

BILL OF ASSURANCE OF  
FIANNA ESTATES, PHASE III ADDITION  
TO THE CITY OF FORT SMITH, ARKANSAS,  
LOTS 1361 THROUGH 1367, 1403 THROUGH 1406,  
1408 THROUGH 1412, 1414 through 1438, 1626 THROUGH  
1654 AND 1656 THROUGH 1689

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CIV. CLERK S.E.B. CO.

KNOW ALL MEN BY THESE PRESENTS:

That the following declaration as to limitations, restrictions and uses are to apply to those lots numbered as set forth on the plat of Fianna Estates, Phase III which plat is being filed contemporaneously with this Bill of Assurance, and which plat depicts Lots 1361 through 1367, 1403 through 1406, 1408 through 1412, 1414 through 1438, 1626 through 1654, and 1656 through 1689 of Fianna Estates, Phase III Addition to the City of Fort Smith, Arkansas.

The undersigned, FIANNA HILLS DEVELOPMENT CORPORATION, an Arkansas corporation, hereinafter sometimes referred to as the "developer" or "owner", is the owner and developer of the property situated in the Fort Smith District of Sebastian County, Arkansas, and described above, said property being described in metes and bounds as follows, to-wit:

See Exhibit "A" attached hereto and incorporated herein;

Said property to be hereinafter known as Fianna Estates, Phase III Addition to the City of Fort Smith, Lots 1361 through 1367, 1403 through 1406, 1408 through 1412, 1414 through 1438, 1626 through 1654, and 1656 through 1689.

The said FIANNA HILLS DEVELOPMENT CORPORATION, as owner and developer, does hereby make the following declarations as to limitations, restrictions and uses to which said property may be put, hereby specifying that said declaration shall establish covenants running with the land for the period of time hereinafter set forth, as provided by law, and shall be binding upon all purchasers and owners of Lots 1361 through 1367, 1403 through 1406, 1408 through 1412, 1414 through 1438, 1626 through 1654, and 1656 through 1689 in Fianna Estates, Phase III Addition to the City of Fort Smith, Arkansas, and upon such owners' heirs, personal representatives, successors and assigns, and all persons claiming under them; and that

said declarations to the extent applicable are for the benefit of and are limitations upon all future owners of said lots in said addition; that this Bill of Assurance has been designated as such in order to provide for an orderly development of said addition and for the purpose of keeping said addition desirable, uniform and suitable for the architectural design and uses herein specified.

This Bill of Assurance shall be binding upon all lot owners and all persons claiming under them until January 1, 2020, at which time said covenants shall be automatically extended for an additional ten (10) years, unless by a vote of the majority of the then owners of all those lots and subject to these covenants it is agreed to change said covenants in whole or in part.

If the persons owning lots in Fianna Estates, Phase III, or their assigns, shall violate or attempt to violate any of the covenants herein contained, it shall be lawful for any other person or persons owning real property situated in said addition, or the developer, FIANNA HILLS DEVELOPMENT CORPORATION, its successors and assigns, to prosecute any proceedings at law or in equity against the parties or person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or recover damages or other dues for such violations. Any rights reserved hereunder to the developer may also be exercised by any other owner of the aforementioned lots situated in said addition, either singularly or collectively. Invalidation of any one of these covenants by a court order or otherwise shall in no way affect any of the other provisions which shall remain in full force and effect.

1. The undersigned does hereby dedicate for public use all of the streets as shown on the plat filed concurrently herewith as part of Fianna Estates, Phase III and does hereby guarantee the title to all of the land covered by said streets. The developer further dedicates to the public, for public use forever, the easements and rights of way as designated on the plat of Fianna Estates, Phase III Addition for the several purposes of constructing, maintaining, operating, repairing and replacing any and all public utilities including the storm and sanitary sewer, if any, telephone lines, electric power lines, transformers, gas lines, water lines and television cable lines, together with all fittings and equipment for each of such facilities and any other appurtenances thereto, with the right of ingress and egress upon said easements and rights of way for the uses and purposes aforesaid, together with similar rights on each and all of the streets shown on any such plat; provided, however, that the undersigned developer hereby reserves the right to construct, maintain, operate, lay and relay water lines and

sewer lines together with the right of ingress and egress for such construction, maintenance, operation, laying and relaying over, across and along all the public streets, alleys and easements shown on said plat, and/or sewer services to the area included in said plat and to any other areas. Said utility easements are for the use and benefit of the developer and its designees as well as the public utilities, their designees, agents and employees. The rights and privileges and authority herein reserved includes the right to cut down and keep trimmed all trees, hedges and shrubs that may, in the judgment of the developer, its designees or of said public utilities, or its designees, interfere with or endanger such utilities. Nothing contained in this article shall be interpreted as requiring the developer to construct or maintain sewer lines on any portion of Fianna Estates, Phase III Addition.

