, supported by columns or by walls or other means, or other structure intended or used for the shelter, housing, or enclosure of any person, animal, or chattel.

BUILDING ACCESSORY. A subordinate building or portion of a principal Building, the use of which is incidental to that of the principal Building on a Lot.

BUILDING HEIGHT. The vertical distance measured from the established ground level to the highest point of the underside of the ceiling beams, in the case of a flat roof; to the deck line of a mansard roof; to the mean level of the underside of rafters between the eaves and the ridge of a gable, hop, or gambrel roof; or to the mean level of any other vertical parts of any other structure. Chimneys and ordinary and customary ornamental architectural projections shall not be included in calculating Building Height.

COMMON USE AREAS. The pedestrian paths and other real property within Clabber Creek reserved by Declarant for the common use of all residents and owners of Lots in Clabber Creek, and the fixtures thereon and appurtenances thereof. The Common Use Areas include those areas identified on the Plat as Common Use Areas. Any Improvements made on the Common Use Areas shall be owned by the Declarant but maintained by the Clabber Creek Property Owners Association.

DECLARANT OR DEVELOPER. BMW Investments, LLC., its successors and assigns.

DWELLING. A residential building which, as originally constructed, is integrated and designed for use exclusively as living quarters for one family.

FAMILY. One or more persons each related to the other by blood, marriage, or legal adoption, together with his or their domestic servants, maintaining a common household in a Dwelling.

MEMBER. Member shall mean and refer to any owner who by virtue of holding fee simple title to any Lot is a member of the Association. If any owner holds title to more than one (1) Lot he/it shall be entitled to an additional membership for each additional Lot he/it owns.

OWNER. Owner shall mean and refer to the record owner, whether one (1) or more persons or entities, of title to any Lot which is part of Clabber Creek, but excluding those having such interest merely as security for the performance of any obligation.

STORY. That portion of the interior of a Building included between the surface of the ground or any floor and the surface of existing or extended plane of the floor next above; or if there is no floor above, the space between the floor and the surface of existing or extended plane of the ceiling next above.

STORY, HALF. A space under a sloping roof which has the line of intersection of roof decking and exterior wall not more than three (3) feet above the top floor level, and in which space not more than sixty percent (60%) of the floor area is improved for principal or accessory use.

STRUCTURE. Any stationary object erected, constructed or placed on the Property or attached to something having a permanent location on or in the ground. A sign or other advertising device, detached or projecting, shall be construed to be a separate Structure. Structures shall include but shall not be limited to sheds, towers, antennas and satellite disks.

LOT OR HOMESITE. A Lot in Clabber Creek, which may be purchased by any person or owned by the Developer as reflected on the Plat. The words Lot or Homesite as used herein shall be synonymous and may be used interchangeably.

LOT AREA. The area of a horizontal plane, bounded by the vertical planes through Front, Side, and Rear Lot lines.

LOT LINE, FRONT. That boundary line of a Lot which is nearest to a private roadway (access easement). In some instances a Lot may have more than one (1) Front Lot Line.

LOT LINE, REAR. That linear boundary of a Lot which is most distant from the Front Lot line. The minimum Rear set back will be twenty (20) feet in length which is required by the City of Fayetteville.

LOT LINE, SIDE. Any boundary of a Lot which is not a Front or Rear Lot Line.

LOT WIDTH. The length of a line perpendicular to a Side Lot Line and lying entirely within a Lot, which either commences at the intersection of a Front Lot Line and a Side Lot Line, or if the

Front or Rear Lot Line is curved or irregular, which is the longest segment perpendicular to a line joining the mid-points (determined by measuring the length of the outermost edge of the Lot Line) of a Front Lot Line and a Rear Lot Line and lying wholly within the Lot, with one or more points coinciding with the Front Lot Line.

LOT DEPTH. The length of a line joining the mid-points of a Front Lot Line and a Rear Lot Line (determined by measuring the length of the outermost edge of the Lot Line).

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

1. EXISTING PROPERTY. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of Washington, State of Arkansas, and is more particularly described on Exhibit A, and shown on the Plat, described as Lots 1-112, Clabber Creek Subdivision, Washington County, Arkansas, all of which property shall be referred to as the Property or Clabber Creek.

