

# **AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS**

## **BIG CREEK ESTATES, PHASE I AND PHASE II AN ADDITION TO THE CITY OF MOUNTAIN HOME**

MOUNTAIN LAND GROUP, L.L.C.  
TO THE PUBLIC

The Declaration of Covenants and Restrictions for Big Creek Estate, Phase I was made on the 17th day of December, 1999, by Mountain Land Group, L.L.C. (hereinafter called "Developer"), a Limited Liability Company established under the laws of the State of Arkansas, and various amendments to said Declaration of Covenants and Restrictions have been made by Big Creek Community Association, Inc.; WITNESSETH:

WHEREAS, Developer is the present owner of real property located in Baxter County, Arkansas, more particularly described as Big Creek Estates, Phase I and Phase II, as shown by the recorded plats thereof, and hereinafter defined (the "Property"); and desires to create a community with common facilities and amenities to be known as BIG CREEK ESTATES; and

WHEREAS, Developer has developed the Property and will add additional properties to be developed over an extended period of time and in stages; and

WHEREAS, portions of the Property shall be subdivided from time to time into building lots, tracts and streets as shown on Plats and Bills of Assurance filed in conjunction herewith, and that such subdivided property shall be held, owned and conveyed subject to the terms, conditions and protective covenants contained in this Declaration and in the supplemental Plats and Bills of Assurance; and

WHEREAS, Developer desires to provide gardens, landscaped boulevards, walkways, entry features, recreational areas and other facilities for the use, enjoyment and benefit of all the residents in those portions of the Property actually developed; and

WHEREAS, Developer deems it desirable to create Big Creek Community Association, Inc., an Arkansas nonprofit corporation ("the Association"), to own, maintain and administer the Common Properties (as hereinafter defined), to administer and enforce the Covenants and Restrictions (as hereinafter defined) imposed on the Property to which the Covenants and Restrictions are made applicable, and to collect, hold and disburse the charges and assessments hereinafter provided for, all in order to protect and enhance the value of the homes and lots, or building lots and in order to insure the residents' enjoyment of the Common Properties; and

WHEREAS, Developer intends that every Owner (as hereinafter defined) of a Residential Unit (as hereinafter defined) which is made subject to this Declaration does

automatically and by reason of such ownership and this Declaration become a member of the Association and become by ownership subject to the rules, regulations, and assessments made by the Association;

NOW THEREFORE, Developer declares that the Property which is made subject to this Declaration pursuant to Article 2 hereof shall now and hereafter be held, transferred, sold, conveyed, owned and occupied subject to the Covenants and Restrictions hereinafter set forth, and all additional Covenants and Restrictions in supplemental Plats and Bills of Assurance, all of which are for the purpose of enhancing, preserving and protecting the value, desirability, natural beauty and attractiveness of such Property. Such Covenants and Restrictions are part of, and constitute a unified, interdependent plan for ownership, use, maintenance and development. These Covenants and Restrictions shall run with the land, and shall be binding on all parties having or acquiring any right, title or interest in such Property or any part thereof and shall inure to the benefit of each Owner thereof. These Covenants and Restrictions shall be filed in the permanent real estate records of the Office of the Circuit Clerk and Recorder of Baxter County, Arkansas, and such filing shall constitute notice to the world of the existence and binding nature of these Covenants and Restrictions. Each and every deed of conveyance for any lot or tract in BIG CREEK ESTATES describing the same by the number or numbers as shown on the filed Plat for such Property shall always be deemed a sufficient description thereof.

## **ARTICLE 1**

### **DEFINITIONS**

The following terms, when used in this Declaration of Covenants and Restrictions for BIG CREEK ESTATES, an Addition to the City of Mountain Home, unless the context shall clearly indicate to the contrary, shall have the following meanings:

A. "Association" shall mean and refer to the BIG CREEK Community Association, Inc., a nonprofit Arkansas corporation, its successors and assigns.

B. "Common Properties" shall mean and refer to those areas of land and easements, together with all structures and facilities now or hereinafter constructed thereon, conveyed or to be conveyed to the Association, which shall be devoted to the common use and enjoyment of the Owners of the Property, such as, but not necessarily including or limited to, the following: swimming pools, bathhouses, tennis courts, playground areas, walkways, entry features, landscaped roadway medians and islands, recreational areas or facilities, gateways, gardens and other ornamental areas.

C. "Covenants and Restrictions" shall mean and refer to all covenants, restrictions, easements, charges and liens set forth in this Declaration or set forth on the Plats and Bills of Assurance recorded in conjunction with the subdivision and development of the Property.

D. "Developer" shall mean and refer to Mountain Land Group, LLC, a Limited Liability Company, established under the laws of the State of Arkansas, its successors and

assigns.

E. "Development Documents" shall mean and refer to the Articles of Incorporation of the Association, the Bylaws of the Association, and all Plats, Bills of Assurance, Covenants and Restrictions applicable to the Property.

F. "Development Plan" shall mean and refer to the plan or plans as proposed, amended or changed from time to time by the Developer for the development of the Property and any additional property added to jurisdiction of the Association pursuant to Article 2 of this Declaration.

G. "Manager" shall mean and refer to any Person or Persons with whom the Association contracts for the day-to-day administration of the Common Properties.

H. "Owner" shall mean and refer to the record Owner, whether one or more persons by purchase, transfer, assignment, devise or foreclosure of a fee or undivided fee interest in any portion of the Property, or any later added property which may hereafter come under the definition of Property pursuant to this Declaration, including contract buyers who reside on the Property, but excluding those having an interest merely as security for the performance or payment of an obligation.

