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**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF EVENING STAR POA, INC.**

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This Declaration of Covenants and Restrictions of **EVENING STAR POA, Inc.**, an Arkansas non-profit corporation ("**Evening Star POA**") (this "**Declaration**"), is made as of August 13, 2023, by **Buffington Evening Star, LLC**, an Arkansas limited liability company (the "**Developer**").

RECITALS:

A. Developer owns the real property described on Exhibit A attached to this Declaration (the "**Property**"), and desires to create a residential community known as "**Evening Star.**"

B. Developer desires to provide for the preservation of the values in Evening Star and for the maintenance of common facilities 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.

C. Developer deems it desirable, for the efficient preservation of the values in Evening Star, to create an association which shall be assigned the powers of maintaining, administering and enforcing these covenants and restrictions and doing all other things necessary to preserve the values and amenities of this community.

D. Developer has caused to be incorporated Evening Star POA for the purpose of exercising these functions.

NOW, THEREFORE, Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth:

## 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:

**"Affiliate"** shall mean as to any Person (i) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person; (ii) that directly or indirectly beneficially owns or holds five percent (5%) or more of any class of voting stock of such Person; or (iii) five percent (5%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Person in question. The term "control" means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

**"Approval"** shall have the meaning set forth in Section 6.02 hereof.

**"Architectural Control Committee"** shall mean the committee appointed pursuant to Section 6.01 hereof.

**"Assessments"** shall mean and refer to an Owner's share of the Association Expenses that from time to time are assessed against an Owner by the Association in the manner herein provided, and other costs and expenses that from time to time are assessed against an Owner in accordance with the terms of this Declaration.

**"Association"** shall mean and refer to Evening Star POA, Inc., an Arkansas non-profit corporation, its successors and assigns.

**"Association Expenses"** shall have the meaning set forth in Section 5.04 hereof.

**"Board"** shall mean the Board of Directors of the Association.

**"Buffington"** shall mean Buffington Homes of Arkansas, LLC.

**"Business Day"** shall mean any day of the week other than Saturday, Sunday or a day in which commercial banks are closed for business in Bentonville, Arkansas.

**"Common Property"** shall mean all real and personal property owned operated or controlled by the Association for the common use or benefit of all Owners.

**"Design Guidelines"** shall have the meaning set forth in Section 6.03 hereof.

**"Developer"** shall mean Buffington Evening Star, LLC, an Arkansas limited liability company, its successors and assigns.

**"Developer Control Period"** shall have the meaning set forth in Section 3.03 below.

**"Improvement"** shall have the meaning set forth in Section 6.04.



“**Lot**” shall mean and refer to any platted lot within the Property that may be purchased by any person, or owned by the Developer.

“**Member**” shall mean and refer to any Lot Owner who by virtue of holding title to any Lot is a Member of the Association. If any Lot Owner holds title to more than one (1) Lot, then the Lot Owner shall hold memberships equal to the number of Lots owned.

“**Mortgage**” shall mean any mortgage, deed of trust or other security instrument used for the purpose of subjecting real property to a lien or encumbrance as security for indebtedness.

“**Owner**” and “**Lot Owner**” shall mean and refer to any individual, Person, firm, corporation, partnership, association, limited liability company, trust or other legal entity, or any combination thereof, whether one or more, including the Developer, who or that holds record fee simple title to any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

“**Person**” shall mean an individual, firm, corporation, partnership, limited liability company, property owners association, trust, or any other legal entity, or any combination thereof.

“**Property**” shall mean and refer to that property described on Exhibit A that is subject to this Declaration and any property subjected to this Declaration in the future pursuant to the provisions of Article II.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

**Section 2.01. Existing Property.** The real property that is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Benton County, Arkansas and is more particularly described on Exhibit A, all of which property shall be referred to as the “**Property**.”

**Section 2.02. Additions to Existing Property.** Additional lands of the Developer may become subject to this Declaration in the following manner:

(a) Developer shall have the right but not the obligation to bring within the plan of this Declaration additional properties (“**Future Development Lands**”), regardless of whether or not said properties are presently owned by the Developer, in future stages of the development. Any future additions to the Property shall become subject to the Assessments of the Association for its share of expenses of Evening Star as a whole upon Developer or Buffington’s sale of the additional lands, or any lot platted therefrom or any portion thereof, to a third party that is not an Affiliate. UNDER NO CIRCUMSTANCES shall this Declaration or any supplement hereto preclude the Developer from conveying lands owned by it free and clear of this Declaration, as amended or supplemented, unless such lands were subject to the Declaration prior to such conveyance.

(b) The additions authorized shall be made by filing of record a Supplemental Declaration of Covenants and Restrictions, executed by the Developer only, 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 shall immediately be entitled to all rights and privileges provided in this Declaration.

(c) Any Supplemental Declaration may contain those complementary 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 and add to the covenants established by this Declaration binding the Property made subject to this Declaration prior to the recordation of that supplement. Each portion of additional lands made subject to this Declaration shall be designated as a separate phase.

**Section 2.03. 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 Association that such additional lands may be included.

### **ARTICLE III**

#### **RESERVED RIGHTS OF DEVELOPER**

**Section 3.01. Reservation of Rights.** Developer, as owner of the Property and the Future Development Lands, expressly reserves the rights set forth in this Article with respect to the Property and the Future Development Lands.

**Section 3.02. Development Rights.** Developer reserves the right, in its sole discretion, to expand the Property as provided in Article II hereof to include other lands owned by the Developer, including without limitation, all or any portion of the Future Development Lands, make such property subject to the provisions of this Declaration, and create additional Lots and Common Properties upon such additional lands.

**Section 3.03. Developer Control Period.**

(a) **Commencement and Termination of Period.** The Developer Control Period for Evening Star (the “**Developer Control Period**”) begins when the Developer executes its first contract with a third-party purchaser to purchase a Lot, and shall terminate no later than sixty (60) days after Developer and Buffington deeds at least ninety percent (90%) of all Lots created or as may be created in Developer’s sole discretion from both the Property and the Future Development Lands to any Person that is not an Affiliate of the Developer or Buffington, but in no event later than ten (10) years from the date the Developer transfers and deeds its first Lot within Evening Star to a third-party purchaser. Once the Developer Control Period terminates, the Developer Control Period shall not be extended or reactivated through the addition of Lots beyond those that may be platted from the Future Development Lands. The Developer shall have the right, but not the obligation, to terminate the Developer Control Period at any time in its sole discretion by filing an instrument in the real estate records of Benton County, Arkansas providing for such termination.

(b) **Restrictions During Period.** During the Developer Control Period, the Association shall not enter into any lease and/or contract for goods and services for the Property



that extends beyond the Developer Control Period. Any contract and/or lease in contravention of the foregoing sentence shall be voidable at the option of the Association.

(c) Association Books and Records. During the Developer Control Period, all books and records kept by or on behalf of the Association shall be available for examination and copying by a Member in good standing or his authorized agent. This right of examination shall exist without reference to the duration of membership and may be exercised only upon five (5) day's prior written notice and during reasonable business hours, or otherwise at a mutually convenient time and location. Notwithstanding the terms of this Declaration to the contrary, books and records kept by or on behalf of the Association may be withheld from inspection to the extent that they concern:

- (i) Personnel records;
- (ii) An individual's medical records;
- (iii) Records relating to business transactions that are currently in negotiation;
- (iv) Privileged communications with legal counsel; or
- (v) Complaints against a Member of the Association.

