

BILL OF ASSURANCE

LOT TWO (2): AIRPORT SITE

COMMERCIAL PARK ADDITION

CHEROKEE VILLAGE DEVELOPMENT

SHARP AND FULTON COUNTIES, ARKANSAS

KNOW ALL MEN BY THESE PRESENTS:

That Cooper Communities, Inc., successor to John A. Cooper Company (formerly Cherokee Village Development Company, Inc.) by reason of merger, holds the title to all of the following described lands situated in Sharp and Fulton Counties, Arkansas, to-wit:

A PORTION OF LOT 2, COMMERCIAL PARK ADDITION, FULTON COUNTY:

A parcel of land lying in the NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  (3.373 acres +- ) and in the SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  (10.272 acres +- ) of Section 36, Township 19 North, Range 6 West of the Fifth Principal Meridian, Fulton County, Arkansas, and being more particularly described as follows:

Beginning at a point 1,302.59 feet South and 5,349.77 feet West of the Southeast corner of Section 30, Township 19 North; Range 5 West; thence S 36° 41' 00" W 1,229.90 feet; thence N 53° 19' 00" W 400.00 feet; thence N 36° 41' 00" E 1,741.90 feet; thence S 0° 18' 56" E 649.72 feet to the point of beginning and containing 13.645 acres, more or less.

A PORTION OF LOT 2, COMMERCIAL PARK ADDITION, SHARP COUNTY:

A parcel of land lying in the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  (13.459 acres +- ) in the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  (5.633 acres +- ) and in the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  (9.902 acres +- ) of Section 30, and in the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  (11.846 acres +- ), and in the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  (0.005 acres +- ) of Section 31, all lying in Township 19 North, Range 5 West of the Fifth Principal Meridian, Sharp County, Arkansas and being more particularly described as follows:

Beginning at a point 1,302.59 feet South and 5,349.77 feet West of the Southeast corner of said Section 30; thence N 01° 18' 56" W 649.72 feet; thence N 36° 41' 00" E 3,536.42 feet; thence N 49° 38' 08" E 235.08 feet; thence N 40° 03' 39" E 125.30 feet; thence S 53° 19' 00" E 339.93 feet; thence S 36° 41' 00" W 239.00 feet; thence S 53° 19' 00" E 135.00 feet; thence S 36° 41' 00" W 990.00 feet; thence N 53° 19' 00" W 135.06 feet; thence S 36° 41' 00" W 3,173.00 feet to the point of beginning and containing 40.845 acres, more of less.

Cooper Communities, Inc. has caused said land to be surveyed and subdivided as a part of said Commercial Park Addition. Said land has been named and shall henceforth be known and designated as Lot Two, Sharp and Fulton Counties, Arkansas. Cooper Communities, Inc. has caused said land to be platted, which plat reflects the location of said lot and is recorded in Plat Book 9 at Page 173 in the office of the Circuit Court Clerk and Ex-Officio Recorder in and for Sharp County, Arkansas, and in Plat Book 4 at Page 102 in the office of the Circuit Court Clerk and Ex-Officio Recorder in and for Fulton County, Arkansas, being filed for record simultaneously with the filing for record of this Bill of Assurance. Said plat is by reference made a part of this Bill of Assurance and this Bill of Assurance is likewise make a part of the plat aforesaid as fully as though written thereon word for word.

As a part of this Bill of Assurance, certain safeguards, restrictions and provisions hereinafter referred to as "Subdivision Restrictions and Provisions" are hereby placed on the described lot of said Addition.

SUBDIVISION RESTRICTIONS AND PROVISIONS

I. INTENT AND PURPOSES

It is the desire and intent of Cooper Communities, Inc., to place certain safeguards, restrictions and provisions upon the lot situated in said Addition for the use and benefit of the future owners of said property; therefore, in consideration of the premises and in consideration of the mutual agreements herein made and set forth, Cooper Communities, Inc., its successors, assigns and grantees, and for their successors in title, do hereby agree, subject to Paragraph A, Section IV hereof, that the said Lot Two, Commercial Park Addition, Cherokee Village

Development, Sharp and Fulton Counties, Arkansas, shall be and is hereby restricted as to use in the manner and to the extent hereafter set forth, and likewise all provisions relative thereto as hereafter set forth shall fully apply as to such lot.