2. All supply of electric service shall be located underground in the easement ways reserved for general utility services, as shown on the plat. Service pedestals and transformers, as sources of supply at secondary voltages, may also be located in said easement ways. Underground service cables to all houses which may be located on a lot may run from the nearest service pedestal or transformer to the point of use as determined by the location and construction of such house upon said lot; provided, that upon the installation of such a service cable to a particular house, the supplier of electric service shall thereafter be deemed to have a definite, permanent, effective and exclusive right of way easement on said lot, covering a five foot strip extending 2.5 feet on each side of such service cable, extending from the service pedestal or transformer to the service entrance of said house. The supplier of electric service, through its proper agents and employees, shall at all times have the right of access to all such easement ways shown on said plat, or provided for in this declaration for the purpose of installing, maintaining, removing or replacing any portion of said underground electric facilities so installed by it. This right shall apply to all suppliers of public utilities and quasi-public utilities, as for example, television cable companies. The owner of each lot shall be responsible for the protection of the underground facilities located on his property and shall prevent the alteration of grade or any construction activity which may interfere with said electric facilities. Repairs or costs of relocation required by the violation of this covenant shall be paid for by the owner of the lot. With respect to gas meters and gas lines to the structures to be built upon the lots covered by these restrictions, all yard lines will be plastic pipe of size and material approved by the gas company, and approved tracer wire will be installed in the trench with the plastic pipe and attached to the meter rise per the gas company's

specifications. Meter set assemblies will be installed by a plumber and shall be installed within five feet of the front corner of the structure. No yard line will be installed under concrete or asphalt unless installed in a casing approved by the gas company. The casing will have to be sealed with jute or similar materials and properly vented at one end, at least six inches above the ground. The yard line and inlet meter riser will be tested at not less than 90 PSIG air or nitrogen for 24 hours, approval and acceptance of same is to be by gas company personnel. Further, in connection with the gas line, the meter setting shall not be isolated from the front property line by a fence requiring entrance by a gate. Shrubbery will be limited so as not to interfere with the meter reading and normal maintenance of said meter.

3. In order to keep beautiful and pleasing the overall visual effect of the development, all plans and specifications for proposed home construction must be submitted to an Architectural Coordination Committee for its approval prior to the start of construction.

For a period of three years following the recording of this Bill of Assurance, the developer will be entitled to appoint the members of the Architectural Coordination Committee for Fianna Estates, Phase III Addition. At the expiration of said three year period the majority of the Committee, which will be composed of five members, will be elected by all of the individual lot owners in Fianna Estates, Phase III Addition although the developer will be entitled to appoint one member of said Committee. For the purpose of voting on the members of said Committee, each owner shall have one vote for each lot owned and the members of the Committee will be the developer's representative and the four persons amongst those nominated receiving the greatest number of votes. Any owner may nominate a person for membership on said Committee. The Architectural Coordination Committee for Fianna Estates, Phase III may be the same Architectural Coordination Committee that oversees the development of the remainder of Fianna Hills Addition. Furthermore, in the event the lot owners in Fianna Estates, Phase III fail to elect a separate committee at the end of the above referenced three year period, then the Architectural Coordination Committee for the remainder of the development shall be deemed to be the Architectural Coordination Committee for Fianna Estates, Phase III until a new committee is elected by the lot owners in Fianna Estates, Phase III to take their place.

Said committee will not have such wide discretion as to act arbitrarily or capriciously or unreasonably, but its actions will be limited to the approval or disapproval of plans, and the consideration of such other matters as may be directed to it for consideration pursuant to this Bill of

Assurance. Plans submitted must meet the requirements of this Bill of Assurance and be in architectural conformity with existing construction. If the plans submitted are in conformity with the architecture of the surrounding area and are in compliance with city zoning ordinances, subdivision regulations and the provisions of this Bill of Assurance the Architectural Coordination Committee must approve of such plans. This provision which requires such approval shall apply to any instance in which submission of plans and specifications to the Architectural Coordination Committee for approval is required.