I. "Person" shall mean and refer to any natural person, corporation, partnership, limited partnership, limited liability company, joint venture, association, trust or any other such entity.

J. "Property" shall mean and refer to the real property described on Exhibit A attached hereto and made a part hereof and as further defined in Article 2 hereof, which is now or may hereafter be made a part of BIG CREEK ESTATES, an Addition to the City of Mountain Home, including any additional real property which may be added to the jurisdiction of the Association pursuant to the provisions of Article 2, Section 2 of this Declaration.

K. "Recreational Purposes" shall mean and include activities, such as picnicking, engaging in sporting activities, walking, jogging, use of non-motorized vehicles, activities on or in any swimming pool which may be constructed, and such other activities as may be delineated by the Board of Directors of the Association from time to time.

L. "Residential Unit" shall mean and refer to each single-family detached house, condominium, or single-family attached house and each platted single lot subdivided by filed Plat intended for the suitable construction of a single-family detached or single-family attached residence prior to the commencement or completion of construction on such lot located in BIG CREEK ESTATES, an Addition to the City of Mountain Home, or otherwise subject to the jurisdiction of the Association, but shall not include any part of the Common Properties or dedicated streets.

M. "Golf frontage" shall mean those lots which adjoin fairways and greens and/or

the golf course boundary.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO DECLARATION**

Section 1. Property Covered by this Declaration. The real property described on Exhibit A shall be held, transferred, sold, conveyed and occupied subject to this Declaration. The Property consists of unplatted land that may be subsequently platted by Developer as it deems appropriate.

Section 2. Additional Property Hereafter Subjected to this Declaration. Developer, its successors and assigns, shall have the sole and irrevocable right to add and include, at any time, additional real property to the jurisdiction of this Declaration and to the definition contained herein of "Property", whether or not such additional property is described on Exhibit A, without the consent or approval of the Owners, the members or the Board of Directors of the Association. Developer may, prior to platting, delete property from Exhibit A. Developer's exclusive right to subject additional lands to the jurisdiction of this Declaration and to the definition of "Property" contained herein, or to delete property shall be assignable, in full or in part, to a successor developer or to the Board of Directors of the Association upon the express assignment thereof in writing by Developer. All additions and inclusions of additional land hereunder shall be effective upon Developer's executing and filing for record in the Office of the Circuit Clerk and Recorder of Baxter County, Arkansas, a Supplemental Declaration describing the additional property which is to become part of the Property and stating that this Declaration does thereafter bind and apply to such additional property. Deletions shall be made by filing a Supplemental Declaration describing the property that is to be deleted.

Notwithstanding anything contained herein to the contrary, this Declaration does not create any charge, lien or encumbrance on any property, unless, if and until such property is subjected hereto by Plat, Bill of Assurance and Supplemental Declaration in the manner contemplated hereby and then only from that time forward. Upon the platting of such property, the jurisdiction, functions, duties and benefits of membership of the Association shall automatically be extended to the platted lands. Property shall not be subject to assessment until platted and subdivided by filing made in the real property records.

Section 3. All Owners Bound. All Property bears the burdens and enjoys the benefits of this Declaration. All Owners shall be deemed by reason of taking record title to a portion of the Property to agree to all of the terms and provisions of this Declaration.

Section 4. Additions Limited to Developer. Unless Developer consents in writing, no one other than Developer may subject additional lands to this Declaration or extend the benefits of the association to any person except those described herein.

**ARTICLE 3**  
**THE ASSOCIATION, AUTOMATIC MEMBERSHIP  
AND VOTING RIGHTS THEREIN**

Section 1. The Association. Developer has caused to be formed and incorporated under the laws of the State of Arkansas, pursuant to Articles of Incorporation filed the 6th day of December, 1999, a nonprofit Arkansas corporation entitled BIG CREEK Community Association, Inc.

Section 2. Membership. The Association is a mandatory association whereby every Owner is and shall automatically be a member of the Association, provided, however, that any person, who holds an interest in the Property merely as security for the performance or payment of an obligation, shall not be a member of the Association.

Section 3. Governance. The Association shall be governed by its Articles of Incorporation and Bylaws.

Section 4. Voting Rights. The Association shall have two classes of membership as provided in the Articles of Incorporation, to-wit:

A. Class A. Class A members shall all be Owners, with the exception of Developer. Each owner shall be entitled to one (1) vote for each Residential Unit in which the Owner holds the interest required for membership by Section 2 of this Article and upon which the Owner shall not be delinquent in the payments of assessments; provided, however, when more than one person holds such interest or interests in any Residential Unit, all such persons shall be members and the vote for such Residential Unit shall be exercised as they among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any such Residential Unit.

B. Class B. Developer shall be the sole Class B member. Such member shall be entitled to three (3) memberships and three (3) votes for each lot or Residential Unit in which it holds an interest and three (3) memberships and three (3) votes for each one-fifth (1/5) acre of unplatted land owned by Developer and planned for inclusion in BIG CREEK ESTATES, an Addition to the City of Mountain Home, including unplatted land described on Exhibit A or hereafter added thereto in accordance with this agreement. Class B memberships shall cease and be converted to Class A memberships upon the happening of any of the following events, whichever occurs earlier:

1. When the total votes outstanding in the Class A membership equals the total votes outstanding for the Class B membership.
2. December 31, 2040.
3. When Developer files an election to terminate the Class B

membership.