The Association may impose and collect a charge, reflecting the costs of materials and labor (including attorney and professional fees) prior to providing copies of any books and records to a Member under this section.

**Section 3.04. Reservation of Easements**. Developer expressly reserves a perpetual easement over all driveways, parking areas, sidewalks and utility easements to connect them with other driveways, parking areas, sidewalks and utility easements within Evening Star, the location of which shall be selected by the Developer.

**Section 3.05. Right To Appoint and Remove Members of Board**. During the Developer Control Period, the Board shall consist solely of members appointed and determined by Developer, and Developer reserves the right to appoint and remove members of the Board pursuant to the provisions of Section 4.04 of this Declaration.

**Section 3.06. Right to Amend to Comply with Law**. Developer reserves the right to amend or supplement this Declaration in any manner necessary to establish the validity and enforceability of this Declaration or to bring this Declaration into compliance with federal law, the laws of the State of Arkansas or any common law principle or judicial decision that may affect the validity and enforceability of this Declaration.

**Section 3.07. Right to Amend to Comply with Title Insurance Company Requirements**. Developer reserves the right to amend or supplement this Declaration in any manner necessary to satisfy the requirements of any title insurance company that may be called upon by the Developer to issue title insurance policies to Owners, provided such amendment is reasonably required to support the validity and enforceability of the Declaration.

**Section 3.08. Right to Amend to Make Corrections.** Except as otherwise may be provided in this Declaration, so long as Developer or an Affiliate of the Developer owns any Lot, Developer reserves the right at any time and from time to time to amend this Declaration as it deems appropriate, in its sole discretion, to carry out the purposes of Evening Star established in this Declaration, or to correct an error or omission, or to address and/or correct any matter required by any lending institution, public body or title insurance company, or to change the configuration or size of any lands or Lots subject to this Declaration, or to facilitate the operation and management of Evening Star and the Association, or to facilitate the sale of Lots. Such an amendment by the Developer may be made unilaterally, without the approval of any other party, and shall become effective upon the recording of an instrument executed by the Developer in the real estate records of Benton County, Arkansas, setting forth the amendment.

## **ARTICLE IV**

### **THE ASSOCIATION**

**Section 4.01. Formation.** Every Owner shall be a Member of and constitute the Association, which shall be governed by the Board.

**Section 4.02. Administration.** The Association was formed to effectively and efficiently provide for the administration and enforcement of the provisions of this Declaration and the performance of other duties imposed upon and accepted by the Association concerning the Property and undertake and perform all acts and duties incident thereto in accordance with the terms, provisions, and conditions of this Declaration. True copies of the Articles of Incorporation and By-Laws of the Association are attached hereto and expressly made a part hereof as **Exhibit B** and **Exhibit C**, respectively. Each Owner shall automatically become a Member of the Association upon acquisition of title to a Lot, and the membership of such Owner shall terminate automatically upon the Owner being divested of such ownership regardless of the means by which such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance on any interest in a Lot shall be entitled by virtue of such, to membership in the Association or to any other rights or privileges of such membership. The Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, specifically including, but not limited to, the right to levy and collect assessments in the manner hereinafter provided, and to enforce building covenants and restrictions set forth herein and in the Bill of Assurance recorded upon the platting of the Property. The Association shall further have and is hereby granted the authority to adopt, promulgate and enforce such rules and regulations, including without limitation rules governing such use of the Common Properties, as the Association may deem to be in the best interest of Evening Star, and to enforce such rules and regulations by imposing reasonable fines for violations thereof. Any such fines shall be personal obligations of the Owner against whom they are assessed and the Association may file and prosecute lawsuits to recover any amounts due or require compliance with the rules and regulations in question. Unpaid fines shall accrue interest at a rate determined by the Board not to exceed the maximum interest rate allowed by applicable law. Unpaid fines and any accrued interest shall become a lien on the Lot in the same manner as an Assessment as set forth in Section 5.09 hereof and may be enforced as set forth in that Section.



**Section 4.03. Voting.** An Owner shall have, for purposes of voting, one (1) vote for each Lot owned by it on all matters relating to the Association upon which a vote of the Members is conducted. All action taken by a vote of the Members shall be by majority vote unless a different vote is specified in this Declaration or in the Bylaws. If a Lot is owned by more than one (1) Person, the owners thereof shall designate one of themselves as the "Voting Member" for that interest. Only the Voting Member shall be entitled to the vote attributed to a Lot on Association issues submitted to a vote of the Members. The Owner of any portion of any subdivided Lot shall be entitled, in addition to the Owner's vote arising from the whole Lot owned by him or her, to a fractional vote determined pro rata based on the proportion of square feet of land in such subdivided portion to the total number of square feet in the originally platted Lot prior to being subdivided

**Section 4.04. Appointment and Election of Board of Directors.**

(a) **Developer May Appoint.** During the Developer Control Period, the Developer, in its sole discretion, may appoint, remove and replace any director of the Board and the Board shall consist solely of directors appointed and determined by the Developer. Directors are not required to be Owners. The Board shall consist of directors appointed by the Developer until the election/appointment of successor directors as provided below.

(b) **Initial Board.** The initial Board of the Association shall consist of three (3) members designated by the Developer as set forth in Section 4.04(a) above, who shall serve for a period commencing upon the date of their appointment and terminating (unless sooner terminated by the Developer, in its sole discretion) at the end of the Developer Control Period upon the election of the successor directors.

(c) **Election of Board of Directors.** At least ten (10) days prior to expiration of the Developer Control Period, at a regular or special meeting of the Association called for such purpose, all Members eligible to vote, including the Developer for the Lots owned by it, shall elect three (3) successor directors to the Board. Membership in the Association is not a condition to election and service as a director. The three candidates receiving the highest number of votes of the Members shall be elected as directors. One successor director shall serve a term commencing upon his/her election and qualification and terminating on the date of the third annual Association meeting thereafter, and the election and qualification of that director's successor. One successor director shall serve a term commencing upon his/her election and qualification and terminating on the date of the second annual Association meeting thereafter and the election and qualification of that director's successor. The third successor director shall serve a term commencing upon his/her election and qualification and terminating on the date of the first annual Association meeting thereafter and the election and qualification of that director's successor. The length of the terms to be served by the initial successor directors shall be determined by lot. Thereafter, directors shall be elected for three (3) year terms and shall serve until the successor of each is elected and qualified. The length of the terms may be modified by the Bylaws. Additional directors, not to exceed a total of seven (7), may be added to the Board by amendment of the Bylaws.

(d) **Removal of Directors.** Notwithstanding any provisions of this section to the contrary, after the expiration of the Developer Control Period, the Members by a two-thirds (2/3)



majority vote of all Owners present and entitled to vote at any meeting at which a quorum is present, may remove any duly elected member of the Board for any reason or no reason.

## ARTICLE V

### ASSESSMENTS

**Section 5.01.** Agreement to Pay Assessments. Each Owner, by acceptance of a deed to a Lot (whether or not expressed in the deed) covenants and agrees to pay to the Association all Assessments.

**Section 5.02.** Exempt Property. Common Properties as defined in Article I, all Common Properties subsequently added to the Property and any areas that are designated for the common use or benefit, and all portions of the Property owned by the Association or otherwise dedicated to any political subdivision shall be exempt from the Assessments and liens of the Association.

**Section 5.03.** Assessments. Each Owner shall contribute pro rata toward the Association Expenses and toward any other agreed upon expenses based on the ratio of the number of Lots (or fraction thereof if a Lot is properly subdivided) owned by the Owner to the total number of Lots deemed subject to this Declaration.

