

BILL OF ASSURANCE  
WITH  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
AUSTIN GARDENS

This Bill of Assurance with Declarations of Covenants and Restrictions (hereinafter “ Declaration” ), is made this \_\_\_\_\_ day of \_\_\_\_\_, 2006 by Austin Gardens, LLC, ( “ Developer ” or the “ Declarant ” ).

WITNESSETH:

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Developer is the owner of the real property described on Exhibit “A” attached to this Declaration (hereafter the “ Property ”) and as the owner desires to establish a single family residential development with privacy gate, private gated roadways or streets, permanent open spaces and landscaped entrance and other common facilities and areas including the private limited common areas as indicated on the plat of the Property for the benefit of the development, which shall be known as Austin Gardens Subdivision (hereafter “Austin Gardens ”).

WHEREAS, Developer desires to provide for the preservation of the values and amenities in Austin Gardens and for the maintenance of the common 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 and each owner of a lot within the Property, and

WHEREAS: Developer has caused to be incorporated Austin Gardens Municipal Multipurpose Property Owners’ Improvement District No. \_\_\_\_\_ of Sherwood, Arkansas ( “District” ) for the purpose of owning and administering the operation, maintenance, repair and replacement of the common areas and facilities and maintenance of the private limited common areas in Austin Gardens; and

WHEREAS, it is deemed advisable that all of the Property shown on the plat hereinafter mentioned, be subdivided into building lots, tracts and streets as shown on the plat filed herewith, and that the Property be held, owned and conveyed subject to the protective covenants herein contained in order to enhance the value of Austin Gardens.

NOW THEREFORE, Developer 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 Marlar Engineering Company, Registered Land Surveyor dated \_\_\_\_\_, \_\_\_\_\_, and bearing a Certificate of Approval executed by the Department of \_\_\_\_\_ of

the City of Sherwood, and showing the boundaries and dimensions of the Property now being subdivided into lots, tracts and streets (the “ Plat ” ).

There are shown on the Plat certain easements for drainage and/or utilities which Developer hereby donates and dedicates 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 therefrom for the installation, maintenance, repair and replacement of such utility services.

AREAS DESIGNATED ON THE PLAT AS LANDSCAPED CONSERVATION AREAS AND DETENTION AREAS AND ROADWAYS, STREET LIGHTS, DRAINAGE FACILITIES AND OTHER INFRASTRUCTURES ARE HEREBY DONATED AND DEDICATED BY DEVELOPER TO THE DISTRICT FOR THE OWNERS, AS THEY MAY EXIST FROM TIME TO TIME, OF LOTS WITHIN AUSTIN GARDENS WITH THE RIGHT TO USE THESE AREAS FOR, DRAINAGE, BUFFER, PEDESTRIAN PATHS, LANDSCAPING AND AESTHETIC PURPOSES AND THE DISTRICT SHALL MAINTAIN SUCH AREAS AND IMPROVEMENTS AT ITS COST. ADDITIONALLY, DEVELOPER HEREBY GRANTS TO THE PUBLIC UTILITIES THE RIGHT TO USE THOSE PORTIONS OF THESE AREAS WITHIN THE SUBDIVISION UPON WHICH AT THE DATE OF RECORDING OF THE PLAT AND THIS BILL OF ASSURANCE WATER, SEWER AND STORM DRAINAGE IMPROVEMENTS HAVE BEEN CONSTRUCTED BY DEVELOPER, PROVIDED SUCH IMPROVEMENTS ARE MAINTAINED BY THE PUBLIC UTILITIES. NO OTHER IMPROVEMENTS SHALL BE PLACED ON THE AREAS DESIGNATED AS COMMON AREAS OTHER THAN IMPROVEMENTS SPECIFICALLY DESCRIBED HEREIN, INCLUDING ANY ADDITIONAL WATER, SEWER OR STORM DRAINAGE IMPROVEMENTS, UNLESS FIRST APPROVED BY THE APPROPRIATE AGENCIES OF THE CITY OF SHERWOOD, THE DISTRICT, ITS SUCCESSORS OR ASSIGNS AND THE ARCHITECTURAL CONTROL COMMITTEE ESTABLISHED PURSUANT TO THESE COVENANTS AND RESTRICTIONS.