2. ADDITIONS TO EXISTING PROPERTY.

A. Additional lands of the Developer may become subject to these Covenants and Restrictions in the following manner: The Developer shall be obligated to bring within the plan of this Declaration additional properties, regardless of whether or not said properties are presently owned by the Developer, in future stages of the development, and such additions shall be in accord with the general plan of development (the General Plan) which has been prepared prior to the date of these Covenants and Restrictions and prior to the sale of any Lot and is maintained in the office of the Declarant, and provided such proposed additions, if made, will become subject to assessments of the Association for their share of expenses. Nor shall Developer be precluded from conveying lands in the General Plan not subject to these Covenants and Restrictions or any supplement free and clear of these Covenants and Restrictions or any supplement.

B. The additions authorized shall be made by Declarant filing of record a Supplemental Declaration of Covenants and Restrictions with respect to the additional property which shall extend the covenants and restrictions of this Declaration to the additional property, and the Owners, including the Developer of Lots in those additions shall immediately be entitled to all rights and privileges provided in this Declaration.

C. The Supplement Declaration may contain those complimentary additions and modifications of the Covenants and Restrictions contained in this Declaration necessary to reflect the different character, if any, of the added properties as are not inconsistent with this Declaration. In no event, however, shall such supplement revoke, modify and add to the covenants established by this Declaration within the Property.

3. ADDITIONS LIMITED TO DEVELOPER. No one other than the Developer shall have the right to subject additional lands to this Declaration of Covenants and Restrictions, unless

the Developer shall indicate and consent in writing to the Association that such additional lands may be included.

ARTICLE III **GENERAL RESTRICTIONS**

1. LAND USE. Except for those portions of Clabber Creek referred to herein as streets and Common Use Areas, each Lot shall be used as a residential site for one Dwelling only, and a private garage containing no fewer than two (2) parking spaces for the sole use of the Owners or occupants of the Dwelling.

ARTICLE IV **ARCHITECTURAL CONTROL COMMITTEE**

1. DESIGNATION OF COMMITTEE. The Association shall have an Architectural Control Committee, consisting of at least three (3) and not more than five (5) members who shall be natural persons. Until ninety percent (90%) of all Lots now subject to these covenants and restrictions, plus Lots added pursuant to Article II hereof, are sold and have Dwellings constructed thereon, the members of the Architectural Control Committee, and all vacancies, shall be appointed by CB Ventures, LLC, an Arkansas limited liability company. When ninety percent (90%) of all Lots described in this paragraph are sold and have Dwellings constructed thereon, the members of the Architectural Control Committee, and all vacancies, shall be appointed by the Board of Directors of the Association.

2. FUNCTION OF ARCHITECTURAL CONTROL COMMITTEE. No Dwelling, Building, Structure or other Improvement shall be constructed or maintained upon any Lot and no alteration or repainting to the exterior of a Dwelling, Building, Improvement or Structure shall be made and no landscaping performed unless complete plans, specifications, and site plans showing the exterior design, height, building material and color scheme, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing walls and windbreaks, sewage systems and the grading plan shall have been submitted in writing to and approved in writing by the Architectural Control Committee prior to the commencement of construction. A copy of the plans, specifications, and Lot plans as finally approved shall be deposited with the Architectural Control Committee. The Architectural Control Committee shall have the power to employ professional consultants to assist it in discharging its duties. The decisions of the Architectural Control Committee shall be final, conclusive and binding upon the applicant.

3. CONTENT OF PLANS AND SPECIFICATIONS. The plans and specifications to be submitted and approved shall include the following:

Residential landscaping must be fully installed within ninety (90) days of the occupancy of the residence. The residential landscaping must provide for a minimum of two (2) new trees, at least two (2") to three (3") inches in diameter shrubs [and solid sod where a lawn is installed].

4. DEFINITION OF IMPROVEMENT. Improvement shall mean and include all residences, buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, poles, towers, antennas, driveways, swimming pools, signs, changes in any exterior color or shape, glazing or reglazing of exterior windows with mirrored or reflective glass, and any other new exterior construction or exterior improvement which materially alters the appearance of any Lot and which may not be included in any of the foregoing. The definition does not include garden shrub or tree replacements or any other replacement or repair of any magnitude which does not materially change exterior colors or exterior appearances.

5. BUILDING HEIGHT. No Dwelling shall be erected, altered, or placed on a Lot which shall contain more than two (2) stories. Also, the minimum height of each roof must be at least a 10-12 pitch. Also, each home must have at least ninety (90%) percent brick surrounding home.

6. DWELLING COST, QUALITY AND SIZE. All Buildings, Dwellings, Structures and Improvements erected upon a Lot shall be constructed in accordance with the applicable governmental building and zoning codes and with such additional standards that may be required by the Covenants and Restrictions and the Architectural Control Committee; and no Dwelling shall be constructed or permitted to remain on any Lot in Clabber Creek unless the finished heated living area, exclusive of porches, patios, garages, breezeways, exterior stairways, storage areas and outbuildings, shall equal to or exceed that shown in the following schedule:

- A. One-story Dwellings - not less than 1,600 square feet.
- B. For Dwellings of one and one-half or more stories - not less than 1,600 square feet.

