

AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS

(_____, 2017)

KNOW ALL MEN BY THESE PRESENTS:

In accordance with the provisions of the original Declaration of Covenants and Restrictions for the Village Harbor Subdivision in Fort Smith, Sebastian County, Arkansas, filed September 19, 1973 at Book 342, Page 2002 (“Original Declaration”), and all amendments and additions thereto, said Original Declaration is hereby amended and restated as follows:

This Declaration made this 19 day of September, 1973, by the SFS Corporation (aka Superior Development Company), hereinafter called DEVELOPERS:

WITNESSETH:

WHEREAS, DEVELOPER is the owner of certain real estate situated in the City of Fort Smith, Arkansas, and more particularly described as Village Harbor Phase I, according to plat dated the 19 day of September 1973, and filed for record in Plat Book 5 at page 14 and,

WHEREAS, DEVELOPER desires to create thereon a residential community complete with permanent parks, playgrounds, open spaces and other common facilities for the benefit of said community; and,

WHEREAS, DEVELOPER desires to provide for the preservation of the values and amenities in said community, and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and to this end, desires to subject the real property described above, together with such additions as may hereafter be made thereto, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, DEVELOPER has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency which should be delegated and assigned the powers of maintaining and administering the common properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursements of the assessments and charges hereinafter created; and,

WHEREAS, DEVELOPER has caused to be incorporated under the laws of the State of Arkansas, a Non-Profit Corporation known as The Village Harbor Property Owners Association, Inc., hereinafter called ASSOCIATION for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the DEVELOPER declares that the real property described herein and such additions as may hereafter be made pursuant hereto, is and shall be held, transferred, sold and conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes herein referred to as “Covenants and Restrictions”), hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in the Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a) “Association” shall mean and refer to The Village Harbor Property Owners Association, Inc.
- b) The “Properties” shall mean and refer to all such properties described herein and additions thereto, as are subject to the Declaration, or a Supplemental Declaration.
- c) “Common Properties” shall mean and refer to those areas of land shown on the recorded plat and any additions thereto, of the Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties.
- d) “Limited Common Properties” shall mean and refer to those areas of land so designated upon the recorded plat of The Properties intended to be devoted to the common use and enjoyment of the owners of specifically designated property; and also those areas so designated from time to time by the DEVELOPER for the purpose aforesaid.
- e) “Roads and Streets” shall mean and refer to every way for passage for four wheeled vehicles, whether or not dedicated to the Owners exclusively or to the general public, and whether or not known by the name of Road, Street, Avenue, Place, Lane or other name. However, this definition shall not include paths throughout the property which have been laid out for the use of pedestrian and bicycles nor shall it include private driveways and cul-de-sacs.
- f) “Utility Easement” shall mean and refer to those areas designated on any recorded subdivision plat of The Properties as “Utilities”, or as may be provided in or by this declaration, or any Supplemental Declaration.
- g) “Reserved Properties” shall be those areas of land so designated on any recorded subdivision plat of The Properties and shall mean that the Developer has not as of the time of filing of the plat specifically designated the use to which the reserved areas are to be applied and that the Developer reserves the right to assign said areas to any use which is general in keeping with the overall plan of development of The Properties.
- h) “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.

- i) "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designated and intended for use and occupancy as a residence by a single family.
- j) "Multifamily Structure" shall mean and refer to any building containing three or more Living Units under one roof.
- k) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon The Properties except the owner or lessee, of an apartment as defined below but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- l) "Member" shall mean and refer to all those Owners who are members of the Association as provided herein.
- m) "Apartment Owner" shall mean and refer to the owner or lessee of a lot or lots in the development which have been designated for development as multifamily rental units, however, any reference to "owner" in this Declaration shall include "apartment owner" unless expressly provided otherwise.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. The Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Fort Smith District, Sebastian County, Arkansas, and is more particularly described as follows:

Village Harbor Phase I as reflected on Plat filed the 19th day of September, 1973, and recorded in Plat Book 5 at page 14; Village Harbor Phase II as reflected on Plat filed June 12, 1974; Village Harbor Phase III as reflected on Plat filed August 12, 1976; Village Harbor Phase IV; Village Harbor Phase V as reflected on Plat filed November 13, 1980.

Section 2. Additions To The Property. Additional lands may become subject to this Declaration in the following manner:

The Developer, and its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future phases of the development. However, the Developer shall not be required to add any additional property and reserves the right to make such amendments, additions or deletions to the Declaration covering such additional property as it may require.