The filing of this Bill of Assurance with Covenants and Restrictions and Plat for record in the office of the Circuit Clerk and Ex-Officio Recorder of Pulaski County shall be valid and complete delivery and dedication of the easements subject to the limitations herein set out.

The lands embraced in the Plat shall be forever known as “Austin Gardens an addition to the City of Sherwood, Pulaski County, Arkansas, ” (the “Subdivision” ) and any and every deed of conveyance of any lot in the Austin Gardens describing the same by the number shown on the Plat shall always be deemed a sufficient description thereof.

The lands herein platted and any interest therein shall be held, owned and conveyed subject to and in conformity with the following covenants and restrictions:

## ARTICLE I

### DEFINITIONS

The following words when used in this Declaration or any supplemental Declaration (unless the context shall indicate a contrary intention) shall have the following meanings:

- (a) “Architectural Control Committee ” shall mean the committee appointed pursuant to Article VII, Section 1 hereof.
- (b) “ Association ” shall mean and refer to Austin Gardens Property Owners Association, Inc., its successors and assigns.
- (c) “ Board ” shall mean the Board of Commissioners of the District.
- (d) “ Common Area ” shall mean all real property owned by the District for the common use and enjoyment of all Owners including but not limited to the privacy gate, private streets and roadways, street lights, and open areas. The common areas shall be deeded to the District as provided herein.
- (e) “ Declarant ” or “ Developer ” shall mean Austin Gardens, LLC, its successors and assigns.
- (f) “ Declaration ” shall mean the covenants and restrictions and bill of assurance as stated herein and hereafter properly amended.
- (g) “District” shall mean and refer to Austin Gardens Municipal Multipurpose Property Owners’ Improvement District No. \_\_\_\_\_ of Sherwood, Arkansas.
- (h) “ Lot ” shall mean and refer to any platted lot within the Property which may be purchased by any person or owned by the Developer.
- (i) “ 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 Lot then the Owner shall hold memberships equal to the number of Lots owned.
- (j) “ Owner ” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, but excluding those having such interest merely as security for the performance of an obligation.
- (k) “Private Limited Common Area” shall mean and refer to the lawn area of each developed Lot.

(l) “The Property” shall mean and refer to that property described on Exhibit “A” which is subject to this Declaration under the provisions of Article II.

(m) “Subdivision” shall mean and refer to Austin Gardens Subdivision to the City of Sherwood, Pulaski County, Arkansas

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

SECTION 1: Existing Property. The real property that is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Sherwood County of Pulaski, State of Arkansas, and is more particularly described on Exhibit “A,” all of which property shall be referred to as the “Property.” The Property may consist of both platted and unplatted properties and the unplatted portions may be subsequently platted by Developer, as it deems appropriate.

#### SECTION 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 have the right but not obligation to bring within the plan of this Declaration additional properties, regardless of whether or not the properties are presently owned by the Developer, in future stages of the development, provided that such additions are 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 Declarant, and provided such proposed additions, if made, will become subject to assessments of the Association for their share of expenses. UNDER NO CIRCUMSTANCES shall these covenants and restrictions or any supplement or the General Plan bind the Developer to make the proposed additions or to adhere to the Plan in any subsequent development of land shown on the General Plan. Nor shall the Developer be precluded from conveying lands in the General Plan not subject to these covenants and restrictions or any supplement.

(B) The additions authorized shall be made by filing of record a Supplemental Bill of Assurance with Covenants and Restrictions with respect to the additional property which shall extend the plan of 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 Supplemental 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 the plan of this Declaration. In no event, however, shall such supplement revoke, modify or add to the covenants established by this Declaration within the Property.