7. LOCATION ON LOT. No Dwelling, Building, Structure or Improvement shall be located on a Lot nearer to the Front Lot Line, Side Lot Line or Rear Lot Line established for each Lot by the Architectural Control Committee. Swimming pools shall be screened from the street or streets by a wall, solid fence, evergreen hedge or other visual barrier as approved in writing by the Architectural Control Committee. No swimming pool shall be located on a Lot nearer to the Front Lot Line, or a Side Lot Line adjoining a street, than the minimum setback established for each Lot by the Architectural Control Committee. Subject to changes being made by the Architectural Control Committee for an individual Lot, the following setback lines shall be deemed applicable:

Minimum Front Setback	twenty-
	five
	(25)

	feet
	from
	the
	center
	line of
	a street
	as
	shown
	on the
	Plat;
	and
Minimum Side Setback	eight (8) feet;
Minimum Rear Setback	twenty (20) feet;

provided that the Architectural Control Committee may authorize variations in its discretion. Where two (2) or more Lots are acquired as a single building site, the side building lines shall refer only to those bordering the adjoining property Owner.

8. COMMERCIAL STRUCTURES. No Building, Structure or Improvement of any type may ever be placed, erected or used for business, professional, trade or commercial purposes on any portion of any Lot. This prohibition shall not apply to any business or Structure that may be placed on any Lot or portion of a Lot that is used exclusively by a public utility company in connection with the furnishing of public utility services to Clabber Creek.

9. OUTBUILDINGS PROHIBITED. No outbuildings or other detached structure appurtenant to the residence may be erected on any of the Lots hereby restricted without the consent in writing of the Architectural Control Committee.

10. NOXIOUS ACTIVITY. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall any garbage, trash, rubbish, tree limbs, pine straw, leaves or cuttings, ashes or other refuse be thrown, placed or dumped upon any vacant Lot, street, road or Common Use Area, nor on any Lot unless placed in a container suitable for garbage pickup; nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood.

11. OIL AND MINERAL OPERATIONS. No oil drilling, oil development operating, 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 other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

12. CONSTRUCTION DRIVEWAY. No Dwelling, Structure, Building, Improvement, grading or clearing shall be commenced on any Lot until a gravel driveway, four (4) inches in depth,

at least twenty-five (25) feet long has been constructed and thereafter maintained to prevent mud from being brought onto the streets.

13. EXISTING STRUCTURE. No existing, erected building or structure of any sort may be moved onto or placed on any of the Lots.

14. TEMPORARY STRUCTURE. No trailer, basement, tent, shack, garage, barn or other outbuilding other than a permanent guest house and servants quarters erected on a Lot covered by these covenants and restrictions shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

15. THE BASIS OF APPROVAL. Approval of plans and specifications shall be based on, among other things, adequacy of site dimensions, structural design, conformity and harmony of external design and of location with neighboring structures and sites, relation of finished grades and elevations to neighboring sites, and conformity to both the specific and general intent of the protective covenants. The Architectural Control Committee shall establish certain architectural guidelines, which shall be approved by the Board of Directors (the Architectural Guidelines), and all plans and specifications must comply with Architectural Guidelines then in force and effect. However, the Architectural Control Committee may approve exceptions to the Architectural Guidelines by a three-fourths (3/4th) vote. The current Architectural Guidelines shall be available at the office of the Association or the office of the Declarant.

16. MAJORITY VOTE. A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed improvements.

17. FAILURE OF COMMITTEE TO ACT. If the Architectural Control Committee fails to approve, disapprove, or reject as inadequate proposed plans and specifications within sixty (60) days after proper written submittal, they shall be deemed approved. If plans and specifications are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them entirely, partially or conditionally approve.

18. LIMITATION OF LIABILITY. Neither the Declarant, the Association, the Architectural Control Committee nor any of its members shall be liable, in damages or otherwise, to anyone submitting plans and specifications for approval or to any Owner of land affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans and specifications.

19. REASONABLE FEE. The Architectural Control Committee may charge any Owner a reasonable fee for its services in reviewing that Owner's proposed plans and specifications.

20. LOT AREA AND WIDTH. None of the Homesites shall at any time be subdivided into two (2) or more ownerships or Lots unless dictated by surveyed portions of lots located in the 100 year flood plain designated by FEMA.