Section 3. Platting Additions. Should the Developer elect to bring additional land within the Declaration, it shall cause a plat of the addition to be filed with the Circuit Clerk and Ex-Officio Recorder of Sebastian County, Arkansas, with these words stated on the plat: “The property covered by this plat is subject to the Declaration of Covenants and Restrictions of Village Harbor as recorded in Book ____, Page ____ of the deed records of the Fort Smith District of Sebastian County, Arkansas.” By such statement shall be incorporated all of the contents of that instrument and exhibits thereto and every lot in that plat shall be subject to this Declaration of Restrictions and Covenants.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee, interest in any Lot (or Living Unit) or Duplex which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who hold such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have three classes of voting membership:

Class A. Class A members shall be all those owners as defined in Section 1 with the exception of the Developer and apartment owners. Class A members shall be entitled to one vote for each Lot (or Living Unit) in which they hold the interests required for each membership by Section 1. When more than one person holds such interest or interests in any Lot (or Living Unit) all such persons shall be members, and the vote for such Lot (or Living Unit) shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot (or Living Unit).

Class B. Class B members shall be all apartment owners. An apartment owner shall have one vote for each ten living units or fraction thereof on the Lot or Lots owned or leased by him. No renter or lessee of such a Living Unit shall be a member of the Association except as herein provided.

Class C. Class C members shall be the Developer. The Class C members shall be entitled to three votes for each Lot in which it holds the interest required for membership by Section 1 (and for every Living Unit in any Multifamily Structure owned by it until such Unit is first sold or leased), provide that the Class C membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

a) when the total votes outstanding in the Class A membership equal the total votes outstanding in Class C membership (including any additional property added to this Declaration as provided herein); or

b) on December 31, 1980.

From and after the happening of these events, whichever occurs earlier, the Class C member shall be deemed a Class A member entitled to one vote for each Lot (or Living Unit) in which it holds the interests required for membership under Section 1. For purposes of determining the votes allowed under this Section, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted. The rights of membership of property owners who have rented their homes or duplex units to others shall be determined by action of the Board of Directors of the Association.

ARTICLE IV

STREETS AND UTILITY EASEMENTS

Section 1. The Developer does hereby dedicate for public use all of the streets as shown on the plat, except those marked "private drive" or "private cul-de-sac". The Developer further dedicates to the public, for public use the several purposes of constructing, maintaining, operating, repairing and replacing any and all public utilities including the storm and sanitary sewer, telephone lines, electric power lines, transformers, gas lines, water lines, and television cable lines, together with all fittings and equipment for each of such facilities and other appurtenances thereto, with the right of ingress and egress upon said easements and rights of way for the uses and purposes aforesaid, together with similar rights on each and all the streets shown on any such plat; provided, however, that the Developer hereby reserves the right to construct, maintain, operate, lay and re-lay water lines and sewer lines together with the right of ingress and egress for such construction, maintenance, operation, laying and re-laying over, across and along all of the public streets, alleys and easements shown on said plat, and/or sewer services to the area included in said plat and to any other areas. Said utility easements are for the use and benefit of the Developer as well as the public utilities, their agents and employees. The rights and privileges and authority herein reserved including the right to cut down and keep trimmed all trees, hedges and shrubs that may, in the judgment of the undersigned, or of said public utilities, interfere with or endanger such utilities.