SECTION 3. Additions Limited to Developer. No one other than the Developer shall have the right to subject additional lands to this Declaration, unless the Developer shall indicate in writing to the District that such additional lands may be included.

### ARTICLE III

#### PROPERTY OWNERS IMPROVEMENT DISTRICT

All Lots in the Subdivision in addition to being bound by this Bill of Assurance, are also within Austin Gardens Municipal Multipurpose Property Owners' Improvement District No. \_\_\_\_\_ of Sherwood, Arkansas established by Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_. As such, all Lots in the Subdivision are subject to the matters established thereby and therein including but not limited to, assessments to enable the District to accomplish its purposes set out therein which the Property Owner agrees shall include, without limitation, the maintenance, preservation, improvement, management and servicing of the Subdivision Common Areas and improvements thereto, the retainage areas, access right of ways and drainage related thereto and maintenance of the Private Limited Common Areas as the Districts Commissioners deem appropriate. Each Lot Owner in the Subdivision, by purchasing or otherwise owning a Lot in the Subdivision agrees to and acknowledges that any such Lot shall be subject to annual assessments levied by the District in whatever amounts the District Board of Commissioners determine.

In connection therewith the District shall or may maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal property, if any, owned by the District as the District's Commissioners deem appropriate; grant easements, rights of way, or strips of land where necessary for utilities and sewer facilities over the Common Areas to serve the Common Areas and Lots; and, levy District assessments as the District deems appropriate. Such assessments shall create liens upon the Lots assessed similar in priority as ad valorem taxes which liens shall be subject to the foreclosure of the Lots and improvements thereon for nonpayment as provided by the Arkansas Municipal Property Owners' Improvement District Law of Arkansas.

Exempted from District Assessments are all property dedicated to and accepted by a local public authority if any part of the Subdivision property is subsequently so dedicated and the Common Areas.

District assessments not paid when due shall be subject to collection pursuant to the provisions of Arkansas Acts 1987, No. 113 of the Acts of the General Assembly of the State of Arkansas, and all amendments thereto (codified as Ark. Code Ann. Section 14-94-101 et seq.) including additional assessments of interest, penalties and costs and right of the District to foreclose the lien of the assessments with the sale of the assessed property as provided therein.

Use of the Common Areas shall be subject to such reasonable Rules and Regulations as may be hereafter established by the District's Board of Commissioners and as amended thereafter from time to time.

#### IV

#### THE ASSOCIATION

Every person, persons or entity who owns any Lot, including a builder or contractor, shall be a member of the Association. Provided however, the Association is not active and will become active at such time as a two-thirds (2/3) majority vote, with one Lot Owner vote per Lot ( in person or by proxy), in Austin Gardens voting to cause the Association to become active at a Subdivision meeting called for that purpose upon proper notice to the Owners; or, upon dissolution of the District for any reason. The Association shall be governed by its By-Laws and laws of the State of Arkansas.

Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot. In the event the Association is activated and annual or other assessments are levied thereunder, each Lot Owner in the Subdivision, by purchasing or otherwise owning a Lot in the Subdivision, agrees to and acknowledges that any such Subdivision Lot so owned shall be subject to such assessments when levied, in whatever amounts such association may determine, the same as if such association were activated and assessments levied simultaneously with the platting of the Subdivision.

#### ARTICLE V

#### PROPERTY RIGHTS IN THE COMMON PROPERTIES

SECTION 1. Common Amenities. The areas designated on the Plat as Landscaped Conservation Area, Detention Area and all improvements thereon, including but not limited to the privacy gate, private roadways, street lights, open areas, landscape entrance and medians and other common facilities, the Common Areas, shall be owned and maintained by the District except for public utility improvements which are maintained by such public utilities.

SECTION 2. Members' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas. This easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot.