#### **ARTICLE 4**

### **THE COMMON PROPERTIES; THE DEVELOPER'S DUTY TO CONVEY; MEMBERS' RIGHTS IN THE COMMON PROPERTIES**

Section 1. Conveyance of Common Properties. Developer hereby covenants with the Association to convey to the Association, and the Association covenants with Developer to accept, as such property is developed and finally platted, that property designated as parks, recreation areas, green areas or other common areas as shown and described on Plats of BIG CREEK ESTATES, an Addition to the City of Mountain Home. In addition, Developer shall convey such other real property and assets as it may deem to be in the best interest of the Association for the use and enjoyment of the members of the Association, and Developer may assign to the Association any contractual or any other rights it may have which Developer, in its sole discretion, determines would be of benefit to the Association for the continued enjoyment and security of the Owners with respect to the Property and the Common Properties. Developer covenants that any conveyance of land to the Association shall be made by quitclaim deed and subject to the easements, covenants and provisions of this Declaration. Upon request of Developer, the Association may agree to waive the obligations of Developer pursuant to this Section 1 by affirmative vote of the holders of fifty percent (50%) or more of the votes of the members in the Association then entitled to vote, if such waiver is in accordance with the zoning ordinances applicable to BIG CREEK ESTATES, an Addition to the City of Mountain Home.

Section 2. Members' Easements of Enjoyment. Every member of the Association shall have a common right and easement of enjoyment in and to the Common Properties, including but not limited to a non-exclusive right of ingress and egress and a non-exclusive right to use the Common Properties for Recreational Purposes, which shall be appurtenant to and shall pass with the title to all portions of the Property, subject to the following provisions:

- A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Properties;
- B. The right of the Association to suspend the voting rights and right to the use and enjoyment of the recreational facilities by any member for any period during which any assessment remains unpaid by such member and for such period as it considers appropriate for any infraction of its published rules and regulations;
- C. The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as it shall deem necessary or desirable for the proper servicing and maintenance of the Common Properties.
- D. Applicable zoning ordinances, governmental rules and regulations;

E. The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure; and

F. The right of Developer to impose reasonable covenants and restrictions in respect to such Common Properties, in addition to those set forth herein, at the time of conveyance of such property to the Association, and such restrictions and covenants are hereby incorporated by reference and made a part of this Declaration.

Section 3. Extension of Rights and Benefits. Every member of the Association shall have the right to extend the right and easement of enjoyment under this Article 4 to the Common Properties to each tenant and to each family or household member who resides in the Residential Unit and to such other persons as may be permitted by the Association's Board of Directors.

## **ARTICLE 5**

### **RIGHTS OF THE DEVELOPER**

Section 1. Sales Activity. So long as the development and sale of land continues in BIG CREEK ESTATES, Developer shall have the right to maintain such facilities and carry on such activities on the Common Properties or other areas owned by Developer as, in the sole opinion of Developer may be reasonably required, convenient or incidental to the development and/or sale of land including, but not limited to business offices, signs, model homes and sales offices, and Developer shall have an easement for access to and use of such facilities. These rights shall specifically include the right to use land owned or leased by Developer, and any facilities owned by the Association, as models and sales offices, respectively.

Section 2. Additional Covenants. So long as the development and sale of land continues in BIG CREEK ESTATES, no person shall record any declaration of covenants, easements and restrictions, or declaration of condominiums or similar instrument affecting any portion of BIG CREEK ESTATES without Developer's prior review and written consent, and any attempted recordation without Developer's approval shall result in such instrument being void and of no force and effect.

Section 3. Use of the Words "BIG CREEK ESTATES". No Person, other than the Developer and Association, shall use the words "BIG CREEK ESTATES" in any printed or promotional material without the prior written consent of Developer. However, Owners may use the words "BIG CREEK ESTATES" where such term is used solely to specify that particular property is located within "BIG CREEK ESTATES".

Section 4. Amendment. This Article may not be amended without the prior written consent of Developer; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Developer of a written statement that all sales activity has ceased.

**ARTICLE 6**  
**ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner, by acceptance of a deed or other conveyance of any portion of the Property, shall be deemed to covenant and agree to pay to the Association: (a) annual assessments and charges, and (b) special assessments. Such annual and special assessments shall be fixed, established and collected from time to time as hereinafter provided and as set forth in the Articles of Incorporation and Bylaws of the Association. The annual and special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land, shall be a continuing lien upon the property against which such assessment is made, and shall also be the personal obligation of the Person who is the record Owner of the property at the time the assessment fell due.

Section 2. Subordination.

A. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed on any such Residential Unit in connection with its purchase. Sale or transfer of any property subject to the charges and liens herein created shall not affect any preexisting assessment lien, except in the case of a sale of any Residential Unit pursuant to the foreclosure of a purchase money first mortgage, or any bona fide proceeding in lieu thereof, which proceedings shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. The Association shall have the right to foreclose its lien the same as the foreclosure of a mortgage under the laws of the State of Arkansas, or obtain judgment for assessments due in such foreclosure suit. No such sale or transfer shall relieve the subject property from liability for any assessments thereafter becoming due or from the continuing lien thereof. The Board shall notify the first mortgagee, upon request, of any default in the performance by the individual Owner of any obligation under this Declaration or the Development Documents which is not cured within sixty (60) days after the Due Date.

B. The subordination created herein is merely a subordination and shall not relieve the Owner of the personal obligation to pay all assessments and charges arising or coming due while the Owner owns such Property; and no sale or transfer of such property to the mortgagee or to any other Person pursuant to a decree of foreclosure shall relieve any existing or previous Owner of the personal obligation for any assessments or charges authorized in this Declaration.

Section 3. Exempt Property. Common Properties, properties dedicated to the public or any political subdivision or for public use, and Property that is not yet platted and subdivided shall be exempt from assessment by the Association.