**Section 5.04.** Association Expenses. The Association shall be responsible for and shall consider the following as common expenses: (i) the costs of Association administration, which shall include all costs and expenses incurred by the Association in performing its duties under this Declaration and any bill of assurance affecting land subject to this instrument and taking other actions as may be authorized by this Declaration, including attorney fees, accounting fees and fees of other professionals; (ii) the maintenance, repair, replacement, acquisition, construction and reconstruction of Common Properties, and easements; (iii) any deficit remaining from a previous period; (iv) creation of reasonable contingency reserves; and (v) any other expenses and liabilities that may be incurred by the Association for the benefit of its Members under or by reason of this Declaration (collectively referred to herein as the “**Association Expenses**”). The Association shall treat as a contribution to reserves the excess Association revenues over Association Expenses.

**Section 5.05.** Commencement of Assessments. Assessments shall commence on a Lot on the date of the initial sale from Developer to a third party, other than Buffington Homes of Arkansas, LLC or any other affiliate of Developer. Assessments shall commence on a Lot owned by Buffington Homes of Arkansas, LLC on the date such Lot is sold by it to a third party. The initial purchaser of a Lot from the Developer, or the initial purchaser of a Lot from Buffington Homes of Arkansas, LLC, as applicable, shall pay to the Association at the closing of its purchase the pro rata amount of the Assessments accruing on the purchased Lot for the balance of the calendar year. An Owner shall be responsible for Assessments accruing during the period of its ownership of such property. The obligation to pay Assessments may be delegated to a tenant or other third party; provided, however, the Owner shall remain liable to the Association for all such payments.

**Section 5.06.** Annual Budget. Each year, the Board shall prepare and adopt an operating budget for the following calendar year. The budget shall itemize the estimated Association



Expenses for such calendar year, taking into consideration anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Assessment for the upcoming calendar year and as the primary guideline under which the Association shall be operated during such annual period. Developer shall estimate the budget for the first calendar year of the Association or portion thereof. The Association shall furnish a copy of the budget to each Owner.

**Section 5.07. Notice of Payment; Late Charge.**

(a) On or around January 1 of each year, the Association will notify each Owner of the amount of the Assessment with respect to the Owner's Lot or Lots. The Assessment shall be payable in annual installments, or in such other installments and at such times as may be determined by the Board.

(b) All unpaid Assessments shall incur a late charge in the amount equal to fifty percent (50%) of the delinquent amount, and shall accrue interest at a rate equal to the maximum interest rate allowed by applicable law from the date each unpaid amount was due until paid. The failure of the Association to give timely notice of any Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Owner from the obligation to pay such assessment or any other assessment, but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

**Section 5.08. Special Assessments.** In addition to the Association's regular assessments authorized by this Article, the Association may levy, at any time and from time to time, upon affirmative vote of a majority of the Owners, or upon the affirmative vote of a majority of a specific group of Owners in accordance with the applicable Bill of Assurance, a Special Assessment, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of any Common Property or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Association Expenses), and such assessment will be payable over such period as the Owners may determine. Such Special Assessments, if any, shall be included within any and all references to Assessments. This section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other sections of this Declaration, the By-Laws or the Articles. Any amounts assessed pursuant hereto shall be assessed to Owners pro-rata based on the number of Lots subject to this Declaration. Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to Owners, and no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall incur a late charge in an amount equal to fifty percent (50%) of the delinquent payment and accrue interest at a rate determined by the Board not to exceed the maximum interest rate allowed by the applicable law from the date such portions become due until paid. All funds received from assessments under this Section shall be part of Association funds.

**Section 5.09. Maintenance Fund.** The Association will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be



made in performing the functions of the Association under this Declaration. The funds of the Association may be used for any purpose authorized by the Board and applicable law.

**Section 5.10. Lien for Assessments.**

(a) All sums assessed to the Owners pursuant to the provisions herein and in the Bylaws, together with interest thereon as provided herein, shall be secured by a lien on the respective Lots in favor of the Association, which lien shall be prior to all other liens upon the Lots except: (a) tax liens in favor of any assessing unit; and (b) any mortgage or deed of trust duly recorded prior to the Assessment Lien encumbering the Lot. To evidence a lien for sums assessed pursuant hereto, the Association may prepare and record in the real estate records a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner and a description of the Lot. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. In addition to the unpaid amount of the Assessment, any recorded lien shall secure payment of all accrued interest on the assessment, late charges, title search fees, and for all costs of collecting such amounts, including attorneys' fee, whether suit be brought or not, and the Owner shall be personally liable for all such amounts.

(b) Liens created pursuant to subsection (a) above may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Arkansas. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including attorneys' fees) and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot that shall become due during the period of foreclosure and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid in at any foreclosure sale, to apply as a cash credit against its bid all sums due the Association and to hold, lease, mortgage or convey the subject Lot. Furthermore, the rights of the Association herein set forth above shall be in addition to any other rights provided by law with respect to liens for and collection of unpaid assessments.

(c) The Board shall have the right to settle and compromise any lien securing unpaid Assessments and the amount of the unpaid Assessment, including all late charges and accrued interest thereon, if such action is deemed to be in the Association's best interest.

**Section 5.11. Personal Obligation of Owner.**

(a) The amount of any Assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving any lien securing the same. In the event of any suit to recover a money judgment for unpaid assessments hereunder, or in the event that the Association must bring an action to enforce these covenants, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including attorneys' fees. The Association shall have the right to assign its claim and lien rights for the recovery of any unpaid Assessments, together with any outstanding costs, charges, and attorney fees, to the Developer, any Owner or group of Owners, or any other Persons.



(b) If a Lot is owned by more than one (1) Person, each Person with an ownership in the subject Lot shall be jointly and severally liable for all Assessments. No Owner may avoid or diminish its personal obligation for payment of Assessments by waiver of the use and enjoyment of any of the Common Property or by abandonment of its Lot or by waiving any services or amenities provided for in this Declaration.

**Section 5.12. Unpaid Assessments Shall Be Paid from Sales Price.** In the case of a voluntary sale or conveyance of a Lot, all unpaid Assessments, or other assessments or charges against an Owner for its pro rata share of Association Expenses or other amounts due the Association shall be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatsoever nature, except the following:

- (i) assessments, liens and charges for taxes past due and unpaid; and
- (ii) payments due under mortgages and other security instruments duly recorded prior to the date the Assessment or other debt due the Association.

**Section 5.13. Statement of Account.** Upon the request of any Owner, mortgagee, prospective mortgagee or prospective purchaser of a Lot, duly authorized representatives of the Association, for a reasonable fee, shall issue a written statement setting forth the following:

- (i) The amount of the unpaid Assessments or other amounts due the Association, if any, with respect to such Lot;
- (ii) The amount of the current Assessments and the date or dates upon which installments thereof become due;
- (iii) Credit for advanced payments or prepaid items; and
- (iv) That such statement shall be conclusive against the Association in favor of persons who rely thereon in good faith.

**Section 5.14. Personal Liability of Purchaser.** Subject to the provisions herein, a purchaser of a Lot, other than purchasers from Developer, Buffington, or an Affiliate of Developer or Buffington, shall be jointly and severally liable with the seller thereof for all Assessments unpaid at the time of the purchase; provided, however, that the provisions of this section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

**Section 5.15. Subordination of the Lien to Mortgage; Foreclosure; Remaining Liability.**

(a) The lien of unpaid Assessments provided for in this Article shall be subordinate to the lien of any prior recorded Mortgage on the Lot. The lien securing the Assessments shall be extinguished by the sale or transfer of any Lot pursuant to a decree of foreclosure of a prior Mortgage. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due.