Architectural conformity shall include conformity in landscaping and other external appearances. The committee will adopt By-Laws explaining the mechanics of its operation and providing for a maximum time within which plans must be acted upon, and if not acted on in that time, the same will be considered as automatically approved. In order to preserve the natural beauty of the land, approval must be given by the committee before trees, five inches or more in diameter, and located outside the building line, are removed.

4. The lots in this addition shall be used for single family residences only. The single family residences to be constructed on the following lots in Fianna Estates, Phase III shall have a heated and cooled living area of a minimum of 2100 square feet: Lots 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1403, 1404, 1405, 1406, 1408, 1409, 1410, 1411, 1412, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654.

The single family residences to be constructed on the following lots in Fianna Estates, Phase III shall have a heated and cooled living space area of a minimum of 2300 square feet: Lots 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689.

5. All single family residences must have either a private garage or a carport for not less than two cars. Construction of all carports must be in keeping with the design of the remainder of the dwelling. Any detached structure to be built on a lot, such as a covered entertainment area, shall conform to the basic styling of the dwelling thereon, and the plans for such structures must be submitted to the Architectural Coordination Committee for approval. Carports will not be permitted unless they are

placed where they will not be between the residence and any street adjoining the property or unless they are in keeping with the architectural design of the residence and are approved by the Architectural Coordination Committee.

6. No outbuilding or tent or shack or garage or barn or any vehicle capable of use as living quarters, either permanently or temporarily, may be erected on or moved on to any lot in the addition by the owner, except construction trailers during the period of construction. No structure of any temporary character is permitted on any lot. No residence previously used shall be moved onto any lot in this addition.

7. No building or part thereof, except open porches and terraces, shall be constructed or maintained on any lot nearer to the front property line than the building line shown on any plat recorded in connection with this addition.

8. All exposed foundations shall be of brick or stone. No concrete block foundation will be exposed unless approved by the Architectural Coordination Committee. All fences must be of ornamental design unless there is an exception to this provision given by the Architectural Coordination Committee. Also, unless there is an exception given to this provision by the Architectural Coordination Committee, no fences consisting of wire or metal posts will be permitted. The design and construction of all swimming pools must be approved by the Architectural Coordination Committee.

9. No obnoxious or offensive trade or activity shall be carried on or upon any lot subject to these restrictions, nor shall anything be done thereon that may be or may become an annoyance or nuisance to the neighborhood. No future mineral development of any kind shall be permitted affecting the surface of the lots covered by these restrictions. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.

10. No sign of any kind shall be displayed to the public view on any lot except one professional sign advertising the property for sale or rent, or signs used by a builder or agent to advertise the property during the construction and sale.

11. No lot owner shall be allowed to conduct any business or commercial enterprise upon his lot unless a home occupation request with the details of such business is submitted to the Architectural Coordination Committee and approved by said Committee. The person making application to the Architectural Coordination Committee for approval of such business enterprise must furnish proof and assurance that

there will be no external appearances of any such business on the lot and there will be no significant increase in traffic to and from the lot. The Architectural Coordination Committee shall be required to reject the request for approval of such a "home occupation" if these assurances are not furnished. The Architectural Coordination Commission may revoke any such approval if it is later determined that there are external appearances of a business or if there is a significant increase in traffic to and from the lot in question. The Architectural Coordination Committee shall employ the same guidelines and policies that are adopted and employed by the Planning Commission of the City of Fort Smith in ruling upon such "home occupation" requests.

12. No lot will be used for the storage of materials for a period greater than 30 days prior to the start of construction. Construction of single family dwellings shall be completed within 12 months from the date construction begins. No lot shall be used or maintained as a dumping ground, and no trash, garbage or other waste shall be kept except in sanitary containers. All lots shall be maintained in a neat and orderly condition at all times.

13. Any assent, expressed or implied, by any party hereto to any breach of any covenant herein contained, shall operate as such only in the specific instance and will not be construed as an assent or waiver of any such covenant or agreement generally, or any subsequent breach thereof.