**ARTICLE 7**  
**ARCHITECTURAL CONTROL**

Section 1. Designation of Architectural Control Committee. The Association shall have an Architectural Control Committee, consisting of at least three (3) and not more than five (5) members who shall all be natural persons. The members of the Architectural Control Committee, and all vacancies, shall be appointed by Developer so long as Developer shall own at least ten percent (10%) of the Property. Once Developer no longer owns at least ten percent (10%) of the Property, the members of the Architectural Control Committee, and all vacancies, shall be appointed by the Board of Directors of the Association.

Section 2. Function of Architectural Control Committee. No building, living unit, fence, wall, parking area, driveway, swimming pool, pole, lake, pond, drainage facility, tennis court, basketball court or other structure shall be commenced, erected or maintained, and no alteration or repainting in a different color or style to the exterior of any of the above shall be made and no significant landscaping performed upon the Property, nor shall any exterior addition to or change therein be made unless complete plans, specifications and site plans showing the exterior design, nature, kind, shape, height, color scheme, building materials and location of the same, the location and size of driveway, the general plan of landscaping, facing of such improvements with respect to existing topography, fencing, walls and windbreaks, the grading plan and any other requested materials shall have been submitted to and approved in writing by the Architectural Control Committee. This provision shall not apply to Developer in the construction or maintenance of living units, sales offices, landscaping, fencing, fountains or other improvements that it undertakes in the Property and Common Property.

Section 3. The Basis of Approval. The Architectural Control Committee shall evaluate all submissions on the individual merits of each application, subject to such site development and architectural guidelines that the Committee may from time to time adopt. The site development and architectural guidelines may change from time to time, but they shall at all times be in conformity with, and be subject to, the covenants, restrictions and requirements of this Declaration. 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, preservation of existing wooded landscape, relation of finish grades and elevations to neighboring sites, and conformity of both the specific and general intent of the protective covenants. The plans and specifications to be submitted and approved must include the following:

A. A topographical plat showing existing contour grades, the location of all improvements, including structures, walks, driveways, fences, walls, patios and decks. A sketch plan may be submitted in lieu of a topographical plat if approved by the Architectural Control Committee.

B. Exterior Elevations.

- C. Exterior materials, colors, textures and shapes.
- D. Structural design plan.
- E. Driveway plan.
- F. Utility connections.
- G. Exterior illumination location.
- H. Significant trees that are to remain.
- I. Generalized landscape plan.

Section 4. Architectural Guidelines. The Architectural Control Committee may establish certain site development and architectural guidelines. All plans and specifications will be evaluated under the site development and architectural guidelines then in force and effect. The Architectural Control Committee may approve exceptions to the site development and architectural guidelines then in force by a majority vote. The current site development and architectural guidelines shall be available for inspection by all Owners at the office of the Association.

Section 5. Action by Committee. A majority vote of the Architectural Control Committee shall be required for the approval or disapproval of said plans and specifications. In the event said Committee fails to approve or disapprove any such plans and specification within thirty (30) days after said plans and specifications have been submitted to it, approval shall be deemed to be granted and compliance with this Article shall be presumed. Nothing herein contained nor the required consent of the Architectural Control Committee shall in any way be deemed to prevent any of the owners of property in "BIG CREEK ESTATES" from maintaining any legal action relating to improvements within "BIG CREEK ESTATES" which they would otherwise be entitled to maintain. There shall be no separate compensation to Developer for architectural review services to be performed pursuant to this provision. The Developer may be compensated for any other services rendered.

Section 6. Limitation on Liability. Under no circumstances shall the Developer, the Architectural Control Committee, the Association or their agents, employees, members or directors ever be liable to any person for any action or failure to act for negligence, mistakes, misfeasance or malfeasance in connection with the performance of any of the duties of the Architectural Control Committee.

## **ARTICLE 8**

### **MAINTENANCE OF PROPERTY**

Section 1. Duty of Maintenance. All Owners and occupants (including lessees,

contract buyers, builders, residents and construction workers) of any part of the Property shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep the exterior portion of the Property so owned, occupied or used, including buildings, improvements, structures 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 trash, litter, refuse, yard waste, debris, unused building materials and waste.
- B. Lawn mowing.
- C. Tree and shrub pruning.
- D. Watering of landscape.
- 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 the exterior of improvements when necessary.
- J. Repairing damages to exterior of improvements.

Section 2. Enforcement. If, in the opinion of the Board of Directors of the Association, any Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Board of Directors or its designee may provide written notice of such failure, giving the Owner or occupant at least ten (10) days from receipt of such notice to perform or initiate and continuously pursue the care and maintenance required. Should any such 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 whatever. The Owner of any part of the Property on which work is performed by the Association shall be personally liable for the cost of the work and shall promptly reimburse the Association for all such cost. If the Association has not been reimbursed within thirty (30) days after invoicing such amount to the respective Owner, the indebtedness shall be a debt of such delinquent Owner and shall constitute a lien against said Owner's Residential Unit. This lien shall have the same attributes as the lien for assessments and special assessments set forth in Article 6 herein, and the Association shall have identical power and rights in all respects, including but not limited to the right of foreclosure.

Section 3. Common Scheme Restrictions. In accordance with the maintenance

requirements imposed on the owners and occupants hereunder, the following restrictions are also imposed with regard to the Property and Common Properties for the benefit of each of the Property and Common Properties and may be enforced by the Association or the Owner of any of the Property through any remedy available at law or in equity. Titles and headings are for reference only, and various restrictions may overlap into other areas.