(b) When the purchaser of a Lot obtains title thereto as a result of foreclosure of a Mortgage or other security instrument, such purchaser, its successors and assigns, which may include but not be limited to the mortgagee or other secured party, shall not be liable for any of the Assessments chargeable to such Lot accruing after the date of recording such mortgage or security interest but prior to the acquisition of title to such Lot by such purchaser. Such unpaid share of Association expenses shall be deemed to be Association expenses collectible from all Members, including such purchaser, its successors and assigns. The provisions of this section, however, shall not release any Member from personal liability for unpaid assessments.

**Section 5.16. Records; Rights to Inspect.**

(a) The Board shall keep, or cause to be kept, a book with a detailed account of the receipts and disbursements affecting the Association and its administration and specifying the expense of maintenance and repair of the Common Properties.

(b) Any Member, or that Member's duly appointed representative, shall have access to the Association's books of account, operating statements and other financial information and minutes from any meeting of the Owners, the Board, or any committee of the Board in order to inspect and copy such records for any purpose reasonably related to his or her interest as a Member. Access shall be at any reasonable time at the office of the Association, if one is maintained, or such other place within Benton County, Arkansas as the Board prescribes. The Board shall establish rules regarding the notice the Member must give to the custodian of the records to obtain access, the hours and days of the week when the records may be inspected and copied, and the charge(s) imposed by the Association for copying records requested by the Member. As a condition to permitting a Member to inspect the books of account, and minute records, the Association may require the Member to agree in writing not to use or allow the use of such information for commercial or other purposes not related directly to membership in the Association. Notwithstanding the terms of this Declaration to the contrary, books and records kept by or on behalf of the Association may be withheld from inspection to the extent that they concern those items listed in Section 3.03(c).

**Section 5.17. Transfer Fee Payable to Association upon Sale of Lot.** The buyer of any Lot, but excluding the Developer, Buffington, or their Affiliates, shall pay the Association a transfer fee of \$350 at the closing of the purchase of said Lot. The foregoing transfer fee shall be paid each time a Lot is sold.

**ARTICLE VI**

**ARCHITECTURAL CONTROL COMMITTEE**

**Section 6.01. Designation of Committee.** The Association shall have an Architectural Control Committee, consisting of at least two (2) and not more than five (5) members who shall be natural persons. The Members of the Architectural Control Committee, and all vacancies, shall be appointed by the Developer until the expiration of the Developer Control Period. When the Developer Control Period expires, the members of the Architectural Control Committee, and all vacancies, shall be appointed by the Board. During the Developer Control Period, status as a Member shall not be a prerequisite to being appointed a member of the Architectural Control



Committee. Upon the expiration of the Developer Control Period, however, at least two (2) members of the Architectural Control Committee shall be Members. The Board shall designate a member of the Architectural Control Committee as the chairman of the committee and a member as the secretary thereof. The Board may, at its sole discretion, elect to pay a stipend to the members of the Architectural Control Committee in any amount determined by it to be appropriate. The Board may employ and compensate professional consultants to assist the Architectural Control Committee in discharging its duties, which authority may be delegated to the Architectural Control Committee.

**Section 6.02. Function of Architectural Control Committee.** No Improvement or structure of any kind shall be constructed, erected, placed, altered, added to, reconstructed, or permitted to remain upon any Lot and no construction activity or grading shall be made unless written approval has been first granted by the Architectural Control Committee (“**Approval**”). Compliance with this Declaration, the Bill of Assurance, and any applicable Design Guidelines, or a variance from the Design Guidelines, is required for the issuance of such Approval

**Section 6.03. Design Guidelines.** The Developer may create Design Guidelines (the “**Design Guidelines**”) in connection with the recording of a Bill of Assurance to supplement this Declaration with respect to items concerning the design of Improvements and placement of Improvements on the Lots, approved construction materials, approved construction methods, the use of a Lot before, during and after construction commences and is completed, establishing procedures for applying for and the issuance of an Approval, establishing procedures for obtaining a variance from the Design Guidelines, and other related matters concerning Improvements on the Property. The Design Guidelines may be modified by the Developer during the Developer Control Period or, thereafter, by the Board. The Design Guidelines may impose obligations concerning the Property more restrictive than those set forth in these Declarations, but may not make the obligations of an Owner materially greater than those set forth in the applicable Bill of Assurance.

**Section 6.04. Definition of “Improvement”.** “Improvement” shall mean and include all residences, buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, poles, driveways, lakes, swimming pools, tennis courts, 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, including without limitation, landscaping, that may be reasonably considered to materially alter the appearance of the property and which may not be included in any of the foregoing or which affect or alter the drainage of water on, around, or across a Lot. The definition does not include garden plant, shrub or tree replacements or any other replacement or repair of any magnitude that would not be reasonably considered to materially change exterior colors or exterior appearances or affect or alter the drainage of water on, around, or across a Lot.

**Section 6.05. Majority Vote.** A majority vote of all members of the Architectural Control Committee is required for Approval, or for granting a waiver or variance in connection with an Approval

**Section 6.06. Basis of Approval.** The Architectural Control Committee shall approve only those requests or applications for an Approval that conform to the provisions and intent of this Declaration, any applicable Bill of Assurance and the applicable Design Guidelines. The



Architectural Control Committee may approve an application subject to satisfaction of conditions or requirements that it finds to be necessary to insure compatibility with the provisions of this Declaration, the Bill of Assurance and the applicable Design Guidelines. The Architectural Control Committee may return for modification any application or request for an Approval that does not include information sufficient to allow the committee to make the above determinations. Such a return, for the purpose of any time periods required by this Declaration, the Bill of Assurance and the applicable Design Guidelines, shall be deemed a disapproval.

**Section 6.07. Appeal.** The decisions of the Architectural Control Committee may be appealed by the Owner submitting a request to the Board. Rules and procedures for perfecting, commencing and prosecuting an appeal of an Architectural Control Committee decision, including rules for the conduct of appeal hearings, may be established in the Bill of Assurance platting the Property or any Future Development Lands or, absent inclusion in the Bill of Assurance, promulgated by the Board. No such rules or procedures for appeals shall require any act by an Owner to perfect or commence an appeal to be performed fewer than nine (9) Business Days after the date the Architectural Control Committee issues its written denial or conditioned approval of a request for an Approval. The Architectural Control Committee's decision shall be final, conclusive and binding upon the applicant unless an appeal is properly commenced in accordance with the applicable procedures.

**Section 6.08. Failure of Committee to Act.** Plans, specifications and other items properly submitted for review and approval in accordance with applicable rules, regulations or submission requirements shall be deemed approved if the Architectural Control Committee fails to act by written notice on or before forty-five (45) days after all such required information and materials are submitted (a "**Default Approval**"); provided, however, no Default Approval shall be deemed to permit the violation of this Declaration, any Bill of Assurance or any zoning requirements, and no Improvement that violates such instruments shall be erected or allowed to remain.