21. DRIVEWAYS. Access driveways and other paved areas for vehicular use on a Lot shall have a base of compacted gravel, crushed stone or other approved base material and shall be surfaced with either asphalt or concrete. Plans and specifications for driveways, culverts, pavement edging or markers shall be as approved in writing by the Architectural Control Committee. Driveways may access the adjacent street at one location only, unless otherwise approved by the Architectural Control Committee.

22. Mailboxes. All mailboxes shall be constructed entirely of wrought iron (National Home Centers Durable Barcelona in Black) and must be approved by the ACC as to design and location, solely at the Owner's expense. Additionally, all mailboxes must be of a type approved by the United States Postal Service, and shall be kept in a good state of repair at all times.

ARTICLE V

EASEMENTS

1. EASEMENTS. Declarant hereby declares, grants and reserves the following easements in Clabber Creek for the benefit of each and all of the Lots, parcels, tracts and lands located in Clabber Creek, as well as for those entities hereinafter named.

A. Declarant hereby grants the easements described on the Plat hereto as utility easements to and for the use of public utilities, the same being without limiting the generality of the foregoing, electric power, gas, telephone, water and cable television with the right thereby granted to the persons, firms or corporations engaged in the supplying of such utilities to use and occupy such easements, and to have free ingress and egress there from for the installation, maintenance, repair and replacement of such utility services. No trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be grown, built or maintained within the area of such utility easement. In the event any trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be grown, built or maintained within the area of such easement, no person, firm or corporation engaged in supplying public utility services shall be liable for the destruction of same in the installation, maintenance, repair or replacement of any utility service located within the area of such easement.

B. Declarant hereby grants perpetual easements described on the Plat as Access, Landscape and Drainage Easements to the Clabber Creek Property Owners Association, Inc. to construct, maintain, install and replace landscaping, streets, fences, drainage facilities, and related improvements upon the property upon which the easement is granted. No trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be built or maintained by the Owner of any Lot within the area of such easements without prior written consent of the Clabber Creek Property Owners Association, Inc.

The Owner of a Lot is solely responsible for the existing drainage course across his/its Lot. The Clabber Creek Property Owners Association, Inc. is only responsible for maintenance and

replacement of drainage equipment and facilities existing within the easement granted herein and described on the Plat and has no responsibility for the maintenance and repair of any drainage course or equipment located upon those areas of the Lot outside the easement.

C. Declarant hereby reserves to itself, its successors and assigns, a perpetual Construction Easement on and over Lots 6 & 7 as described on the Plat for use by the Declarant in the future development of Property which may be added from time to time pursuant to Article II, Section 2. Future development by the Declarant within the Construction Easement may include, but is not limited to, the construction of streets for the use described in Article VI hereto, landscaping, installation of utilities, drainage facilities and other construction related to the development of Property for residential use.

D. Grants of Easements. To Be Provided by BMW Investments, LLC., as required by the City of Fayetteville.

Declarant reserves the right to: (a) execute and record documentation confirming and defining the rights of any third person maintaining facilities in easement areas, and (b) to assign its rights hereunder, all of which acts shall be binding upon each Lot in Clabber Creek.

ARTICLE VI

PRIVATE ROADWAYS

All roadways within Clabber Creek are private access easements for vehicular traffic only for the use of the Owners of Lots in Clabber Creek, their guests and invitees. An easement is also hereby granted to the public for access to the Lots in the case of an emergency created by fire, public safety, or other occurrence necessitating access to a Lot by any public utility, fire department, police department, United States Postal Service or other public agency. Additionally, Developer hereby grants to the public utilities the right to use these areas for utility easements provided such public improvements are maintained by said public utilities. The Association shall maintain such private access easements including all private improvements thereon, including but not limited to street lights. A drive is also necessary for detention pond and lift station maintenance.

ARTICLE VII

PROHIBITIONS

Except for (1) the development and sales activities of Developer and its contractors, employees and agents, and (2) construction activities authorized by the Architectural Control Committee, the following prohibitions shall be applicable to all Lots, Buildings, Structures and Improvements in Clabber Creek:

A. No gainful occupation or profession, or other non-residential use, shall be conducted, provided however that the use of a home office shall be permitted.

B. No noxious or offensive activity shall be carried on, in or upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or any adjoining Lot or Common Use Area.

C. No livestock or poultry shall be kept or maintained. No swine, sheep, goats, cattle, or other objectionable animals shall be kept, and no animals may be raised for commercial purposes. All Buildings, Dwellings, Structures and Improvements will be serviced by underground utilities.