SECTION 3. Title To Common Areas. The Developer agrees to convey title to the Common Areas to the District free and clear of all liens and encumbrances except for applicable ad valorem taxes and improvement district assessments, if any, within ten (10) years after their designation as such on the recorded plat filed in the office of the Circuit Clerk of Pulaski County, Arkansas.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of Lien and Personal Obligation of Assessments and Special Assessments. Each Owner of any Lot by acceptance of a deed shall be deemed to covenant and agree, to pay to the District assessments or charges and special assessments, monthly or annually as the District shall determine, 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 and run with the land.

In lieu of assessments being imposed upon Lots owned by Developer, Developer shall underwrite all reasonable costs for operation of the District not covered by assessments paid by owners of Lots other than Developer until eighty percent (80%) of all Lots are owned by persons or entities other than Developer, then the remaining Lots owned by Developer shall be subject to the same assessments as Lots owned by others than Developer.

SECTION 2. Exempt Property. Common Areas as defined in Article I, all Common Areas subsequently added to the Property and all portions of the Property owned or otherwise dedicated to any political subdivision shall be exempt from the assessment and liens of the District.

## ARTICLE VII

### ARCHITECTURAL CONTROL COMMITTEE

SECTION 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. As long as Developer shall own one (1) or more of the Lots, the members of the Architectural Control Committee, and all vacancies, shall be appointed by Developer. When Developer no longer owns one (1) Lot the members of the Architectural Control Committee, and all vacancies, shall be appointed by the District's Board of Commissioners.

SECTION 2. Function of Architectural Control Committee. No improvement shall be constructed or maintained upon any Lot and no alteration or repainting to the exterior of a 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, and the grading plan and site preparation plans for drainage and other purposes shall have been submitted to and approved in writing by the Architectural Control Committee. A copy of the plans, specifications, and Lot plans as finally approved shall be deposited with the Architectural Control Committee. No trees shall be removed without prior written approval of the Architectural Control Committee. The Architectural Control Committee shall have the power to employ professional consultants

to assist it in discharging its duties in accordance with Section 9 hereof. The decisions of the Architectural Control Committee shall be final, conclusive, and binding upon the applicant.

SECTION 3. Content of Plans and Specifications. The plans and specifications to be submitted and approved shall include the following:

- (a) A topographical plot showing existing contour grades and showing the location of all improvements, structures, walks, driveways, fences and walls. Existing and finished grades shall be shown at Lot corners and at corners of proposed improvements. Lot preparation and drainage provisions shall be indicated as well as cut and fill details if any applicable change in the lot contours is contemplated.
- (b) Exterior elevations.
- (c) Exterior materials, colors, textures and shapes.
- (d) Structural design.
- (e) Landscaping plan, including mailboxes, walkways, fences and walls, elevation changes, watering systems, vegetation and ground cover.
- (f) Parking area and driveway plan.
- (g) Screening, including site, location and method.
- (h) Utility connections.
- (i) Exterior illumination, including location and method.
- (j) Fire protection system.
- (k) Signs, including size, shape, color, location and materials.
- (l) Foundation Plan

SECTION 4. Definition of "Improvements". Improvement shall mean and include all residences, buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, poles, driveways, swimming pools, recreation, sporting or exercise facilities, 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 the property 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.

SECTION 5. The Basis of Approval. Approval of plans and specifications shall be based on, among other things, adequacy of Lot dimensions, site preparation, including excavation and preparation for drainage and other purposes, structural design, conformity and harmony of external design and of location with neighboring structures and Lots, 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 may establish separate architectural guidelines, which shall be approved by the Board (the "Architectural Guidelines"), and all plans and specifications must comply with any Architectural Guidelines then in force and effect. However, the Architectural Control Committee may approve exceptions to any Architectural Guidelines by a unanimous vote.

SECTION 6. Majority Vote. A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed improvements.

SECTION 7. Failure of Committee to Act. If the Architectural Control Committee fails to approve, disapprove, or reject as inadequate proposed plans and specifications within thirty (30) days after 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.