A. **DWELLING SIZE:** Each lot in Big Creek Estates is restricted to the construction of one (1) permanent single family dwelling. Each dwelling on lots not across the street from golf course frontage or golf course frontage lots must have not less than 1,600 square feet of heated and cooled living area on the main floor. Each dwelling on lots across the street from lots that have golf course frontage must have not less than 2,050 square feet of heated and cooled living area on the main floor. Each dwelling on lots with golf course frontage must have not less than 2,500 square feet of heated and cooled living area on the main floor. All these dwelling sizes are exclusive of basements, porches, patios and garages. Square footage measurement is inside stud walls. Developer may designate lots for condominiums which have additional restrictions and covenants thereon but no such lots shall have dwellings of less than 1,200 square feet of heated and cooled living area.

All dwellings and other structures erected upon any lot as a residential dwelling shall be served by all public utilities, are required to have water and sewer facilities connected to the City of Mountain Home, Arkansas, water and sewer systems and all utilities will be buried to the homes at the expense of the builder or homeowner.

The Architectural Control Committee may grant up to a 10% variance to the minimum square footage requirement of heated and cooled living area on the main floor for two story homes. If a variance is granted, then the total square feet of heated and cooled living area for the entire house shall be in excess of 120% of the minimum square foot requirement of the main floor before the variance is granted. For instance, if up to a 10% variance is granted from the 2,500 square feet minimum on the main floor (a reduction to 2,250 square feet), then the total square feet of heated and cooled living area for the entire house shall be 3,000 square feet or more (2,500 x 120%). Any partial variance reduction will result in the full 120% being applied to the minimum square footage requirement.

B. **SETBACKS:** No building structure shall be located on any lot nearer than thirty (30) feet to the road right of way, ten (10) feet to any side lot lines, nor nearer than twenty-five (25) feet to any rear lot line. The owner of two or more contiguous lots may utilize said lots to build any conforming structure so that it occupies said lots. In utilizing two lots as one in the construction of the home on the interior lot line, then the interior easements and setbacks are automatically eliminated and deleted from the plat unless the easement is being utilized by a utility company.

C. **EXTERIOR FAÇADE AND COLORS:** All structures shall have 100% brick, stone, or stucco on exterior of home. With the approval of the Architectural Control

Committee, on a limited basis only (i.e., dormers, eaves, etc.) may be fiber cement siding, engineered wood siding, vinyl, aluminum, or steel siding. No awnings on windows are allowed except on patios.

The façade or covering of the house must be completed to the ground. All vents for the crawl space of the house must be painted to match the façade of the house. Service yards, wood piles and storage areas shall be allowed only if located so as not to be visible from a street, road, golf course or any of the Common Properties. Appropriate fencing, screening or landscaping must visually screen utility yards, garbage areas, air conditioning units, utility boxes, gas/electrical meters, pool equipment and other unsightly elements.

**D. ROOFS:** All homes shall use architectural (laminated) asphalt (fiberglass) shingles, cedar shingles or shakes, tile or cement tile, copper, or slate roof materials. Standard 3-tab shingles are prohibited. Roof color shall be an integral part of the exterior color scheme of the residence. Continuous ridge vents must be covered with asphalt shingles to match the roof.

The proportions of the roof shall be consistent with the architectural style of the residence. A minimum of 8/12 pitch is required on all homes except where the architectural style of the home dictates a lower pitch. This exemption must be approved by the Architectural Control Committee before construction. Roof stacks and vents shall be placed on the rear slopes of the roof. Prefabricated roofs or rooms, such as aluminum patio covers, are prohibited.

**E. GARAGES, PAVEMENTS AND DECKS:** Each single-family residence must have a private fully enclosed attached garage for not less than two cars. The preference is for a side entrance and driveway for each home unless the lot size does not allow for it. Oversized garages and garage doors taller than nine (9) feet or wider than twenty-two (22) feet are prohibited. All driveways, walkways, patios, and porches shall be finished concrete, patterned concrete, pavers or brick. Asphalt driveways are prohibited. As of March 5, 2009, decks on the first level shall have skirting extending from the deck to the ground. The skirting shall be of the same material as the deck or of the same material as found on the façade of the house. Said skirting, in the opinion of the Architectural Control Committee, shall substantially block the area under the deck from public view. Driveways shall be a minimum of one (1) foot from the side property line unless the Architectural Control Committee approves a lesser distance.

**F. TEMPORARY STRUCTURES:** No used, previously erected, temporary house or structure, modular or prefabricated house, garage, barn, tent, shack, house trailer, mobile home, motor home, trailers, basement without a house on top or non-permanent outbuilding shall be allowed to be placed, erected, used at any time as a residence either temporarily or permanently, or allowed to remain on any of the property or the common properties. No houses or portions of houses shall be moved to or placed on the property.

Only during construction of a home, a builder or individual lot owner may use a

construction shed or trailer for storage of equipment or materials temporarily. However, the developer, at its discretion may place and use such facilities at various locations on the property. Also, a temporary security fence may be erected by the builder or lot owner during construction of a home.

G. **VEHICLES:** The vehicles of the primary resident (single adult) or residents (a couple) must be parked in the garage of the home. Vehicles of the other residents of the home can park outside of the garage but must be parked on a driveway surface and not in the yard. Recreational vehicles or boats are permitted only if stored in the garage. No trucks larger than a pick-up truck, or campers or trailers are permitted to park on any lot any time. No motor vehicles of any type in a non-operative condition are to be parked, jacked up, blocked up, worked on or to remain in a non-operative condition on any lot or on the street in front of a residence for a period of more than twenty-four (24) hours at any one time or as a repeated matter of practice. Except for authorized maintenance vehicles and golf carts, no motor vehicles of any type or bikes shall be allowed on the pedestrian trails, greenbelts, open spaces, or other pedestrian areas. No vehicle shall be parked on any street or in front of residences on a frequent, regular or permanent basis after construction of a residence is completed.