All persons, entities, firms and corporations who now own, or who shall hereafter acquire any interest in the lot mentioned herein, or affected hereby, shall by acceptance of such conveyance, be bound by the restrictions and provisions herein set forth, with the same force and effect as though they had joined in the execution of this instrument, it being the intention of Cooper Communities, Inc. that all restrictions and provisions set forth herein shall be held to be covenants running with the land, binding upon all persons interested in said lot throughout the whole period of time for which these restrictions and provisions shall remain in effect.

## II. AIRPORT COMMISSION

At the time of execution of this Bill of Assurance, it is contemplated that said Lot Two (2), Commercial Park Addition, Cherokee Village Development, Sharp and Fulton Counties, Arkansas, shall be deeded to the City of Ash Flat, Arkansas by Cooper Communities, Inc. for use as a public airport facility. It is further contemplated that promptly thereafter, the City of Ash Flat, Arkansas will, by appropriate action of its city council, create the Ash Flat Airport Commission, hereinafter referred to as "Commission," in accordance with the Airport Commission Act of the State of Arkansas which shall thereafter have the full and complete authority to operate and maintain the airport, enforce the restrictions and provisions herein and enact additional rules, restrictions and provisions not inconsistent herewith in aid and furtherance of airport operations.

In the event of the failure of the property being so deeded or the failure of the creation and continued existence of said Airport Commission or the reversion of said property to the said Cooper Communities, Inc. subsequent to the execution hereof, then Cooper Communities, Inc., its successors and assigns, does hereby reserve and shall have the right to create and establish a committee with such rights and powers as the said Cooper Communities, Inc. its successors and assigns, shall in its sole discretion determine as being necessary to protect and pursue the rights and responsibilities herein set forth.

## III. SUBDIVISION RESTRICTIONS

### A. LAND USE:

All lots shown upon the plat aforesaid shall be controlled by the notes on the recorded plat thereof and shall not be otherwise used.

### B. APPROVAL OF PLANS:

No building, appurtenances thereto, or other structure shall be erected, placed or altered on any lot until full and complete construction plans and specifications and a topographical site plan showing the location of the proposed structure shall have been presented to and approved in writing by the Commission as to quality of workmanship and material, structural design and appearance, harmony of external design with the existing structures, and as to location with respect to property, topography and finish grade elevation. The Commission may require additional submissions which are, in its discretion, necessary for a full and complete review of the proposed construction in keeping with its responsibilities hereunder.

### C. CONSTRUCTION OF BUILDINGS:

Prior to beginning construction of a building, appurtenances thereto or any other structure upon any lot herein, the owner of that lot shall furnish to the Commission proof that suitable financial arrangements have been made by the contractor or builder to insure completion of the structure and to indemnify the owner against materialman's and mechanics' liens.

If the owner is his own builder, he shall furnish to the Commission satisfactory credit information and proof of financial ability to complete the structure within the time requirements hereinafter set forth.

In any case, the owner shall furnish the Commission with satisfactory proof that builder's risk insurance, including workman's compensation insurance, if applicable, will be in effect for the construction period.

#### D. COMPLETION OF BUILDINGS:

(1) The exterior of any structure erected on or moved upon any lot shall be completed within six (6) months after construction has begun, or within such other reasonable period of time as fixed by the Commission in their written approval for construction, and in accordance with the provisions of the most recently revised edition of the Standard Building Code of the Southern Building Code Congress International, Inc. Completion of the exterior shall include completion of any and all kinds of details of exterior construction or finish which in their absence shall change the appearance of the structure from that approved by the Commission.

(2) The interior of any structure erected on or moved upon any lot shall be completed within twelve (12) months after construction has begun, or within such other reasonable period of time as fixed by the Commission in their written approval for construction, and in accordance with the provisions of the most recently revised edition of the Southern Building Code of the Southern Building Code Congress International, Inc. Completion of the interior shall include completion of any and all kinds of details of interior construction or finish which in their absence shall change the appearance of the structure from that approved by the Commission. Electric wiring installed in any structure shall be in accordance with the standards required by the most recently revised edition of the National Electric Code or with the standards required by the local power company, whichever are more restrictive. Plumbing shall be in complete accordance with the requirements set up by the Arkansas State Health Department or the Standard Building Code of the Southern Building Code Congress International, Inc., whichever is more restrictive.

#### E. INSPECTIONS

All structures will be submitted to inspections as required by the Commission and/or its representative to determine compliance with completion dates as herein provided and in accordance with the plans and specifications and other documentation upon which written approval for construction was granted by the Commission. In the event the completion dates and requirements above provided are not met, the Commission shall have the right, but not the obligation, to hire a contractor to promptly complete the work in accordance with such requirements and to bill the owner for the amount expended plus \$10 of such amount for administration.