SECTION 8. Limitation of Liability. Neither the Developer, 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.

SECTION 9. Cost of Review: The Architectural Control Committee will charge Owners the Architectural Control Committee's expenses incurred in exercising its functions herein including but not limited to legal, engineering and all other costs for submission and review of the Owner's building plans and specifications.

## ARTICLE VIII

### CONSTRUCTION REQUIREMENTS AND RESTRICTIONS

SECTION 1. Type and Construction of Residence. The residences in Austin Gardens shall be of similar size and architectural style so as to create a neighborhood of architectural continuity and constructed by a builder with a current Arkansas contractor's license. All construction shall be approved by the Architectural Control Committee, in its sole and absolute discretion, as further provided for in Section VII of this Declaration. The construction of a residence on any Lot shall be completed sufficiently for homeowner occupation with landscaping within one year of commencement of construction. Basement need not be finished out. No residence shall be erected, altered, placed or permitted to remain on any lot in Austin Gardens other than one detached single-family residence not to exceed two and one-half stories in height and further subject to the following specific design, construction and landscaping requirements:

Roof Pitch	_____ At Main Ridge
Windows	Wood, Wood Clad or vinyl.
Chimney & Fireplace	Brick, Stone, Stucco or dryvit on all four sides.

Ceiling Height 1 <sup>st</sup> Floor	_____ minimum
Soffit, Facia, Frieze Board, Dormer	Pre-approved wood and vinyl
Shingles	No flat roofs shall be allowed without specific permission from the Architecture Control Committee. Roofs shall be finished with materials harmonious with the surroundings and of a complimentary color. Dimensional or textured shingles are the minimum standard for roof finishes.
Mailboxes	Constructed of materials and character consistent with the principal residence.
Lawn	Zoysia Sod
Gas Light	According to plans approved by Architectural Control Committee
Fence	Wrought iron or approved designer wood
Landscape	According to plans approved by Architectural Control Committee
Driveways	All driveways must be _____ for the entire width and length.
Irrigation	According to plans approved by Architectural Control Committee
Exterior Materials	All homes must be constructed with exterior of brick, stone, stucco, dryvit or a combination thereof on all sides.

SECTION 2. Setback Requirements. No residence shall be located on any Lot in front of (beyond) the front line or the side street line as shown on the Plat. No building shall be located beyond an interior Lot side line as shown on the Plat. Unless provided for to the contrary on the Plat, no principal dwelling shall be located on any Lot beyond the rear Lot line. For the purposes of this covenant, eaves, steps and porches not under roofs shall not be considered as a part of the building. Where two or more Lots are acquired as a single building site, the site building lines shall refer only to those bordering the adjoining property owner.

SECTION 3. Minimum Square Feet Area. No residence shall be constructed or permitted to remain on any Lot in Austin Gardens unless the finished heated living area, exclusive of porches, patios, garages, breezeways, exterior stairways, porte cocheres, storage areas and outbuildings, shall be equal to or exceed that shown in the following schedule:

<u>Lot Numbers</u>	<u>One Story Minimum Sq. Ft.</u>	<u>Multi-Story Min. Sq. Ft.</u>
All	_____	_____

Finished heated living area shall be measured in a horizontal plane to the face of the outside wall on each level. Ground floor shall mean heated and cooled living space on one level and visible from street and does not include basement, whether a walkout basement or without access.

SECTION 4. Frontage of Residence on Streets. Any residence erected on any Lot in Austin Gardens shall have its front facing the street to which the Lot is adjacent; and, on any corner Lot it shall mean that the residence shall front on the adjacent street as determined by the Architectural Control Committee.

SECTION 5. Driveways for Cul-de-sac Lots. Any driveway for a Lot that fronts, wholly or partially, on a cul-de-sac drive or for a Lot that has a side Lot line that is wholly or partially adjacent to a cul-de-sac drive, shall enter and exit the Lot from or on the cul-de-sac drive and not on any other street to which the Lot is also adjacent.