**Section 6.09. Limitation of Liability.** The primary responsibility of the Architectural Control Committee is to review Approval requests submitted to it to determine if the proposed improvements comply with this Declaration, the Bill of Assurance and any applicable Design Guidelines. Neither the Developer, the Association, the Board, the Architectural Control Committee nor any officers, members, employees and agents thereof shall be liable, in damages or otherwise, to anyone submitting an application or request for an 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. The Architectural Control Committee does not review and assumes no responsibility for the following:

- (A) The structural adequacy, capacity or safety features of the proposed improvement or structure.
- (B) Whether or not the location of the proposed improvement or structure on the building site is free from any possible hazard whether caused by conditions occurring either upon or off of the property.



- (C) Soil erosion or soil conditions including drainage or stormwater issues resulting from the Improvement or any other construction activities taking place on a Lot or Common Property.
- (D) Mechanical, electrical or any other technical design requirements for a proposed project.
- (E) Compliance with any building codes, safety requirements, or governmental laws, regulations, codes or ordinances.
- (F) Performance or quality of work of any contractor.

By acceptance of a deed to any Lot, the Owner acknowledges the foregoing and waives and releases the Developer, the Association, the Board, the Architectural Control Committee and all officers, members, employees and agents thereof from any and all liability arising from items for which any of such Persons have not expressly assumed responsibility.

**Section 6.10. Meetings.**

(a) Scheduled Meetings; Agenda. The Architectural Control Committee shall meet subject to the level of design review required. Owners or their representatives may schedule items on the meeting agenda of the Architectural Control Committee by notifying the chairman or secretary of the committee by telephone or in writing. The applicants will be advised of the scheduled meeting time. The agenda for a meeting shall be closed at 5:00 p. m. two (2) Business Days prior to the scheduled meeting.

(b) Special Meetings. The chairman of the Architectural Control Committee, acting alone, or any two (2) members of the committee acting jointly, may call a special meeting of the Architectural Control Committee by giving telephonic notice of such meeting to its members on or before twenty four hours of such meeting time. The Architectural Control Committee may hear any item that may have otherwise been heard by the committee at a regularly scheduled meeting. The voting requirements of Section 6.05 above shall apply.

**Section 6.11. Reasonable Fee.** The Board may establish reasonable fees that the Architectural Control Committee may charge an Owner for its services in reviewing that Owner's application or request for an Approval. The Architectural Control Committee may require any such fees to be paid in advance of its review of any submission.

**ARTICLE VII**

**MAINTENANCE**

**Section 7.01. 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 Lot, 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:

- (a) Prompt removal of all litter, trash, refuse and waste.

- (b) Lawn mowing.
- (c) Tree and shrub pruning.
- (d) Watering.
- (e) Keeping exterior lighting and mechanical facilities in working order.
- (f) Keeping lawn and garden areas alive, free of weeds and attractive.
- (g) Keeping parking areas, driveways and roads in good repair.
- (h) Complying with all governmental health and police requirements.
- (i) Repainting of improvements.
- (j) Repair of exterior damages to improvements.

**Section 7.02. Enforcement.** If, in the opinion of the Board, any Owner or occupant of a Lot has failed in any of the foregoing duties or responsibilities, then the Board may provide written notice of that failure, giving the Owner or occupant ten (10) days from receipt to perform the care and maintenance required. Should any person fail to fulfill this duty and responsibility within the ten (10) day period, then the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform needed care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and occupants (including lessees) of any Lot on which work is performed shall jointly and severally be liable for the cost of the work and shall promptly reimburse the Association for all costs. If the Association has not been reimbursed within thirty (30) days after invoicing, the indebtedness shall be a debt of all of the Owners and occupants jointly and severally and shall constitute a lien against the Lot. This lien shall have the same attributes as the lien for assessments and special assessments set forth in Article V, and the Association shall have identical powers and rights in all respects, including, but not limited to, the right of foreclosure.

## ARTICLE VIII

### **COMMON SCHEME RESTRICTIONS**

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

- (a) No garbage, refuse, rubbish, tree limbs, leaves or cuttings shall be deposited on any street, road or Common Properties or on any Lot unless placed in a container suitable for garbage pickup.
- (b) 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



or construction not requiring Architectural Control Committee approval. Construction shall be promptly commenced and diligently prosecuted.

(c) No service yards, woodpiles or storage areas shall be so located as to be visible from a street, road, or Common Property.

(d) Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the adjacent property.

(e) No livestock, animals or poultry shall be kept on any Lot or Common Property except a reasonable number of ordinary household pets belonging to the household.

(f) No signs, plaques or communication of any description shall be placed on the exterior of any Lot or Common Property unless approved by the Architectural Control Committee. Provisions concerning the use of signs advertising a Lot for sale and political campaign signs shall be set forth in the Design Guidelines. The Design Guidelines may provide that "For Sale" and political campaign signs shall be deemed approved unless affirmative action is otherwise taken by the Architectural Control Committee.

(g) No nuisances shall be allowed in Evening Star nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with their right of quiet enjoyment.

(h) No immoral, improper, offensive or unlawful use shall be made of Evening Star or any part thereof, and all valid laws, zoning, bylaws and regulations of all governmental bodies having jurisdiction shall be observed.

(i) No portion of a Lot (other than the entire Lot) may be rented, and no transient may be accommodated therein unless by consent of the Owner.

(j) No used or previously erected or temporary house, structure, house trailer or nonpermanent outbuilding shall ever be placed, erected or allowed to remain on any Lot or Common Property.

(k) No junk vehicle, commercial vehicle, trailer, 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 any improvements located upon the Property and except for such equipment and/or machinery as the Association may require in connection with the maintenance and operation of the Common Properties) shall be 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 within an enclosed storage room or garage, or otherwise properly screened from view.

(l) All buildings built on any Lot shall comply with the setback restrictions imposed upon the Lot on either a recorded plat in the Circuit Clerk's office of Benton

County, Arkansas or in the deed to each purchaser of a Lot. Bills of assurance platting any Property may provide that variances from such setback restrictions may be granted.

(m) Easements for access to, installation and maintenance of utilities and drainage of facilities and for pedestrian traffic may be reserved in rights of way of drives and roads and in such other locations as shown on a recorded plat of the Property.

(n) Each Owner hereby grants a right of access to its Lot to the Association and/or any other person authorized by the Board for the purpose of making inspections or for the purpose of correcting any conditions originating in its Lot and threatening another Lot or any Common Property, or for the purpose 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 shall 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.

## ARTICLE IX

### COMMON PROPERTIES

**Section 9.01. Easements of Enjoyment.** Subject to the provisions of Section 9.04 below, every Member shall have a right and easement of enjoyment in and to the Common Properties. This easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot.

**Section 9.02. Title to Common Properties.** Developer agrees to convey title to platted Common Properties, if any, to the Association no later than one (1) year after the expiration of the Developer Control Period. Any conveyance of Common Properties shall be by special warranty deed and shall be free and clear of all liens securing any indebtedness or obligation of the Developer (other than the current year's ad valorem real estate taxes that are due but not payable), but may be subject to any rights of access or easements retained by the Developer for utilities, maintenance or similar purposes, the rights of Developer under Section 9.03 below, and any other encumbrance that does not materially hinder the intended use of the particular Common Property.

**Section 9.03. Operation and Maintenance.**

(a) After conveyance thereof by Developer, the Association shall maintain and operate the Common Properties at its sole cost and expense.