Section 2. All supply of electric service shall be located underground in the easement ways reserved for general utility services, as shown on the plat. Service pedestals and transformers, as sources of supply at secondary voltages, may also be located in said easement ways. Underground service cables to all houses which may be located on all lots in said addition may run from the nearest service pedestal or transformer to the point of use as determined by the location and construction of such house as may be located upon said lot; provided, that upon the installation of such a service cable to a particular house, the supplier of electric service shall thereafter be deemed to have a definite, permanent, effective and exclusive right of way easement on said lot, covering a five foot strip extending 2.5 feet on each side of such service cable, extending from the service pedestal or transformer to the service entrance of said house. The supplier of electric service through its proper agents and employees, shall at all times, have right of access to all such easement ways shown on said plat, or provided for in this Deed of Dedication for the purpose of installing, maintaining, removing, or replacing any portion of said underground electric facilities so installed by it. This right shall apply to all suppliers of public utilities and quasi-public utilities, as for example, television cables. The owner of each lot shall be responsible for the protection of the underground facilities located on his property and shall prevent the alteration of grade or any construction activity which may interfere with said electric facilities. Repairs or cost of relocation, required by the violation of this covenant, shall be paid for by the owner of the lot. In connection with gas meters and gas lines to the structures in this addition, all yard lines will be plastic pipe of size and material approved by the Gas Company. An approved tracer wire will be installed in the trench with the plastic pipe and attached to the meter rise per the Gas Company's specifications. Meter set assemblies will be furnished to the plumber to be installed within five feet (5') of the front corner of the structure. No yard line will be installed under concrete or asphalt unless installed in a casing approved by the Gas Company. The casing will have to be sealed with jute or similar material and properly vented at one end, at least six inches above the ground. The yard line and inlet meter rise will be tested at not less than 90 PSG air or nitrogen for 24 hours, approval and acceptance of same to be by Gas Company personnel. Further, in connection with the gas line, the meter setting shall not be isolated from the front property line by a fence requiring entrance by a gate. Shrubbery will be limited so as not to interfere with the meter reading and normal maintenance of said meter. The Gas Company shall also have a definite, permanent, effective and exclusive right of way easement on said lot, covering a 5 foot strip extending 2.5 feet on each side of such house service line, extending from the service main to service entrance of the house.

Section 3. Underground utilities may also be constructed and maintained within the common areas shown on the plat.

Section 4. No motorized vehicle of any type, other than maintenance vehicles shall be operated in any common area designated on the plat, except parking lots. It is the expressed intention of

this provision to prohibit motor vehicles, including motorcycles, motorbikes, minibikes and the like, from being operated upon the common areas other than designated parking lots.

ARTICLE V

RESERVED PROPERTY

Section 1. Real Properties Designated as “Reserved Properties” are Reserved from Declaration and Plats. Any platted area covered by this Declaration or any Supplemental Declaration designated as “Reserved Properties” shall remain the privately owned and the sole and exclusive property of the Developer, its successors and grantees, if any, of said areas or any portion of same, and neither this Declaration or any Supplemental Declarations or the plats in connection with same shall in anywise apply to such “Reserved Properties” unless at a later time same shall be included under the provisions of the Declaration or a Supplemental Declaration as provided in ARTICLE II hereof.

ARTICLE VI

PROPERTY RIGHTS AND THE COMMON PROPERTIES

Section 1. Members Easement of Enjoyment Except in Limited Common Properties. Every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

Section 2. Members Easements of Enjoyment in Limited Common Properties. Only those members owning Lots which are designated in a plat or the Declaration or a Supplemental Declaration as having an interest in a Limited Common Property shall have a right and easement of enjoyment in and to the Limited Common Property, and such easement shall be appurtenant to and shall pass with the title to each Lot so designated.

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

- a) The right of the Developer and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender’s rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the

- possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and
- b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and
 - c) the right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and
 - d) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and
 - e) 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 may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.
 - f) the rights herein granted utility companies pursuant to this Declaration, or any Supplemental Declarations.

ARTICLE VII

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer for each Lot and Living Unit owned by him within The Properties hereby covenants and each Owner of any Lot or Living Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association:

- 1) Annual assessments or charges;
- 2) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided.
- 3) **Individual Assessments and fines levied by the Board against individual Lot Owners for violation of these covenants and restrictions.**

The assessments provided for herein, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with

such interest thereon and cost of collection thereof as hereinafter provided shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in The Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties.

Section 3. Basis and Maximum of Annual Assessments. Until the year beginning January 1975, and continuing from year to year the annual assessment shall be 100.00 per lot or living unit, except for those lots designated for apartment development. An apartment owner shall be assessed on the same basis as other members except that he shall pay the per lot assessment for each ten living units, or fraction thereof, on the Lot or Lots owned or leased by him. From and after January 1, 1975, the annual assessment may be increased or decreased by vote of the Members.

Beginning January 1, 1985, and continuing from year to year thereafter unless increased or decreased as provided herein, the annual assessment shall be \$125.00 per lot or living unit. *(amended 3-19-1984);*

Beginning January 1, 1993, and continuing from year to year thereafter unless increased or decreased as provided herein, the annual assessment shall be \$150.00 per lot or living unit. *(amended 7-8-1992)*

Beginning January 1, 2003, and continuing from year to year thereafter unless increased or decreased as provided herein, the annual assessment shall be \$200.00 per lot or living unit. *(amended 12-9-2002)*

Beginning January 1, 2013, and continuing from year to year thereafter unless increased or decreased as provided herein, the annual assessment shall be \$300.00 per lot or living unit. *(amended 09-17-2012)*

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written

notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting. No such capital assessment shall be levied against an apartment owner unless the capital improvement for which levied shall be subject to the use of persons renting Living Units from the apartment owner.