No other driveways to or for the said Lot or residence thereon shall be allowed unless approved in writing by the Architectural Control Committee.

SECTION 6. Garages and Outbuildings Prohibited. A private attached or detached garage for not less than two nor more than four passenger vehicle bays is permitted for each Lot. Carports are not permitted. Garage doors shall remain closed except during entry and exit operation.

Site constructed outbuildings may be permitted at the discretion of the Architectural Control Committee. If permitted, such structures must be of a character and material consistent with the principal residence.

SECTION 7. 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 Areas, nor on any site unless placed in a container suitable for garbage pickup; nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

SECTION 8. Oil and Mineral Operations. No oil drilling, oil development operation, 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.

SECTION 9. Cesspool. No leaching cesspool shall ever be constructed or used on any Lot.

SECTION 10. Existing Structure. No existing, erected building, manufactured building or structure of any sort may be moved onto or placed on any of the above described Lots.

SECTION 11. Temporary Structure. No trailer, basement, tent, shack, garage, barn or other outbuilding, other than a guest house and servants quarters approved by the Architectural Control Committee, can be erected on a Lot covered by these covenants or at any time be used for human habitation, temporarily or permanently. No structure of a temporary character can be used for human habitation.

SECTION 12. Easements for Public Utilities and Drainage. Easements for the installation, maintenance, repair and replacement of utility services, sewer and drainage have heretofore been donated and dedicated, said easements, being of various widths, reference being hereby made to the Plat filed herewith for a more specific description of width and location thereof. No trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be grown, built or maintained within the area of such utility or drainage 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.

SECTION 13. Fences. No fences or enclosure of part of any building of any type or nature whatsoever shall ever be constructed, erected, placed or maintained beyond (forward of) the front portion of the house, provided, however, that the construction or use of chain link, other wire or similar fences by Owners are in all events strictly prohibited and shall not be used under any circumstances; provided further, that it is not the intentions of this paragraph to exclude the use of evergreens or other shrubbery to landscape the front yard. Fencing of any type must be approved by the Architectural Control Committee as provided in Section VII hereof. Only wrought iron or designer wooden fencing will be allowed.

SECTION 14. Sight Line Restrictions. No fence or wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways, 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 fifty (50) feet from the intersection of the street lines, or in the case of a rounded property corner, within the triangle formed by tangents to the curve at its beginning and end, and a line connecting them at points fifty (50) feet from their intersection. No tree shall be

permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of at least eight (8) feet to prevent obstruction of such sight lines. The same sight line limitations shall apply on any Lot within ten feet of the intersection of the street property line with the edge of a driveway or alley pavement.

SECTION 15. Property Lines and Boundaries. Iron pins have been set on all Lot corners and points of curve and all Lot dimensions shown on curves are chord distances, and all curve data as shown on the Plat filed herewith is centerline curve data. In the event of minor discrepancies between the dimensions or distances as shown on the Plat and actual dimensions and distances as disclosed by the established pins, the pins as set shall control.

SECTION 16. Driveway Obstructions. No obstruction shall be placed in the street gutter. There shall be no curb cuts unless authorized by the Architectural Control Committee.

SECTION 17. Subdividing Lots. No Lot shall be subdivided.

SECTION 18. Oil, Gas and Other Minerals. Developer, for and in consideration of Ten and No/100 Dollars (\$10.00), executes this Bill of Assurance upon the belief that it may own a portion of the oil, gas and minerals in and under the above described land and hereby subordinates its interest in oil, gas and other minerals to the Bill of Assurance and will not engage the use of the surface in any oil drilling, oil development operating, oil refining, quarrying or mining operations.

SECTION 19. Changes. After construction and landscaping are complete, any additions or changes must be first submitted to the Architectural Control Committee.