D. No burning of refuse or leaves shall be permitted.

E. Chain link or similar fences are in all events prohibited and shall not be used under any circumstances except as approved by the Architectural Control Committee.

F. No garage, carport, driveway, or parking area which may be in front or adjacent to or part of any Lot may be used as a habitual parking place for commercial vehicles. The parkway located between the pavement and the Front Lot Line of each Lot shall not be used for the parking of commercial vehicles, boats, mobile homes, trailers, nor any vehicle other than private passenger automobiles. (The habitual violation of the parking regulations set forth in this paragraph shall be deemed a nuisance and violation of Article IV, Section 10.)

G. No temporary buildings, huts, trailers, tents, shacks, or privies shall be constructed, erected or parked upon any Lot. It is understood that the word Atrailer@ shall refer to a house or camping trailer which could be temporarily occupied for living purposes, and this restriction shall refer also to truck-mounted campers and travel buses, unless such trailer, erected camper, truck-mounted camper or travel bus is enclosed in a garage. Temporary Buildings, Improvements or Structures used during the construction of a Dwelling shall be on the same Lot as the Dwelling, and such Buildings, Improvements and Structures shall be removed upon completion of construction of the Dwelling.

H. No garage, building, Structure or other outbuilding approved by the Architectural Control Committee shall be constructed or erected upon said premises prior to construction and occupancy of the Dwelling.

I. No undomesticated animal nor any other animal having unusually vicious propensities shall be kept or maintained either inside or outside any Building, Structure, Improvement or Dwelling. No commercial breeding of any animal is allowed within Clabber Creek. No more than one kennel, for occupancy by no more than three dogs may be allowed on any one Lot in Clabber Creek.

J. No plants, seeds, or other materials which harbor or are a source of breeding infectious plant diseases or noxious insects shall be introduced or maintained.

- K. No advertising sign, or billboard, other than For Rent advertising signs, and no submerged, underground or visible oil or gas tank for fuel or other purpose, shall be erected or maintained on any Lot; except, however, a sign, not exceeding twelve (12) square feet in area, may be erected during the construction of the house, displaying the name of the general contractor and/or architect, and For Sale signs not larger than twenty four (24) inches by thirty (30) inches may be erected at any time.
- L. No firearm shall be discharged within Clabber Creek.
- M. No hunting shall be allowed within Clabber Creek.
- N. No fishing in any lake existing within Clabber Creek shall be allowed other than pursuant to rules established by the Association.
- O. No clearing or harvesting of trees may occur within the Property comprising Clabber Creek without approval of the Architectural Control Committee.
- P. No animal waste may be spread on any Lot, except for fertilization purposes.
- Q. No garbage, refuse, rubbish, tree limbs, pine straw, leaves or cuttings shall be deposited on any street, road, or Common Use Area, nor on any Lot unless placed in a container suitable for garbage pickup or according to City requirements for disposal.
- R. No building material of any kind or character shall be placed upon any Lot except in connection with construction approved by the Architectural Control Committee. Construction shall be promptly commenced and diligently prosecuted.
- S. No clothes lines, drying yards, service yards, wood piles or storage areas shall be so located as to be visible from a street, road, adjacent Lot, or Common Use Area.
- T. Any exterior lighting must be approved by the Architectural Control Committee and installed in a manner that shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the adjacent Lot.
- U. No immoral, improper, offensive or unlawful use shall be made of Clabber Creek or any part thereof, and all valid laws, zoning, by-laws and regulations of all governmental bodies having jurisdiction shall be observed.
- V. No portion of a Lot (other than the entire Lot) may be rented, and no transient may be accommodated therein unless by consent of the Declarant.
- W. No used or previously erected or temporary house, structure, house trailer or non-permanent outbuilding shall ever be placed, erected or allowed to remain on any Lot or Common Use Area.

ARTICLE VIII
NAMEPLATES AND HOSPITALITY
LIGHT STANDARDS, TELEVISION OR RADIO
ANTENNAE AND TOWERS, LAUNDRY DRYING FACILITIES

There shall be not more than one nameplate on each Lot. A nameplate shall not be more than ninety six (96) square inches in area, and contain the name of the occupant and/or address of the Dwelling. It may be located on the door of the Dwelling or the wall adjacent thereto, or upon the wall of an Accessory Building or Structure, or free-standing. Hospitality light standards, of a design approved by the Architectural Control Committee, may be located within the Lot. No laundry-drying equipment or facilities shall be erected or used outdoors, whether attached to a Building or Structure, or otherwise. No antenna or other high power electronic equipment shall be permitted without the prior written consent of the Architectural Control Committee. Satellite dishes pre-approved by the Architectural Control Committee may be permitted on a Lot at a location approved by the Architectural Control Committee.