(b) For a period of five (5) years after Developer conveys a portion of a Common Property to the Association, the Developer shall have the right, but not the obligation, to enter upon such Common Property and perform such repairs, maintenance, reconstruction or replacement of the improvements located on such Common Property so as to keep the improvements, in Developer's reasonable discretion, in good condition and repair. Developer shall give the Association not less than ten (10) days written notice of its intent to enter upon the Common Property to perform such work. The Association shall pay Developer within ten (10) days after written demand therefor all cost and expense incurred by the Developer in performing such work. All amounts due from the Association shall accrue interest from the date of demand until payment at the highest rate allowed by law. The Association shall be responsible for all



attorneys' fees and expenses, including litigation expenses, incurred by Developer in collecting amounts due from the Association and the enforcement of Developer's rights under this section.

**Section 9.04. Extent of Easements.** The Owners' rights and easements of enjoyment created shall be subject to the following:

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

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

(c) The right of the Association to take reasonably necessary steps to protect all or any part of the Common Property against foreclosure;

(d) The right of the Association to suspend the easements of enjoyment of any Member of the Association during the time any assessment levied under Article V or any other cost or expense owing to the Association remains unpaid, and for any period not to exceed 30 days for any infraction of its published rules and regulations; and

(e) to the Articles of Incorporation and the By-Laws of the Association.

**Section 9.05. Streets and Roads.** The streets and roads (other than certain private alleys) are public, and are subject to rules and regulations determined from time to time by the City of Rogers and the State of Arkansas.

## **ARTICLE X**

### **AMENDMENT OF DECLARATION**

**Section 10.01. Amendment Before Close of First Sale.** Prior to the delivery of the first deed to an unrelated Person, this Declaration, any recorded plat(s) of the Property, and any amendment(s) or supplement(s) to either may be amended in any respect or revoked by the execution and recordation in the real estate records of Benton County, Arkansas by the Developer, and any mortgagee of record, of an instrument amending, supplementing or revoking the Declaration, any recorded plat(s) or any amendment(s) or supplement(s) to either.

**Section 10.02. Amendment After Close of First Sale.**

(a) After Developer's delivery of the first deed to a Lot to an unrelated Person, this Declaration, any recorded plat of the Property, and any amendment or supplement to either, or any portion of either, may be amended, supplemented, or revoked in any respect by the Developer without the vote or written consent of the Owners or the Association if such amendment, supplement, or revocation results from the exercise by Developer of any of its reserved rights set out in Article III of this Declaration.

(b) Any amendment, supplement, or revocation of this Declaration, any recorded plat of the Property, or any amendment or supplement to either for any purpose not related

to matters governed by the rights reserved exclusively to the Developer in Article III of this Declaration, and except as otherwise provided in this Declaration or the laws of the State of Arkansas, shall require an instrument signed by owners of more than seventy-five percent (75%) of the Lots in Evening Star, including votes of the Developer for Lots owned by it, provided that any such amendment or supplement shall in no way modify or eliminate the reserved rights of the Developer set out in Article II and Article III.

(c) Any amendment, supplement, or revocation of this Declaration, any recorded plat of the Property, or any amendment or supplement to either, whether made by Developer pursuant to its reserved rights set out in Article II and Article III, or by the Owners as provided in the preceding paragraph, shall not be effective until such amendment, supplement, or revocation is duly recorded.

**Section 10.03.** Reserved Rights of Developer Not Subject to Amendment. The terms of this section and the reserved rights of the Developer, including but not limited to the right to amend this Declaration, set out in Article III hereof shall not be altered, impaired, prejudiced, or eliminated by the Owners pursuant to Section 10.02(b) above by an amendment or supplement to this Declaration, any recorded plat of the Property, or any amendment or supplement to either, unless such amendment or supplement is executed by Developer.

## ARTICLE XI

### **GENERAL PROVISIONS**

**Section 11.01.** Duration. The covenants and restrictions of this Declaration shall run with and bind the land, shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) 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-seven percent (67%) of the Lots has been recorded prior to the commencement of any ten (10) year period.

**Section 11.02.** 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 of a Lot on the records of the Association at the time of mailing. Each purchaser of a Lot shall forward a copy of its recorded warranty deed to the Association or its officers.

**Section 11.03.** Enforcement. Enforcement of this Declaration 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 the Association or any Owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter. The right to obtain an injunction or other equitable remedy shall be available notwithstanding the availability of an adequate remedy at law. The Owner or Owners of any Lot against whom an



enforcement action in commenced waives the right to assert the availability of an adequate remedy at law as a defense to an injunction or other equitable remedy.

**Section 11.04. 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 11.05. 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 Association 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 11.06. Dissolution.** The Association may be dissolved with consent given in writing and signed by not less than three-fourths of the Members. Upon dissolution of the Association other than incident to a merger or consolidation, the assets of the Association shall be conveyed and granted and assigned to any nonprofit corporation, association trust or other organization to be devoted to same or similar purposes.

**Section 11.07. Construction of Instrument.** This Declaration shall not be construed more strictly against a party merely by virtue of the fact that it may have been prepared by counsel for a party. The headings of various Sections in this Declaration and all exhibits and attachments hereto are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof. Section and Exhibit references are to Sections of and Exhibits to this Declaration unless otherwise specified. All references to instruments, documents, contracts and agreements are references to such instruments, documents, contracts and agreements as the same may be amended, supplemented and otherwise modified from time to time, unless otherwise specified. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Declaration and its exhibits shall, unless otherwise specifically stated, refer to this instrument as a whole and not to any particular provision of this Declaration.





JOINDER BY MORTGAGEE

The undersigned, as holder of that certain Mortgage ("Mortgage") which encumbers certain portions of the lands described in this instrument, does hereby consent to the filing of the Declaration of Covenants and Restrictions of Evening Star POA, Inc., and subordinates the lien of the Mortgage solely to the covenants, restrictions and terms hereof.

IN WITNESS WHEREOF, this instrument is executed as of the day and year first above stated.

**CENTENNIAL BANK**

By: [Signature]

Title: LOAN OFFICER

STATE OF ARKANSAS )

) ss. **ACKNOWLEDGMENT**

COUNTY OF Washington )

On this 11 day of October, 2023, before me, a Notary Public (or before any officer within this State or without the State now qualified under existing law to take acknowledgments), duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Chris Decker, Loan officer, being the person authorized by **CENTENNIAL BANK** (the "Bank") to execute such instrument, stating his capacity in that behalf, to me personally well known (or satisfactorily proven to be such person), who stated that he was the Loan officer of the Bank, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of the Bank, and further stated and acknowledged that he 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 official seal this 11 day of October, 2023.