Section 5. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence of January 1, 1974 and shall be paid by March 1, 1974, and shall be for the calendar year 1974. The assessments for each succeeding calendar year shall become due and payable on the 1st day of January of each year, and shall become a lien upon the property as of that date as herein provided. However, the payment of annual assessments shall not be considered to be delinquent if paid on or before March 15th of such calendar year. The due date of any special assessment authorized under Section 4 hereof, shall be fixed in the resolution authorizing such assessment.

Section 6. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of the Association. If the assessments are not paid on the date when due (being the dates specified in Section 5 hereof or as otherwise provided by the Board in the case of special assessments or individual assessments), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien of the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation (but not the lien) of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period of limitations and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid by the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten (10) percent per annum, and the Association may bring an action at the law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaints in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. The purchaser of any property subject to this lien at a foreclosure sale or sale in lieu of foreclosure shall take the property free and clear of any lien for prior assessments against it; however, that purchaser's obligation to pay the assessments shall begin pro-rata upon the date of his purchase of the property. Such sale or transfer does not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 8. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

- a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- b) all Common Properties as defined in Article I, Section 1 hereof;
- c) all properties exempted from taxation by the laws of the State of Arkansas, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VIII

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Review By Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, size, kind, shape, height, materials, and location of the same shall have need submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. **The Board may delegate to the ACC the rights and powers to supervise and enforce the architectural and protective covenants against Owners and Lots, including the power to impose individual assessment penalties for violation of the architectural and protective covenants.**

ARTICLE IX

APARTMENTS

Section 1. Rights of Apartment Renters. The renters of Living Units from an apartment owner although not members of the Association shall have the right to use Common Properties on the Properties except swimming pools, tennis courts, club houses, marinas and boat docks, and any other facilities paid for by special assessment unless the apartment owner participated in the payment of the special assessment.

Section 2. Agreements With The Association. The Board of Directors of the Association may enter into a written agreement with apartment owners to permit renters from such apartment owners to use the facilities of the Association otherwise prohibited under the provisions of Section 1 above. Any such agreement shall provide the basis of assessment for such use, the period of the use, the facilities which may be used and such other terms and conditions as the Board considers appropriate.

ARTICLE X

GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by The Association, or the Owner of any land subject to the Declaration, their respective legal representatives, heirs, successors, assigns, for a term of thirty (30) years from the date the Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless, after proper notice, an instrument signed by the then Owners of two-thirds of the Lots or Living Units has been recorded, agreeing to change said covenants and restrictions in whole or in part. For purposes of meeting the two-thirds requirement, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted. **The provisions of any instrument amending or terminating this Declaration, including the provisions of this Amended Declaration, shall be effective from and after the date it is properly recorded.**

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions may be by any proceeding at law or in equity brought by the Association or any Owner against any person or persons violating or attempting to violate any covenant or restriction, to enjoin and restrain violations and/or to recover damages, and against the land to enforce any lien created by these covenants; **in addition, the Association, and any designated committee, may enforce violations of these covenants and restrictions by imposing individual assessment penalties as defined herein against the violating party, causing liens to be filed on the Lots of the violating party for failure to pay any assessments due hereunder (including individual assessment penalties) and to pursue foreclosure of any said liens, and/or suspending the rights and privileges of any violating party to access and use of any common properties or facilities described herein, and these remedies shall be cumulative and may be exercised at the discretion of the Board; and the costs incurred by the Association for pursuing any such remedies, including attorney fees and court costs, shall**

become an additional charge owed by the violating party; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The provisions herein shall supercede, replace and repeal any previously enacted Village Harbor Property Owners Association Covenant Violation Policy, it being the intent that the contents of which have now been addressed in this Amended Declaration.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

ARTICLE XI

PROTECTIVE COVENANTS

Section 1. Attached hereto as “Exhibit 1” and made a part hereof as fully as though contained herein word for word are the Protective Covenants relative to The Properties as well as any other lands which may be added as provided in Article II hereof. Every provision of this Declaration shall apply as fully to the Protective Covenants as if same were set forth herein word for word.