ARTICLE IX
COMMON USE AREAS AND PATHS

1. COMMON USE AREAS AND PATHS. Any Common Use Area within Clabber Creek may be used by all residents of Clabber Creek and their guests for recreational purposes. There are reserved for the use of all Homesite Owners within Clabber Creek, their guest and invitees, all private road easements. All Common Use Areas, streets, roads, easements, fences and street lights shall be maintained by the Association.

2. EXTENT OF EASEMENTS. The rights and easements created herein shall be subject to the following:

(a) The right of the Association to prescribe rules and regulations for the use, enjoyment and maintenance of the Common Use Areas;

(b) The right of the Association to borrow money for the purpose of improving all or any part of the Common Use Areas, and to mortgage all or any part of the Common Use Areas;

(c) The right of the association to take reasonably necessary steps to protect all or any part of the Common Use Areas against foreclosure; and

(d) The right of the association to suspend the easements of any Member of the Association during the time any assessment levied under Articles XI or XIV remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(e) All Structures, landscape plans and additions must first be approved by the ACC. No approval is necessary for the planting of flowers, and shrubs, or trees except where it may

affect easements or drainage onto adjacent Lots. The initial landscape plans and designs to be submitted to the ACC shall include a \$3,000.00 minimum for plants and shrubs.

(f) All toys, newspapers, etc., must be picked up so as not to accumulate in an unsightly manner in view of any Street. Only porch furniture, flower pots, etc., are permissible in front yards. Front Yard grass is to be kept mowed so as to never be above four (4").

ARTICLE X

GRASSING AND TREES

1. GRASSING. After Lots have been sold by the Developer, the Owners of Lots in Clabber Creek shall be responsible for the maintenance of the area located between their Lot Line and edges of street pavements which abut said Lots whether the streets are private or have been dedicated to the public. After construction of a Dwelling is completed on a Lot, the Owner of such Lot shall grade the land between the edge of the driving pavement and the undisturbed ground on his/its property; maintain the ditch-line, if any, along the edge of said driving pavement, and shall seed, fertilize and cause grass to grow from said edge into his/its Lot, cover all disturbed soil left bare by construction of roads, and thereafter keep said grass mowed to a height not exceeding four (4) inches. In the event an Owner is authorized by the Architectural Control Committee to clear a portion of his/its Homesite, he/it shall plant grass on the cleared area. Said Owner shall maintain and keep his/its Homesite in good appearance by cutting all weeds and under brush and by cutting and maintaining all lawns to a height of not more than four (4) inches. All Structures, landscape plans and additions must first be approved by the ACC. No approval is necessary for the planting of flowers, and shrubs, or trees except where it may affect easements or drainage onto adjacent Lots. The initial landscape plans and designs to be submitted to the ACC shall include a \$3,000.00 minimum for plants and shrubs.

All toys, newspapers, etc., must be picked up so as not to accumulate in an unsightly manner in view of any Street. Only porch furniture, flower pots, etc., are permissible in front yards.

At any time and from time to time, the Association, or the Declarant may, at their option, enter the Homesite and plant grass or clear the weeds and underbrush and thereafter maintain the Homesite in good appearance. No such entry shall be deemed a trespass. If the Association or Declarant chooses to exercise this option, any planting, underbrush clearing or grass cutting by the Association or Declarant shall cause a lien to arise and be created in favor of the Association or Declarant against any such Homesite for the full amount expended or otherwise chargeable therefor, including the cost of supervision, contracting fees and office overhead. The full amount chargeable to such Homesite shall be due and payable within thirty (30) days after the Owner has been billed therefor, and the lien shall be enforceable in the same manner as liens created pursuant to Article XIV hereof.

2. TREES. A. The Property Owner's Association is entirely responsible to the City of Fayetteville for ensuring the planting, maintaining and protection of the Native American trees in the front yard of each lot within the subdivision. B. The Property Owner's Association shall provide each lot owner with the proper planting instructions and maintenance guidance during the establishment period to ensure the viability of each tree. C. Each lot within Clabber Creek

Subdivision is required to have and maintain a minimum of two (2) native American trees with a two (2) to three (3) inch diameter in the front yard before the structure is certified for occupancy. Each lot owner shall be responsible for the health of all trees planted on the lot and shall be bound for the maintenance, care and monitoring for each tree planted. If at any time any tree is damaged significantly or dies, it must be replaced within a two (2) month period. The Architectural Control Committee will provide a list of the types of trees permitted. Failure to replant or maintain the tree after notice by the Property Owners Association could result in an assessment and a lien upon the lot for the cost of planting and maintaining the tree. The lot owner agrees a lien which results from a failure to pay an assessment may be foreclosed in the same manner provided by Arkansas Law for the foreclosure of a real estate mortgage.