My Commission Expires:

[Signature]  
Notary Public

08-02-2032



**EXHIBIT A**

**Legal Description**



**EXHIBIT A**

**Legal Description**

PART OF THE SE 1/4 OF THE SE 1/4 OF SECTION 23, THE NE 1/4 OF THE NE 1/4 AND THE N 1/2 OF THE SE 1/4 OF THE NE 1/4 OF SECTION 26, ALL IN TOWNSHIP 19 NORTH, RANGE 31 WEST, BENTON COUNTY, ARKANSAS. MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 26, SAID POINT BEING A 4"X6" STONE;

THENCE ALONG THE EAST LINE OF SAID SECTION 26 S02°27'14"W 1992.56 FEET TO THE SOUTHEAST CORNER OF THE N 1/2 OF THE SE 1/4 OF THE NE 1/4 OF SAID SECTION 26;

THENCE N87°07'57"W 663.45 FEET TO A 5/8" IRON PIN;

THENCE N87°09'18"W 662.50 FEET TO THE SOUTHWEST CORNER OF THE N 1/2 OF THE SE 1/4 OF THE NE 1/4 OF SAID SECTION 26, SAID POINT BEING A 5/8" IRON PIN;

THENCE N02°28'43"E 1985.06 FEET TO THE SOUTHWEST CORNER OF THE SE 1/4 OF THE SE 1/4 OF SECTION 23;

THENCE ALONG THE WEST LINE THEREOF N02°32'34"E 655.31 FEET TO THE SOUTHWEST CORNER OF THE NW 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 23;

THENCE ALONG THE SOUTH LINE THEREOF S87°27'08"E 662.47 FEET TO THE SOUTHEAST CORNER OF THE NW 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 23;

THENCE ALONG THE EAST LINE THEREOF N02°32'16"E 655.13 FEET TO THE NORTH LINE OF THE SE 1/4 OF THE SE 1/4 OF SECTION 23;

THENCE ALONG SAID NORTH LINE S87°26'12"E 662.43 FEET TO THE NORTHEAST CORNER OF THE SE 1/4 OF THE SE 1/4 OF SECTION 23;

THENCE ALONG THE EAST LINE THEREOF S02°31'59"W 1309.90 FEET TO THE POINT OF BEGINNING, CONTAINING 90.40 ACRES, MORE OR LESS AND SUBJECT TO THE RIGHT-OF-WAY OF GASTON ROAD ALONG THE WEST AND ANY AND ALL EASEMENTS OF RECORD OR FACT.

**EXHIBIT B**

**Association Articles of Incorporation**



# STATE OF ARKANSAS



**John Thurston**

ARKANSAS SECRETARY OF STATE

To All to Whom These Presents Shall Come, Greetings:

I, John Thurston, Arkansas Secretary of State of Arkansas, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of

## **Articles of Incorporation for Dom. Non-Profit Corp**

of

## **EVENING STAR POA, INC.**

filed in this office  
June 30, 2023

**In Testimony Whereof**, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 30th day of June 2023.

  
John Thurston  
Secretary of State

Online Certificate Authorization Code: 66290264aeb6d387e75  
To verify the Authorization Code, visit [sos.arkansas.gov](http://sos.arkansas.gov)





# Articles of Incorporation for Dom. Non-Profit Corp - 501(c)(3)

## Filing Information

**Filing Act:** 1147 of 1993

**Entity Name:** EVENING STAR POA, INC.

**File Date:** 2023-06-30 08:21:00

**Effective Date:** 2023-06-30

**Filing Signature:** JASON N. BRAMLETT

**Organization Type:** Mutual - Benefit Corporation

**Asset Distribution:** Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations as said Court shall determine which are organized and operated exclusively for such purposes.

**Power:** No part of the net earnings of the corporation shall inure to the benefit, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in previous articles hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

**Has Members:** Yes



**Primary Purpose:**

The purpose for which this corporation is organized:

1. The primary purpose of the Corporation shall be: **The purpose for which this corporation is organized: 1. The primary purpose of the Corporation shall be: This corporation is organized exclusively for the purpose of carrying on the exempt functions of a homeowners association as defined in Section 528 of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue law). The specific purposes for which the corporation is organized are: (a) To provide for the acquisition, construction, management, maintenance, and care of association property consisting of property held by the corporation, property commonly held by the members of the corporation, and property within the Association privately held by members of the corporation, as further defined in Section 528 of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue law). (b) To receive and maintain fund or funds of real or personal property, or both, and, subject to the restrictions hereinafter set forth, to use and apply the whole, or any part, of the income therefrom and the principal thereof exclusively for the purpose of carrying on the exempt functions of a homeowners association as defined in Section 528 of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue law). (c) To have and exercise all powers, privileges and rights conferred upon corporations by the laws of the State of Arkansas and all powers and rights incidental to carrying out the purposes for which this corporation is formed, except such as are inconsistent with the express provisions of the Act under which this corporation is incorporated. (d) The foregoing shall be construed both as objects and powers, and the enumeration thereof shall not be held to limit or restrict in any manner the general powers conferred upon this corporation by the laws of the State of Arkansas, all of which are hereby expressly claimed. 2. To conduct any business enterprise not contrary to law. 3. To exercise all the powers enumerated in Section 4-27-302 of the Arkansas Business Corporation Act.**
2. To conduct any business enterprise not contrary to law.
3. To exercise all the powers enumerated in Section 4-27-302 of the Arkansas Business Corporation Act.

**Registered Agent:**

**First Name:** JASON

**Middle Name:** N.

**Last Name:** BRAMLETT

**Address 1:** 3350 S. PINNACLE HILLS PKWY., SUITE 301

**City:** ROGERS

**State:** AR

**Zip:** 72758

**Country:** USA

**Officers**

**First Name:** JASON

**Middle Name:** N.

**Last Name:** BRAMLETT

**Title:** Incorporator/Organizer

**Address 1:** 3350 S. PINNACLE HILLS PKWY., SUITE 301

**City:** ROGERS

**State:** AR

**Zip:** 72758

**Country:** USA

**EXHIBIT C**

**Association By-laws**  
(attached hereto)



**BYLAWS OF  
EVENING STAR POA, INC.,  
AN ARKANSAS NONPROFIT CORPORATION**

**ARTICLE I**

**NAME AND LOCATION**

The name of the Corporation is EVENING STAR POA, INC., hereinafter referred to as the "*Association*". The principal office of the Association shall be located at 2826 East Joyce Blvd., Suite #1, Fayetteville, Arkansas 72703, but meetings of Members may be held at such places within Benton or Washington County, Arkansas, as may be designated by the Board of Directors. Meetings of the Board of Directors may be held at such places in the United States as may be designated by the Board of Directors.

The Association may have such other offices, either within or without the State of Arkansas, as the Board of Directors may designate or as the affairs of the Association may require from time to time by the Board of Directors.

**ARTICLE II**

**DEFINITIONS**

The following words, when used in these Bylaws, shall have the following meanings:

*"Association"* shall mean and refer to EVENING STAR POA, INC., an Arkansas nonprofit corporation, its successors and assigns.

*"Bill of Assurance"* shall mean and refer to any bill of assurance applicable to and encumbering a Lot.

*"Common Property"* shall mean all real and personal property owned, if any, operated or controlled by the Association for the common use and enjoyment of all Owners.

*"Declaration"* shall mean and refer to the Declaration of Covenants and Restrictions of Evening Star applicable to the Properties recorded in the office of the Recorder of Benton County, Arkansas.

*"Developer"* shall mean and refer to Buffington Weir, LLC, an Arkansas limited liability company, its successors and assigns.

*"Lot"* shall mean and refer to any plot of land upon which a single housing unit, together with appurtenant structures as allowed by the Declaration and the applicable Bill of Assurance, is located and shown by number upon any recorded subdivision map of the Properties with the exception of any Common Property.

*"Member"* shall mean and refer to those persons entitled to membership as provided in the Declaration.

*"Owner"* shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot that is a part of the Properties, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

*"Properties"* shall mean and refer to the "Property" as defined and described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

### ARTICLE III

#### MEETING OF MEMBERS

**Section 3.1 Annual Meetings.** The first annual meeting of the Members shall be held on a day during the month of April, 2023 chosen by the Board of Directors, and each subsequent regular annual meeting of the Members shall be held on a day chosen by the Board of Directors during the same month of each year thereafter, at the hour of 10:00 a.m. If the day for the annual



meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. The Board of Directors shall cause written notice of the date of the annual meeting to be given in the manner set forth in Section 3.4 hereof.