H. **GARBAGE & REFUSE DISPOSAL:** No lot or common properties shall be used or maintained as a dumping ground for rubbish, leaves, tree limbs, ashes, weeds, grass clippings, wood piles or other refuse. Trash, garbage or other waste shall be kept in sanitary containers. All garbage cans, equipment or other refuse containers must be concealed from view of streets or the golf course. Composting is permitted as long as it is not unsightly or causes an odor.

I. **BUILDING MATERIALS:** No building material of any kind or character shall be placed upon any of the Property except in connection with construction approved by the Architectural Control Committee. Construction shall be promptly commenced and diligently prosecuted. All construction sites must be kept clean and orderly, free of trash, construction waste and scrap materials.

J. **CLOTHESLINE & RECREATIONAL EQUIPMENT:** No clothes lines or drying yards shall be kept or allowed on the Property or Common Properties. Recreation equipment such as volleyball and badminton nets must be stored when not in use for an extended period of time. Permanent basketball goals shall be permitted with backboards either clear, white or painted a color similar to the color of the house.

K. **EXTERIOR LIGHTING:** Any exterior lighting installed on any Residential Unit or on any of the Property shall either be indirect or of such controlled focus and intensity as not to disturb neighboring Owners or adjoining Property. Seasonal decorations are permitted thirty (30) days prior to the holiday and fifteen (15) days after the holiday.

L. **PETS:** The City of Mountain Home ordinances for the control and care of pets shall apply. Not more than two pets, dogs and/or cats may be kept at any one time. Pets may not be housed in any outbuilding of any kind. Owners of loud barking dogs that

are considered to disturb the peace of neighbors as determined by the local police department shall have the responsibility to correct the situation. Household pets may not be kept, bred or maintained for any commercial purpose. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot at any time.

M. **SIGNS:** Except for subdivision identification signs and informational, interpretive or directional signs placed by the Developer or Association, no signs, posters, plaques, address markers or communications of any description shall be placed on the exterior of any surface or placed or permitted to remain on any part of the Property or Common Properties unless previously approved by the Architectural Control Committee. As to commercial signs, only one (1) free-standing construction sign and one (1) real estate sign will be permitted at any Residential Unit during construction, except on corner lots, where two (2) of each shall be permitted. No signs of any types shall be attached to trees or shrubs. Except for signs used by Developer or a builder to advertise the Property during construction, only one (1) sign per lot not exceeding five (5) square feet in area may be displayed advertising the Property for sale or rent. All permitted signs must be erected on posts or stakes.

N. **MAILBOXES:** Mailboxes are restricted to those designed by the "BIG CREEK ESTATES" Architectural Control Committee. The size, style, construction and placement of all mailboxes shall be subject to the prior review of the Architectural Control Committee. No mailbox shall be erected unless first approved by the Architectural Control Committee.

O. **RESUBDIVISION:** No lot shall be subdivided unless the written consent of Developer, until it owns less than 10% of the lots or land to be subdivided, the Architectural Control Committee, and the City of Mountain Home Planning Commission is obtained, and any required action by the Association is taken, such as an approved plat amendment. A single residence may be placed on more than one lot, but said property shall be considered one lot and may not be subdivided at a later date.

P. **POOLS & HOT TUBS:** Swimming pools and hot tubs must be fenced. No pool or hot tub (spa) shall be permitted on the street side of any residence. All pools and hot tubs shall be located in the rear yard away from the adjacent property so that their use, presence, and noise of the mechanical equipment do not adversely affect the use of the adjacent property. No above ground swimming pools shall be permitted. Pool equipment must be enclosed.

Q. **COMMERCIAL ACTIVITY:** No trade, business or commercial activity shall be carried on upon any lot. No noxious or offensive trade or activity shall be carried on upon any lot.

R. **ANTENNAS & SATELLITE:** Television antennas, satellite dishes, radio receivers or other similar devices may not be installed unless it is entirely contained within the interior of a building or other structure. Small 24" diameter maximum satellite dishes may be allowed in the rear yard or on a rear roof if the location is approved by the

Architectural Control Committee. All wiring shall be underground. No poles, towers, or similar structures of any kind shall be built or permitted to remain upon any lot.

**S. LINE OF SIGHT OBSTRUCTION:** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitation shall apply on any lot within ten feet (10') from the intersection of the street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such intersection unless the foliage lines are maintained at sufficient height to prevent obstruction of such sight lines. No fence, wall or landscaping (i.e., hedge, shrub) over two feet (2') tall shall be placed or permitted to remain on any lot within fifteen (15) feet of the street. No tree shall be permitted to remain unless the foliage lines are maintained at sufficient height to prevent obstruction of sight lines.

**T. FENCES & WALLS:** No fences or walls shall be erected in front of or in the front side yard of any dwelling except for decorative brick, stone or wrought iron. All walls and fences must be harmonious with the dwelling and surroundings. Fencing and walls shall be finished on all sides. No front or side yard fence shall exceed a height of four (4) feet except that pillars or ornaments are permitted to a height of six (6) feet. Fences and walls in the front and side yards are intended strictly to enhance the appearance of the dwelling. They are not intended for privacy. Front and side yard fencing and retaining walls must incorporate the same materials as found on the façade of the house.

On non-golf frontage lots, the rear yard fencing may be of decorative brick, stone or wrought iron. The fencing shall not exceed five (5) feet in height. This restriction shall apply to all lots after March 5, 2009, and replacement of fencing after said date.