ARTICLE XI **MAINTENANCE**

1. **DUTY OF MAINTENANCE.** Owners and occupants (including lessees of any part of the Property) shall jointly and severally have the duty and responsibility, at their sole cost and expense to keep that part of the Property so owned or occupied, including Dwellings, Structures, Buildings, Improvements and grounds in a well-maintained, safe, clean and attractive condition at all times. Maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse, and waste;
- (b) lawn mowing;
- (c) tree and shrub pruning;
- (d) watering;
- (e) keeping exterior lighting and mechanical facilities in working order;
- (f) keeping lawn and garden areas alive, free of weeds, and attractive;
- (g) keeping parking areas, driveways, and roads in good repair;
- (h) complying with all governmental health and police requirements;
- (i) repainting of improvements;
- (j) repair of exterior damages to improvements;
- (k) repair of all damage to fences; and

(l) Prompt disposal of all animal waste in a manner that complies with all local, state and federal regulations.

2. **ENFORCEMENT.** If, in the opinion of the Association any Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may provide written notice of that failure, giving the Owner or occupant ten (10) days from receipt to perform the care and maintenance required. Should any person fail to fulfill this duty and responsibility within the ten (10) day period, then the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform needed care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and occupants (including lessees) of any part of the Property on which work is performed shall jointly and severally be liable for the cost of the work and shall promptly reimburse the Association for all costs. If the Association has not been reimbursed within thirty (30) days after invoicing, the indebtedness shall be a debt of all of the Owners and occupants jointly and severally, and shall constitute a lien against that portion of the Lot on which work was performed. This lien shall have the same attributes as the lien for assessments and special assessments set forth in Article XIV, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

ARTICLE XIII **THE ASSOCIATION**

Every person, persons or entity who owns any Lot, including a builder or general contractor, shall be a Member of the Association, and shall abide by its Articles of Incorporation and Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The Association shall be governed by its Articles of Incorporation and Bylaws.

ARTICLE XIV **COVENANT FOR MAINTENANCE ASSESSMENTS**

1. **CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS AND SPECIAL ASSESSMENTS.** Each Owner, other than Declarant, of any Lot by acceptance of a deed shall be deemed to covenant and agree, to pay to the Association annual assessments or charges and special assessments, together with interest and costs of collection, if any, which amounts shall be a charge on the land and shall be a continuing lien upon the Lot. Each assessment, together with interest, cost of collection and reasonable attorneys' fees, if any, shall also be the personal obligation of the Owner, other than Declarant, of the Lot at the time when the assessment or special assessment fell due. The personal obligation for delinquent assessment or special assessment shall not pass to an Owner's successors in title unless expressly assumed by them.

The lien for assessments and special assessments shall be subject to and subordinate to the lien of any recorded first mortgage or deed of trust.

Assessments shall be fixed by the Association in accordance with the Articles of Incorporation and Bylaws of the Association.

In lieu of assessments being imposed upon such Lots owned by the Declarant, the Declarant shall underwrite all reasonable costs for the operation of the Association not covered by assessments paid by Owners of Lots other than Declarant until ninety percent (90%) of all Lots are owned by persons or entities other than Declarant. Once ninety percent (90%) of all Lots are owned by persons or entities other than the Declarant, the remaining Lots owned by the Declarant shall be subject to the same assessments as Lots by Owners other than the Declarant.

2. EXEMPT PROPERTY. Common Use Areas as defined in Article I, all Common Use Areas subsequently added to the Property and any areas which are designated for the common use of a particular Lot, and all portions of the Property owned or otherwise dedicated to any political subdivision shall be exempt from the assessments and liens of the Association.

ARTICLE XV

GENERAL PROVISIONS

1. DURATION. The Covenants and Restrictions of this Declaration shall run with and bind the land, shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time the Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument terminating these Covenants and Restrictions signed by the then Owners of sixty five percent (65%) of the Property has been recorded prior to the commencement of any ten-year period.

2. AMENDMENTS. The Declarant shall be entitled to three (3) votes for each Lot, whether built upon or not, in which Declarant holds title, for the purpose of amending these covenants and restrictions. All other Owners of a lot shall be entitled to one (1) vote for each Lot in which he/it holds an ownership interest. Lot Owner, other than the Declarant, as herein defined, may be one (1) or more and all such persons or entities constituting one (1) person or member shall vote as they, among themselves, determine but in no event shall more than one (1) vote per Lot owned by others than the Declarant be voted.