#### F. RESUBDIVISION

No lot as shown on said plat shall be resubdivided.

#### G. HEIGHT AND SETBACK LIMITATIONS

Structures shall be controlled as to height and setback limits by the Commission, provided, however, that setback lines may not be less restrictive than those reflected upon the recorded plat, if any.

#### H. EASEMENTS FOR PUBLIC UTILITIES:

Cooper Communities, Inc. for itself, its successors and assigns, hereby reserves all easements for installation and maintenance of utilities and drainage facilities as reflected upon the recorded plat and as herein provided, and by reason of such reservation, shall have the right to install or have installed water mains, power lines or any other utility or drainage facility within such easements without notification to the lot owner; however, all such facilities will be placed within the easement wherever such installation would be most practical and least detrimental to the lot. Such easements as so reserved shall be assignable, perpetual, alienable and releasable on the part of Cooper Communities, Inc., its successors and assigns.

Within easements as reflected upon the recorded plat or as herein provided, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels within the easements, or which may obstruct or retard the flow of water through drainage channels within the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

In addition, Cooper Communities, Inc., for itself and its successors and assigns, hereby reserves and is given an assignable, perpetual, alienable and releasable easement, privilege and right on, in, over and under the previously described lands to erect, maintain and use electric and telephone poles, wires, cables, conduits, water mains, drainage lines and drainage ditches or drainage structures, sewers and other suitable equipment and structures for drainage

and sewerage collection and disposal purposes or for the installation, maintenance, transmission and use of electricity, telephone, gas, lighting, heating, water, drainage, sewerage and other conveniences or utilities on, in, over and under the property reflected upon said plat.

Cooper Communities, Inc. shall have the unrestricted and sole right and power of alienating and releasing the privileges, easements and rights referred to herein. The owners, other than Cooper Communities, Inc., of the lot or lots subject to the privileges, rights and easements referred to herein, shall acquire no right, title or interest in or to any poles, wires, cables, conduits, pipes, mains, lines or other equipment or facilities placed on, in, over or under the property which is subject to said privileges, rights and easements. All such easements are and shall remain private easements and the sole and exclusive property of Cooper Communities, Inc. and its successors and assigns.

In addition, Cooper Communities, Inc., for itself, its successors and assigns, hereby reserves and is given a perpetual, alienable and releasable easement, privilege and right to place upon any "Common Properties" reflected upon the plat aforesaid if, in fact, there are any such "Common Properties" reflected upon said plat, water pump stations, water reservoirs, overhead water reservoirs, water meter stations, water pressure reducing stations, water hydrants and water system structures, and Cooper Communities, Inc. likewise reserves unto itself, its successors and assigns, the specific right to transfer and convey such easement, privilege and right with or without any of such improvements located thereon.

#### I. FENCES

No fence or wall may be constructed or erected on any lot until the construction plans and specifications therefore have been given specific written approval prior to construction, pursuant to and in accordance with Paragraphs B and E hereof, by the Commission and in no event shall such fence or wall be constructed or erected in the area outlined in Paragraph L of this SECTION III.

This restrictive covenant shall not be construed so as to in any way lessen or limit the effect or intent of the preceding Paragraph H which shall control this covenant in all cases of conflict. If it becomes necessary to partially or completely remove any such fence or wall in order to install or maintain utility or drainage facilities within any easements reserved herein, the cost of such removal and , reconstruction, if any, shall be borne by the lot owner.

#### J. SEWAGE DISPOSAL:

No building shall be maintained or erected upon the lot unless the owners thereof shall install any sewer line extensions and appurtenances thereto necessary to connect to the then existing central sewer collection system serving said Commercial Park Addition. Said sewer line extension and appurtenances thereto shall be located and constructed in accordance with the requirements of the central sewer system owners and of the Arkansas State Department of Health. In the event that the owners of the central sewer system and the Arkansas State Department of Health give prior approval thereto, a temporary individual sewage system may be installed upon the lot in lieu of the construction of said sewer line extension and appurtenances thereto. Said individual sewage disposal system shall be located, constructed and operated in accordance with the requirements, standards and recommendations of the Arkansas State Department of Health. Said temporary individual sewage disposal system shall be abandoned and the building connected to the central sewerage collection system whenever the owners of the central sewerage collection system is prepared to accept the aforesaid necessary extension and appurtenances thereto.