Fences are not recommended in rear yards fronting the golf course. However, any proposed fence in the rear yard of a golf course lot shall require approval of the Architectural Control Committee. Only wrought iron fences, of standard design and construction, and not exceeding four (4) feet in height will be considered. The Architectural Control Committee shall not grant approval of the fence if, in its opinion, the fence will block the view of the fairway from the patio, deck or rear windows of the home or proposed home of an adjoining lot. Walls, except for retaining walls, and hedges shall not be permitted in the rear yards.

All lots with a rear property line that borders Town Park Subdivision will be allowed to construct a solid privacy fence of wood or wood like material, on the rear property line. Said fences shall not exceed six (6) feet in height.

**U. BLOCKAGE OF EASEMENTS:** No building, fences, paved driveways or any other permanent structure or improvement of any kind, whether herein specifically enumerated or not, shall be built or maintained within the area of any of the easements

and no alteration including grading, filling, excavation or other site work may be done within the area of any of the easements shown on the Plat which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels, or which may obstruct or retard the flow of water through drainage channels; and, in the event any such obstruction is placed thereon in violation of this restriction and reservation, no public authority will be liable for destruction of same in maintaining or repairing its lines located within the area of said easement. Easements, including drainage channels, shall be mowed and generally maintained by the owner of the lot over which the easement or drainage channel is platted, except for improvements installed in those easements for which a public authority or utility is responsible.

V. **CURBS & GUTTERS:** No concrete, asphalt or other obstruction shall be placed in the street gutters. Curbs may be sawed at driveways and driveway grades lowered to meet gutter flow line or not more than two inches (2") above said flow line.

W. **GRADING OF LOTS:** All construction, excavation, site grading, trenching, digging, equipment storage and usage, and other activities on the Property shall be undertaken in compliance with the rules and guidelines established by the Architectural Control Committee. These guidelines shall restrict or prohibit certain types of activities, such as grading or back filling, which may damage trees and other plants.

X. **LANDSCAPING:** All lots must have front and side yards sodded with grass. The rear yard can be seeded with grass. No portion of the lot can be left in the natural state. All yards must be maintained equal to or exceeding the City of Mountain Home, Arkansas, weed and refuse ordinances. Yard decorations such as imitation animals or other creatures or items are prohibited in the front and side yards and any yard that has golf course frontage. Fountains and decorative pools are permitted in the rear yard only and must conform aesthetically with the surroundings. Berms in excess of two (2) feet are prohibited. Permitted flags are as follows:

1. Permitted flags are as follows:
  - A. The flag of the United States.
  - B. The flag of the State of Arkansas.
  - C. The official flag of any branch of the United States armed forces.
  - D. Permitted flags must be displayed in a respectful manner in accordance with the current relevant federal, State of Arkansas or military code. Only the permitted flags listed above are allowed to be flown. These guidelines do not apply and do not allow any flags other than the permitted flags listed above including, but not limited to:
    - i) Flags for schools, sports teams, businesses, or foreign countries.
    - ii) Flags with marketing, seasonal, historical, commemorative, nautical, political, or religious themes.
    - iii) Historical versions of flags permitted above.

2. Permitted Flags may be displayed subject to these guidelines. Advance written approval of the Architectural Control Committee is required for any free-standing flagpole and any additional illumination associated with the display of Permitted Flags.

3. Flag and Flagpole Rules and Maintenance Requirements:

- A. Only one flagpole is allowed per property. Flagpoles must be constructed of metal or fiberglass with an appropriate finish that is harmonious with the dwelling. A property owner may have either one free-standing flagpole, or one flagpole attached on the residential dwelling or garage.
- B. Flagpoles must not generate unreasonable noise levels which would disturb the quiet enjoyment of other residents. Each flagpole owner should take steps to reduce noise levels by using vinyl or plastic snap hooks, installing snap hook covers or securing a loose halyard (rope) around the flagpole with a flagpole clasp.
- C. Flagpoles are allowed solely for the purpose of displaying Permitted Flags. If a flagpole is no longer used on a daily basis, it must be removed. A flagpole is considered not in use if it does not display a permitted flag.
- D. All flags and flagpoles must be maintained in good condition. Deteriorated flags must be removed and promptly replaced. Deteriorated or structurally unsafe flagpoles must be promptly repaired, replaced, or removed.
- E. Permitted Flags shall be no larger than three feet (3') by five feet (5') in size.
- F. Flagpole Location:
  - i) Permitted Flags must be displayed from a pole attached to a structure or to a free-standing pole. Permitted Flags may not be draped over or directly attached to structures. For example, a Permitted Flag may not be laid across a fence or stapled to a garage door.
  - ii) Only one Permitted Flag may be displayed on a flagpole attached to a structure. The flagpole must be mounted to the fascia of the home using appropriate flag mounting hardware. One attached flagpole is allowed on any portion of a structure facing a street, except if the portion facing the street, is a garage. The flagpole must be attached in such a manner as to not damage the structure. The flag and or flagpole may not

extend into common areas or over any property lines.