These Covenants and Restrictions may be amended during the first twenty (20) years from the date of recording of the Declaration, by an affirmative vote of seventy five percent (75%) of eligible votes, and thereafter by an affirmative vote of seventy percent (70%) of the eligible votes. Any amendment must be properly recorded and signed by not less than Owners holding seventy five percent (75%) of the eligible Votes within the first twenty (20) years and seventy percent (70%) of the eligible votes thereafter.

3. NOTICES. Any notice required to be sent to any Member or 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 Member or Owner on the records of the association at the time of mailing. Each purchaser of a Lot shall forward a copy of his/its recorded warranty deed to the Association or its officers.

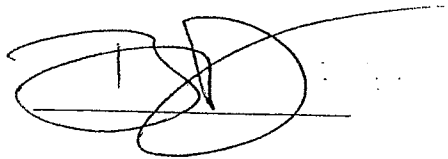
4. ENFORCEMENT. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or person violating or attempting to violate any Covenant or Restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these Covenants and Restrictions. Failure by the Association or any Owner to enforce any Covenant or Restriction shall in no event be deemed a waiver of the right to do so thereafter.

5. SEVERABILITY. Invalidity of any one of these Covenants or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

6. ATTORNEY FEE. In any legal or equitable proceeding for the enforcement or to restrain the violation of this instrument or any provision thereof, by reference or otherwise, the prevailing party or parties shall be entitled to attorney fees in such amount as the court finds reasonable. All remedies provided for herein, or at law or equity, shall be cumulative and not exclusive.

7. DISSOLUTION. The Association may be dissolved with consent given in writing and signed by not less than three-fourths of each class of Members as defined in the Bylaws of the Association. Upon dissolution of the Association other than incident to a merger or consolidation, the assets of the Association shall be conveyed and granted and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to same or similar purposes.

[Remainder of Page Intentionally Blank; Signature Pages Follow]



By:
Print Name: Brandon Barker
Title: Member

Attest:



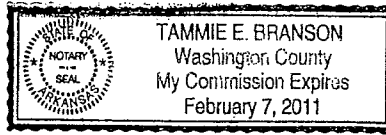
Print Name: Seth KAFFKA
Title: Member

ACKNOWLEDGMENT

STATE OF ARKANSAS)

COUNTY OF WASHINGTON)

) ss:



On this day before me, a Notary Public, duly commissioned, qualified and acting within and for said county and state, appeared the within named Brandon Barber being the member and _____, respectively, of CB Ventures, LLC and who had been designated by said _____ to execute the above instrument, who stated they were the member and _____ of said CB Ventures, LLC and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said C. B Ventures LLC and further stated and acknowledged that they had so signed, executed, and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 9th day of October, 2003.

Notary Public

Tammie E. Branson

My Commission Expires:

Feb 7, 2011

Exhibit A

Property Description

LEGAL DESCRIPTION:

A PART OF THE FRACTIONAL SECTION 31, T-17-N, R-30-W, AND PART OF THE SECTION 1, T-16-N, R-31-W, ALL IN WASHINGTON COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; BEGINNING AT THE NE CORNER OF FRACTIONAL SECTION 1, T-16-N, R-31-W, THENCE N01°00'27"E 141.32 FEET TO THE POINT OF BEGINNING, THENCE N89°59'06"W 1143.52 FEET, THENCE S00°00'54"W 764.20 FEET, THENCE S00°29'14"E 15.99 FEET, THENCE S01°47'20"E 369.49 FEET, THENCE S01°21'49"E 325.82 FEET TO THE CENTERLINE OF MOUNT COMFORT ROAD, THENCE ALONG SAID CENTERLINE N89°10'08"W 31.58 FEET, THENCE N69°59'08"W 122.60 FEET, THENCE N52°15'08"W 94.14 FEET, THENCE LEAVING SAID CENTERLINE N04°19'06"W 713.63 FEET, THENCE S89°41'00"W 183.06 FEET, THENCE N00°31'55"W 1167.86 FEET, THENCE N85°16'23"E 147.99 FEET, THENCE N65°25'37"E 1417.34 FEET, THENCE S31°54'30"E 119.08 FEET, THENCE N65°26'55"E 134.98 FEET, THENCE S01°34'08"W 1060.51 FEET TO THE POINT OF BEGINNING, CONTAINING 40.67 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND R/W OF RECORD.