**Section 3.2 Special Meetings.** Special meetings of the Members may be called at any time by the president or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth of all of the votes.

**Section 3.3 Place of Meeting.** The Board of Directors may designate any place within Benton County or Washington County in the State of Arkansas as the place of meeting for annual meetings or special meetings called by the Board of Directors. A waiver of notice signed by all Members entitled to vote at a meeting may designate any place, either within or without the State of Arkansas, as the place for the holding of such meeting. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be the registered office of the Association in the State of Arkansas.

**Section 3.4 Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, either by hand delivery or by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 3.5 Quorum.** The presence at the meeting, either in person or by proxy, of twenty percent of the Members shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, such quorum shall not

be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. If a quorum is present, an affirmative vote by a majority of votes entitled to be cast at the meeting is an act of the Members except as otherwise specifically provided in the Articles of Incorporation, the Declaration, or these Bylaws.

**Section 3.6 Membership Voting.** The Association shall have one (1) class of voting membership and every owner of a Lot shall be a Member with each Lot being entitled to one (1) vote, regardless of whether or not ownership of the Lot may be divided. If a Lot is owned by more than one (1) person, the owners thereof shall designate one of themselves as the "*Voting Member*" for that interest. Only the Voting Member shall be entitled to the vote attributed to a Lot on Association issues submitted to a vote of the Members. The Board shall have the right to disqualify the vote of a Member upon receipt of evidence that the Voting Member apparently acting for the Member lacked authority or was not properly designated by the multiple Persons owning a Lot. The owner of any portion of a subdivided Lot shall be entitled, in addition to his/her vote arising from the whole Lot owned by him or her, to a fractional vote determined pro rata based on the proportion of square feet of land in such subdivided portion to the total number of square feet in the originally platted Lot prior to being subdivided.

**Section 3.7 Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. The maximum proxy appointment is for three (3) years. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.



## ARTICLE IV

### BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

**Section 4.1 Number; Appointment by Developer.** The affairs of this Association shall be managed by a Board of three (3) directors, who need not be Members of the Association. Notwithstanding anything herein to the contrary, the original directors of the Board shall be appointed by Developer as set forth in the Articles of Incorporation and the Declaration.

**Section 4.2 Term of Office.** At a meeting to be held in anticipation of the expiration of the Developer Control Period (as defined in the Declaration), the Members shall elect three (3) directors for terms of one (1), two (2) and three (3) years each, and at each annual meeting thereafter the Members shall elect one (1) director for a term of three (3) years. The length of the initial terms to be served by the elected directors shall be determined by lot.

**Section 4.3 Removal.** Any director may be removed from the Board, with or without cause, by a two-thirds (2/3) majority vote of all persons entitled to vote at a meeting of the Members at which a quorum is present. In the event of death, resignation or removal of a director, a successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of the predecessor.

**Section 4.4 Compensation.** No director shall receive compensation from the Association for any service he or she may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

**Section 4.5 Action Taken Without a Meeting.** The directors shall have the right to take any action in the absence of a meeting that they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

**Section 5.1 Nomination.** After expiration of the Developer Control Period (as defined in the Declaration), nomination for election to the Board of Directors may be made either by a Nominating Committee, or nominations may be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or nonmembers.

**Section 5.2 Election.** Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI

### MEETINGS OF DIRECTORS

**Section 6.1 Regular Meetings.** Regular meetings of the Board of Directors shall be held as determined by the Board, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day that is not a legal holiday.



**Section 6.2 Special Meetings.** Special Meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days' notice to each director.

**Section 6.3 Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Except as set forth in the Declaration of the applicable Bill of Assurance, every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

**Section 7.1 Powers.** The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Property and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the common facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

**Section 7.2 Duties.** It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth of the Members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(i) fix the amount of the annual assessment against each Lot;

(ii) send written notice of each assessment to every Owner subject thereto; and

(iii) foreclose the lien against any Lot for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a statement or certificate setting forth whether or not any assessment, and such other matters as set forth in the Declaration, has been paid. A reasonable charge may be



made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment:

(e) Procure and maintain adequate liability and hazard insurance on property owned or controlled by the Association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) Cause the Common Property to be maintained.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

**Section 8.1 Enumeration of Officers.** The officers of this Association shall be a president, a vice president, a secretary and a treasurer, and such other officers as the Board may from time to time by resolution create.

**Section 8.2 Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

**Section 8.3 Term.** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless such officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

**Section 8.4 Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

**Section 8.5 Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of

such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 8.6 Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

**Section 8.7 Multiple Offices.** The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

**Section 8.8 Duties.** The duties of the officers are as follows:

(a) **President.** The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) **Vice President.** The vice president shall act in the place and stead of the president in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

(c) **Secretary.** The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep or oversee the keeping of appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.



(d) *Treasurer.* The treasurer, either individually or by oversight of an agent of the Board, shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented as required by the Declaration, and deliver a copy of each to the Members as required by the Declaration.

The depositing and disbursement of funds, issuance of checks, the recording and publication of minutes of meetings, financial reporting and budget preparation may be delegated by the Board to a manager or other independent contractor or employee as deemed appropriate.

## ARTICLE IX

### COMMITTEES

**Section 9.1 Committees.** The Association shall acknowledge a Design Review Committee, as provided in the Declaration and to be designated by the Developer, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose. The Board may appoint its members to serve on any committee.

## ARTICLE X

### BOOKS AND RECORDS

**Section 10.1 Inspection.** The books, records and papers of the Association shall be subject to inspection by any Member subject to conditions set forth in the Declaration. The Declaration, the Articles of Incorporation, the Bylaws of the Association, an alphabetical list of Members entitled to notice, accounting records and meeting minutes shall be available for inspection by any

Member at the principal office of the Association, where copies may be purchased at reasonable cost.

## **ARTICLE XI**

### **AMENDMENTS**

**Section 11.1.** During the Developer Control Period (as defined in the Declaration), the Developer may amend these Bylaws at any time for any purpose. After expiration of the Developer Control Period, these Bylaws may be amended, at a regular or special meeting of the Members, by a vote of the lesser of (a) a majority of the Members, or (b) two-thirds (2/3) of the votes cast where a quorum is present. These Bylaws may not be amended in a manner that would make them inconsistent with the Declaration unless and until the Declaration has been amended.

**Section 11.2.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## **ARTICLE XII**

### **MISCELLANEOUS**

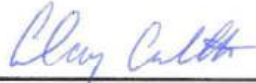
The fiscal year of the Association shall begin on the first (1<sup>st</sup>) day of January and end on December 31 of every year, except that the first fiscal year shall begin on the date of incorporation. In the event of any inconsistency in the provisions of these Bylaws and the Declaration, the terms of the Declaration shall prevail.



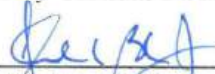
IN WITNESS WHEREOF, we, being all of the directors of the EVENING STAR POA,  
INC., have hereunto set our hands as of January 7, 2022.



Mike Lamberth, Director



Clay Carlton, Director



Ted Brock, Director

User Name: CLAUDIA  
CERTIFICATE OF RECORD  
STATE OF ARKANSAS, COUNTY OF BENTON  
I hereby certify that this instrument was  
Filed and Recorded in the Official Records  
L202353387 10/13/2023 10:57:33 AM  
Brenda DeShields, Circuit Clerk  
BENTON CO, AR FEE \$225.00