- iii) A flagpole attached to a structure may be up to six feet (6') long and must be securely attached with a bracket with an angle of 30 to 45 degrees down from vertical. Brackets which accommodate multiple flagpoles are not allowed.
- iv) Free-standing flagpoles may not be taller than twenty feet (20') in height including any ornamental caps. Only one Permitted Flag may be displayed on a free-standing flagpole. Free-standing flagpoles must be permanently installed in the ground according to manufacturer's instructions. If the footing and/or stand for a free-standing flagpole extend above the surface of the ground, installation of landscaping to screen the stand and/or footing is required. Except as outlined below, a free-standing flagpole shall not be located nearer to a property line of the Lot than the applicable setbacks as either shown on the recorded plat or as set forth in the Declaration. On a case-by-case basis, subject to Architectural Control Committee approval, a free-standing flagpole may be located in front of the front building setback line for a Lot.
- v) Free-standing flagpoles may not be installed in any location described below:
  - (v-1) in any location other than the Owner's property; or
  - (v-2) within a ground utility easement or encroaching into an aerial easement; or
  - (v-3) in any location owned or maintained by the Association; or
  - (v-4) in any location owned in common by members of the Association; or
  - (v-5) beyond any setback lines or on zero lot lines; or
  - (v-6) closer to a dwelling on an adjacent lot than the height of the flagpole (for example, a 20' flagpole cannot be installed closer than 20' from an adjacent house); or
  - (v-7) on any party walls.
- vi) Lighting may be installed to illuminate Permitted Flags if they will be displayed at night and if existing ambient lighting does not provide proper illumination. Flag lighting must:
  - (vi-1) be installed in an area in accordance with paragraph v above;
  - (vi-2) be ground mounted in the vicinity of the flag;
  - (vi-3) utilize a fixture that screens the bulb and directs light in

- the intended direction with minimal spillover;
- (vi-4) point towards the flag and face the main structure on the property or to the center of the property if there is no structure; and
- (vi-5) provide illumination not to exceed the equivalent of a 60 watt incandescent bulb.

Y. **GARAGE SALES:** Garage sales will be permitted only two (2) weekends each year. The weekends will be the first weekend in May and October. Garage sales will be only two (2) days in length and be held on Thursday, Friday or Saturday.

Z. **UTILITY EASEMENTS:** Easements of way for streets shown on the recorded plat have been donated and dedicated to the public and persons, firms or corporations engaged in supplying electric power, gas, telephone, cable TV, water and sewer or any public utility, shall have the right to use and occupy said easements of way and streets for the installation, maintenance, repair, and replacement of such utility services.

The agents, servants, and employees of any parties giving any utility service shall have the right of free ingress and egress to and from, in, over, and across said easements. Said agents, servants, and employees shall have the right to trim, remove, and cut down trees, brush, stumps, and roots located within the bounds of said easements. Also, no improvements, trees, incinerators, fences, or other hindrances shall be placed on such easement areas that will interfere with the operation and maintenance of such utility services, in the event such improvements, trees, fences, or other hindrances are grown, built, or maintained within the areas of such easements, no utility shall be liable for the destruction or repair of same.

All utilities will be reimbursed by the owner(s) for any reasonable cost of relocating, additions to, or changes in its facilities occasioned by changes in grade, replat of lots, or change in usage designated in these protective and restrictive covenants. All owners of lots shall enter into a standard agreement with all the utilities for the installation of their underground service. The terms of the easements shall remain in existence so long as the said easements are being used by the utilities.

Exposed overhead wires and cables for utility services are prohibited in this addition, except within the easements and rights-of-way along perimeter of this addition where designated on the recorded plat unless otherwise designated by the dedication on the plat. All electric power facilities shall be underground provided, however, that street light standards and towers for street lighting purposes may be installed, erected, maintained, and operated in, under, and along the streets and public ways, if the utility is directed to make such installation by any governmental authority having jurisdiction.

Any alterations or lowering of the surface grade of the ground in any easement and the area immediately adjoining such easement are prohibited which would result in there being less than thirty-six (36") inches of clearance either vertically or horizontally between

the surface grade and the underground utility services. As the electric distribution transformer stations, telephone and cable pedestals, gas meters, and service connection points are located on the surface grade, fills within the areas of the said easements and upon the lands adjacent thereto which will damage or which will interfere with the installation, maintenance, operation, and replacement of the cables, facilities and equipment, and the supplying of service from such equipment are also prohibited.

AA. **STREET ACCESS & RESERVED EASEMENTS:** Lots which adjoin Big Creek Estates Parkway shall not have access to said street. Also, all lots which adjoin Big Creek Estates Parkway shall be subject to a three foot (3') easement for the construction of a decorative fence which may be built by the developer or Association.

It is the responsibility of each Owner to ensure that the Owner and every contractor employed by the Owner has reviewed and agreed to comply with the foregoing common scheme restrictions prior to commencement of site preparation or construction.

## **ARTICLE 9**

### **GENERAL PROVISIONS**

Section 1. Noxious Activity. No loud, disturbing, unsanitary, dangerous, hazardous, noxious or offensive trade or activity shall be carried on upon the Common Properties or any portion of the Property. Nor shall any annoyance or nuisance created or sustained by any Owner upon the Property or Common Properties be tolerated or permitted.

Section 2. Duration. The Covenants and Restriction of this Declaration shall run with and bind the Property, shall be and remain in effect, and shall inure to the benefit of and be enforceable by the Association or the Owners of any of the Property, their respective legal representatives, heirs, successors and assigns.

Section 3. Notices. Any notice required or permitted to be sent to any member pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member or Owner to whom it is intended at the Owner's last known place of residence and such service shall be deemed sufficient. The date of service shall be the date of mailing.

Section 4. Assignability. Notwithstanding any other provision herein to the contrary, Developer shall at all times have the right to fully transfer, convey and assign all of its rights, title, interest and obligations under this Declaration, provided that such transferee, grantee or assignee shall take such rights subject to all of the Covenants and Restrictions contained herein, and in such event the transferee shall be deemed to be Developer.

Section 5. Severability. Invalidation of any of the covenants, restrictions, requirements, provisions or any part thereof by an order, judgment or decree of any court shall in no way affect any other provisions of this Declaration which shall remain in full force and effect.