## ARTICLE IX

### MAINTENANCE

SECTION 1. Duty of Maintenance. Owners and occupants (including lessees) of any Lot 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 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 to achieve an aesthetically pleasing and well maintained appearance for the residences, the Lots and Austin Gardens:

- (a) Prompt removal of all litter, trash, refuse, and waste.
- (b) Watering.
- (c) Keeping exterior lighting and mechanical facilities in working order.
- (d) Keeping garden areas alive, free of weeds, and attractive.
- (e) Keeping parking areas and driveways in good repair.
- (f) Complying with all governmental health and police requirements.
- (g) Repainting of improvements.

- (h) Repair of exterior damages to improvements.
- (i) Exercise reasonable effort, as determined by the District, to reduce or eliminate erosion and to control drainage.

SECTION 2. Enforcement. If, in the opinion of the District any owner or occupant has failed in any of the foregoing duties or responsibilities, then the District 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-day period, then the District 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 District has not been reimbursed within thirty (30) days after invoicing, the indebtedness shall be a debt of all of the Lot Owners and occupants jointly and severally, and shall constitute a lien against that portion of the Property on which work was performed. This lien shall have the same attributes as the lien for assessments and special assessments set forth in Article VI, and the District shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

## ARTICLE X

### COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a common scheme upon all Lots and Common Areas for the benefit of each Lot and may be enforced by any Owner or the District through any remedy available at law or in equity.

1. No garbage, refuse, rubbish, tree limbs, pine straw, leaves or cuttings shall be deposited on any street, road, or common areas nor on any Lot unless placed in a container suitable for garbage pickup. Burning of any such refuse is prohibited.
2. 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.
3. No clothes lines, drying yards, service yards, wood piles or storage areas shall be so located as to be visible from a street or Common Area.
4. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents or the adjacent property.
5. No animals or poultry shall be kept on any Lot or Common Area except for a maximum of three (3) ordinary household pets belonging to the household. No pit bulldog, pit bulldog mixed breed or any other mix or breed of dog known to display or displaying vicious tendency or that barks when outside the family residence to an extent

that it becomes a nuisance or an irritation to other Owners and occupants of other Lots, shall be permitted to remain in Austin Gardens. Any dogs allowed outside the residence shall be confined to the rear yard area, fenced in with fences subject to the approval of the Architectural Control Committee. Likewise, owners, residents, may walk their dogs on leashes in Austin Gardens, confining the dogs to the Owner's Lot, and the private streets. Pet owners are required to also promptly remove and properly dispose of pet waste from the private streets.

6. No signs, plaques or communication of any description shall be placed on the exterior of any Lot or Common Area by an Owner unless approved by the Architectural Control Committee.

7. No nuisances shall be allowed in Austin Gardens nor shall any use or practice be allowed which is a source of annoyance to its resident or which interferes with their right of quiet enjoyment.

8. No immoral, improper, offensive or unlawful use shall be made of the Lot or Common Areas or any part thereof, and all valid laws, zoning, by-laws and regulations of all governmental bodies having jurisdiction shall be observed.

9. No portion of a Lot (other than the entire site) may be rented or leased.

10. 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 area.

11. No junk vehicle, derelict vehicle, inoperable vehicle, commercial vehicle, trailer, bus, truck, camper, camp truck, house trailer, boat or other machinery or equipment (except as may be reasonable and customary in connection with the use and maintenance of the Lot and the improvements located upon the Property and kept in an enclosed garage or storage room) shall be stored or otherwise kept upon the Property, nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be performed. This restriction shall not apply to vehicles, trailers, boats, machinery, equipment or the like stored and kept for less than 72 hours or when kept or stored within an enclosed storage room or garage. This provision is not intended to include pickup trucks and vans up to 6,000 lbs G.V. W. and normally used for personal and family transportation.