#### K. GARBAGE AND REFUSE DISPOSAL:

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste incidental to the use of the property as herein provided shall not be kept except in covered sanitary containers and disposition of same shall be prompt. There shall be no burning of trash, garbage, or other waste material upon any lot without the prior written approval of the Commission and provided that the facilities therefore have been installed and are operated and maintained in accordance with the Commission permit and all applicable laws, rules and regulations.

#### L. SIGHT DISTANCE AT INTERSECTIONS:

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any 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 any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

#### M. NUSIANCES:

No noxious or offensive activity shall be carried on upon any part of the above-described premises nor shall anything be done thereon which may be or may become an annoyance or nuisance to the area or which may be or become offensive by reason of color, design or emission of odor; liquid, gas, smoke, vibration or noise or for any other reason.

#### N. TEMPORARY STRUCTURES:

No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be constructed or placed or allowed to remain on any lot without approval by the Commission, nor shall any such structures be used on any lot at any time as a residence either temporarily or permanently.

#### O. SIGNS:

No sign of any kind shall be displayed to the public view on any lot or upon any building or other structure thereon except:

- (a) Signs erected by the appropriate authorities for identification of streets, traffic control or directional purposes;
- (b) Signs erected by the developer in connection with its development or sales program or to identify the Commercial Park;
- (c) Signs erected by the property owner to identify the use or establishment located on the property;
- (d) Signs of a temporary nature advertising property for sale or for lease or construction signs.

Signs in Sections (c) and (d) above shall require a permit of the Commission after submission of plans therefore, including additions or alterations thereto, and may not be erected without such permit.

#### P. OIL AND MINING OPERATIONS:

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot nor shall oil wells, 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.

#### Q. LIVESTOCK AND POULTRY:

No beehives or the breeding or raising of any insects, reptiles, fish, worms, animals, poultry, etc., of any kind shall be permitted on any lot when such activity will constitute an annoyance to the neighborhood.

### IV. GENERAL PROVISIONS

#### A. MODIFICATION:

Cooper Communities, Inc. reserves the right to change or cancel any or all of these restrictions, if in its judgment, the development or lack of development of adjacent property makes that course necessary or advisable or in the event of a reversion of the property to it subsequent to the deeding thereof as hereunder contemplated.

B. TERM:

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the land contained in said Commercial Park Addition has been recorded agreeing to change said covenants in whole or in part.

C. ENFORCEMENT:

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant which proceedings may be brought either to restrain violation or to recover damages.

D. SEVERABILITY:

Invalidation of any of these covenants by judgment or court order shall in nowise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the said Cooper Communities, Inc., a corporation, has caused this instrument to be signed by its \_\_\_\_\_ President and its \_\_\_\_\_ Secretary and its corporate seal to be affixed this 28<sup>th</sup> day of September, 1981.

ATTEST:

COOPER COMMUNITIES, INC.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

STATE OF ARKANSAS                    )  
  ) SS        ACKNOWLEDGEMENT  
COUNTY OF BENTON                 )

On this day before me, the undersigned, a Notary Public duly qualified, commissioned and acting within and for the said state and county, appeared in person the within named John A. Cooper, Jr. and Larry W. Garrett, to me well known, who stated that they were \_\_\_\_\_ President and \_\_\_\_\_ Secretary of COOPER COMMUNITIES, INC., a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in behalf of said corporation, 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.

Witness my hand and Notary Seal on this 28<sup>th</sup> day of September, 1981.

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

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

CERTIFICATE OF RECORD

STATE OF ARKANSAS )  
  ) SS  
County of Sharp l         )

I, Tommy Estes, Clerk of the Circuit Court and Ex-Officio for the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 29<sup>th</sup> day of Sept A.D. 1981 at 12:10 o'clock PM and the same is now duly recorded. with the acknowledgement \_\_\_\_\_ and certificate \_\_\_\_\_ thereon. in Record Book Vol 187, Page 451.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed they seal of said court this 29 day of Sept, A.D. 1981.

\_\_\_\_\_ Tommy Estes, Clerk

By \_\_\_\_\_ Deputy Clerk

**SIGNED AND CERTIFIED COPY ON FILE AT CHEROKEE VILLAGE CITY HALL, 2 SANTEE DR., CHEROKEE VILLAGE, AR 72529. If there is a conflict between this copy and the official document, the official document always governs.**

**EFFECTIVE FEBRUARY 15, 1999 THE ARCHITECTURAL CONTROL COMMITTEE HAS BEEN REPLACED BY THE PLANNING AND ZONING COMMISSION.**