IN WITNESS WHEREOF, pursuant to Art. X, Section 1 of the Original Declaration, the undersigneds, representing two-thirds (2/3) of the current Owners do hereby execute this Amended Declaration and cause the same to be executed and acknowledged by the respective corporate officer of the Association, who are duly authorized to execute same in multiple counter parts, any one of which shall be deemed original, this _____ day of _____, 2017.

Village Harbor Property Owner’s Association, Inc.

By: _____

Title: _____

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EXHIBIT “1” TO AMENDED AND RESTATED DECLARATION OF COVENANTS AND
RESTRICTIONS

PROTECTIVE COVENANTS

1. Application. These Protective Covenants shall apply to all Lots in Village Harbor Phase I, according to plat filed the 19th day of September, 1973, and recorded in Plat Book 5 at Page 14, and any additional properties and phases that have been subsequently subjected to the Declaration and these Protective Covenants by notation on the Plat or otherwise. These Protective Covenants may likewise be adopted by reference by the Developer to cover additional phases of this Development by the recording of an appropriate Declaration incorporating these Protective Covenants by reference or by subjecting the Plat of any additional property to the Declaration which include these Protective Covenants.

2. Architectural Control Committee (A.C.C.). No building, fence, wall or other structures shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition or change or alteration therein be made until the requirements of Article VIII of the Declaration of Covenants and Restrictions have been complied with, provided that under no circumstances shall a fence be constructed closer to the street than the setback line reflected on the plat.

3. Permitted Uses. The notes upon the recorded subdivision plats shall control the permitted use of the Lots reflected thereon. Structures upon Lots designated as commercial upon a recorded subdivision plat shall be entirely controlled as to kind, shape, height, materials, and other factors by the A.C.C. As to Lots designated as Residential Lots upon a recorded subdivision plat, the notes upon the recorded subdivision plat shall control regarding the residential structure types (Single Family Detached, Single Family Attached Duplex and Multifamily Structure) which shall be permitted. The notes upon the recorded subdivision plat, if any, shall also control as to minimum square footage of each Single Family Detached structure, Single Family Attached structure, as well as each Living Unit in a Multifamily structure. Provisions of Article VIII shall control as to kind, shape, height, materials, and other factors in regard to all structures erected upon Residential Lots.

4. Resubdivision. No part of The Properties which has been designated as a Lot in a recorded plat shall be resubdivided except upon written approval of the A.C.C.

5. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

6. Campers, Trailers, Motorhomes, Boats or Portable Moving Containers. No one shall be permitted to keep a camper, trailer, motor home, boat or portable moving container upon a Lot where they are visible from the street upon which the Lot fronts. **The above may be temporarily kept for 5 days unless approval is granted by the A.C.C. for longer periods of time. Construction trailers may be kept for a time while work is being done on the residence but A.C.C. approval is required.**

7. Setbacks. No building shall be placed closer to the Roads and Streets than the setback line shown on a recorded subdivision plat, except where such requirement created an undue hardship upon the Owner, such setback may be modified as necessary to prevent the hardship by the A.C.C..

8. Sight Distance At Intersections. No fence, 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 25 feet 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 limitations shall apply on a Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

9. Signs. All signs are prohibited in areas zoned upon any recorded subdivision plat as Residential except:

a) signs erected by the City or Developer or Association for identification of streets, traffic control and directional purposes, **and neighborhood watch signs, or other signs approved by VHPOA board.**

b) Signs in return of donated services to VHPOA are allowed in the common area adjacent to the donated services to VHPOA with approval of the VHPOA Board.

c) Signs of a temporary nature advertising property for sale, construction signs and political signs which does not exceed 5 square feet in area.

The erection of signs in areas zones commercial upon any recorded subdivision plat shall require a permit of the A.C.C. and no such sign, except as provided in sub-paragraph (a) above, shall be erected without the permit of the A.C.C. covered by these Protective Covenants unless such

system is designed, located and constructed in accordance with requirements, standards and recommendations of the Arkansas State Health Department and approved by the A.C.C..

10. Outbuildings. Outbuildings or accessory buildings, such as a garage, servants quarters or guest house, shall be permitted on Lots upon which a Single Family Detached structure has been constructed or is under construction, provided the building and/or buildings are occupied by servants employed on the premises or by guests, and are not occupied otherwise as rental units by non-servant or non-guest occupants, and provided the A.C.C. shall first approve in writing the design, plans, specifications, etc. of such buildings including buildings for storage purposes.

Outbuilding such as detached garage, Pool house or storage building must comply with the provision Exhibit "1" as well as the City Zoning Ordinance.