12. All buildings built on any Lot shall comply with the setback restrictions imposed upon the Lot on either the recorded Plat in the Circuit Clerk's office of Pulaski County, Arkansas or in the deed to each purchaser of a Lot. Setback restrictions are covenants running with the land.

13. An Owner hereby grants a right of access to his Lot to the District, any managing agent of the District, and/or any other person authorized by the Board or the managing agent for the purpose of making inspections or for the purpose of correcting any conditions originating in his Lot that threatens his Lot or another Lot or any Common

Area, or for the purposes of performing installations, alterations, or repairs to the parts of the Lot over which said persons have control and/or responsibility for maintenance. Requests for such access must be made in advance and entry must be at a time reasonably convenient to the Owner. In case of an emergency, this right of entry shall be immediate whether the Owner is present or not.

14. All automobiles, boats, campers, recreational vehicles and self powered construction equipment shall be kept in an enclosed garage and not in the driveway.

15. The storage of building materials for a period of time in excess of three months on any Lot shall be prohibited unless the materials shall be incidental to the construction of a new residence as permitted by the Architectural Control Committee. The materials include, but not necessarily limited to, lumber, timber, metal or waste materials. Upon notice by the District the Lot Owner shall have ten (10) days to remove the material. Pursuant to the notice and failure to comply, the District shall have the right to remove the materials all at the cost of the Owner. Such cost and expenses shall be paid to the District upon demand.

## ARTICLE XI

### USE, MAINTENANCE AND PROTECTION OF COMMON PROPERTIES

SECTION 1. Easements of Enjoyment. Subject to the provisions of Section 3 of this Article XI, every Owner shall have the right and easement of enjoyment in and to the Common Areas.

SECTION 2. Operation and Maintenance. The District shall be responsible for the operation, maintenance, repair and replacement of Common Areas.

SECTION 3. Extent of Easements. The rights and easements of enjoyment created shall be subject to the following:

- (a) The right of the District to prescribe rules and regulations for the use, enjoyment, and maintenance of the Common Areas;
- (b) The right of the District to borrow money for the purpose of improving all or any part of the Common Areas, and to mortgage all or any part of the Common Areas;
- (c) The right of the District to take reasonable necessary steps to protect all or any part of the Common Areas against foreclosure; and
- (d) The right of the District to suspend the easements of enjoyment of any Member of the District during the time any assessment levied pursuant to this Declaration remains unpaid, and for any period not to exceed thirty, (30) days for any infraction of its published rules and regulations.

## ARTICLE XII

### GENERAL PROVISIONS

SECTION 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, shall inure to the benefit and be enforceable by the District, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) 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 Lots has been recorded prior to the commencement of any ten-year period.

SECTION 2. Amendments. These covenants and restrictions may be amended at any time by the Developer, so long as the Developer owns a Lot in Austin Gardens, for a period of ten (10) years from the date of this Declaration; and thereafter may be amended thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. Any amendment must be properly recorded.

SECTION 3. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as the Owner on the records of the District at the time of mailing. Each purchaser of a Lot shall forward a copy of his recorded warranty deed to the District or its Board.

SECTION 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons 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 any Owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 5. Severability. Invalidation 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.

SECTION 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.

SECTION 7. Dissolution. Upon dissolution of the District other than incident to a merger or consolidation, the assets of the District shall be conveyed and granted and assigned to the District to perpetuate the purposes herein.

Austin Gardens, LLC

By: \_\_\_\_\_, Manager

Attest:

\_\_\_\_\_  
Secretary

ACKNOWLEDGEMENT

STATE OF ARKANSAS

COUNTY OF PULASKI

On this day before me, a Notary Public, duly commissioned, qualified and acting within and for said county and state, appeared the within named \_\_\_\_\_, and

\_\_\_\_\_ being the Managing Member and Secretary, respectively, of Austin Gardens, LLC, to me personally well known, who stated they were duly authorized in their respective capacities to execute the foregoing instrument, 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 \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

Exhibit "A"

LEGAL DESCRIPTION