Outbuildings or accessory buildings permitted upon Lots or Parcels of Land upon which there is constructed a commercial building, Single Family Attached structure, or Multifamily structure shall be entirely within the discretion of the A.C.C. and no such building shall be constructed or placed on the property without written approval of the A.C.C..

11. Garbage and Refuse. No lot or Parcel of Land of The Properties shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in a clean and sanitary condition, and disposition of same shall be prompt.

12. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any site, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the Owners of land covered by these Protective Covenants.

13. Antenna, Aerial, or Satellite Dish.

a) Village Harbor single family Living Unit are allowed only two (2) antennas, aerials, or satellite dishes for the purpose of receiving television, music or internet services.

b) Village Harbor Duplex Living Units are allowed only two (2) antennas, aerials, or satellite dishes for the purpose of receiving television, music or internet services. Must be requested, in writing by the Owner.

c) The industry standard is for a satellite dish to have dimensions of no more than 34 inches width, 24 inches in height, and the installed dish to not exceed 36 inches in total height. No satellite dishes or antennas are to be installed OR deviate from these dimensions or be visible from the street, to protect neighboring property values.

d) No Commercial or private transmitters are allowed, other than for ham radio public services. Receiving equipment shall not be raised to a height greater than is considered professionally necessary by the Service Provider for the Living Unit

e) There will be an exception for corner lot Living Units with front and side street visibility, a company letterhead letter must be pre-submitted by the proposed Service Provider licensed installation technician, with an explanation about what circumstances justify any placement visible from a street. Said letter is to be signed by the Service Provider technician or by an officer of the company for submittal to the Architectural Control Committee (A.C.C) for five (5) working days' review and approval or denial. Any dispute of an A.C.C denial recommendation will require the approval or denial of the full VHPOA Board at its next regularly scheduled public Board meeting, which normally occurs on the second Monday at 7pm each month.

f) If chosen by the Living Unit Owner, backyard poles that can mount the satellite dish, the satellite dish must not exceed six (6) feet in height. The pole base must be supported in concrete following service cable installation. Be careful to avoid any hazards to others.

14. Maintenance of Unimproved Lots. In the event that any Lots are sold and no structure is immediately erected, the Owner or Owners of such Lot or Lots shall keep said property mowed and in a sanitary condition.

15. POOLS. Construction of swimming pools, with the exception of small children's wading pools, must be in ground. Above ground pools will not be approved. Legal setback requirements of the Zoning Ordinance apply to swimming pools.

a) Wading Pools may not exceed 18 inches deep and 15 feet wide in diameter. All pools must drain to the curb if not connected to the sewer system on which the house fronts.

b) All pools must be approved by A.C.C.

16. FENCING.

a) All fencing shall be primarily wood or composite material in earth tones such as: Brown, Dark Green, or Gray. Owner must submit a sample with application for approval.

b) Wooden or steel fence posts and framing must be set inside of the fence.

c) Under no circumstances shall a front yard be fenced.

d) Fences should connect to the house not more than two-thirds (2/3) from the back corner of the house that is the farthest from the street in front of the house. The Neighbors fence may connect straight across or to a spot where that fence would be, but in no case will fences extend beyond the front of the house. Homes on a cul-de-sac or corner will

present a problem and will be inspected by the ACC prior to the application for construction.

e) Fences not exceeding six feet in height are preferred. Patio privacy screens are excluded. Higher fence heights require approval of the A.C.C..

f) Homes that backup to a sidewalk, easement or common area should have a gate. Gate access to these areas allows the home owner to perform fence repairs and mow the area along the back of the fence.

g) A privacy fence may be installed to conceal the trash cans, AC units and yard debris on the side of the house.

h) Although it is allowed, we advise against the construction of a fence on a utility easement.

i) No fences shall be constructed onto or within common areas unless approved by ACC.

17. General. Maintenance of property, parking of derelict vehicles or operation of a business from the home is covered by City ordinance and complaints should be addressed to the City Police.

a) Under no circumstances are vehicles to be parked in yards or common areas. **Any part of two or more tires constitutes parking in the yard.**

b) **VHPOA requirements or restrictions may be more strict than the city of Fort Smith ordinances**

18. Enforcement. These Protective Covenants shall be enforced and shall remain enforced in the manner and for the period of time as provided in the Declaration to which these Protective Covenants are a part of.

19. Invalidation. Invalidation of anyone of these Covenants by a judgment or a court order shall not affect any of the other provisions which shall remain in full force and effect.