14. There shall be no automobile repairs or parking of "dead" or "junked" automobiles, trucks or motorcycles as same are customarily defined on either the front, side or rear of any residential site, nor shall there be any repair work permitted on any vehicle on any of the lots so that said vehicles under repair may be readily seen by occupants and owners of neighboring residences, except for those emergency repairs which would only occasionally be required as the result of unexpected malfunctions. It is the specific intention of this covenant to prohibit the practice of keeping and maintaining automobiles, trucks or motorcycles or any other vehicle which is constantly or periodically being repaired or modified and which is kept in plain view of other neighboring residences.

15. No modular homes or manufactured homes shall be placed on any of the lots in Fianna Estates, Phase III.

16. No television satellite, dish or antenna shall be placed upon any lot subject to these covenants without the approval of the Architectural Coordination Committee. The plans, specifications and location site on the lot for such television satellite, dish or antenna must be submitted to the

Architectural Coordination Committee in detail, and all such dishes must be adequately screened from the surrounding lots and from public highways before the Architectural Coordination Committee may consider the same. No such dish or antenna shall be approved by the Architectural Coordination Committee unless such screening is provided. It is not the intent of this paragraph to require that ordinary television antennas be submitted to the Architectural Coordination Committee, but only satellite receiving dishes and antennas.

17. The developer may at any time amend this Bill of Assurance in any way convenient or necessary to bring this Bill of Assurance into compliance with any state law or regulation pertaining to Bills of Assurance and Restrictive Covenants or property rights in general or in order to give full legal force and effect to the plan of development set forth herein. Furthermore, the developer may amend this Declaration in such manner if such amendment is necessary to establish the validity of this Bill of Assurance and the provisions set forth herein.

18. If any provision of this Bill of Assurance or any section, clause, phrase, word or the application thereof in any circumstances is held to be invalid, the validity of the remainder of this Bill of Assurance and of the application of the remaining provisions shall not be affected thereby.

19. The developer reserves the right to resubdivide and/or replat all or any portion of the lots in Fianna Estates, Phase III, provided that such lots to be resubdivided and/or replatted are lots that are still owned by the developer. Therefore, the developer reserves the right to change the dimension, configuration, location, number and designation of such lots and to relocate easements as shown on the plat in order to conform with the resubdivision or replatting of such lots. No person other than the developer shall be entitled to replat or resubdivide a lot.

EXECUTED at Fort Smith, Arkansas this 25<sup>th</sup> day of October, 1992.

FIANNA HILLS DEVELOPMENT CORPORATION

By

Donald Aldridge  
President

ATTEST:

Robert C. Jones  
Secretary



ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
                                  ) ss.  
COUNTY OF SEBASTIAN )

On this 21<sup>st</sup> day of October, 1992, before me, a Notary Public, duly commissioned, qualified and acting within and for said County and State, appeared in person the within named Ronald H. Udou and Robert C. Brantford, to me personally well known, who stated that they were the President and Secretary of Fianna Hills Development Corporation, a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 21<sup>st</sup> day of October, 1992.

Allen Nell Parker  
Notary Public

My Commission Expires:

9/8/99

## LEGAL DESCRIPTION

Part of the SE 1/4 of the SW 1/4 of Section 16; Part of the SW 1/4 of the SE 1/4 of Section 16; Part of the NE 1/4 of the NW 1/4 of Section 21, and all of the NW 1/4 of the NE 1/4 of Section 21, all in T-7-N, R-32-W, Sebastian County, Arkansas, being more particularly described as follows:

Beginning at the Southeast Corner of the NW 1/4 of the NE 1/4 of said Section 21; thence N 88°50'48" W, 1330.16 feet; thence N 00°52'14" E 1056.82 feet; thence southwesterly 165.95 feet along the arc of a curve to the left, said curve having a central angle of 04°31'30", a radius of 2101.24 feet, and a chord of 165.91 feet on a bearing of S 72°13'45" W; thence N 19°02'00" W, 369.76 feet; thence N 70°58'00" E, 23.00 feet; thence N 19°02'00" W, 300.00 feet; thence N 11°17'14" W, 198.34 feet; thence N 59°54'17" W, 371.00 feet; thence N 81°32'56" W, 305.00 feet; thence N 53°21'45" W, 352.10 feet; thence N 01°06'31" E, 401.43 feet to the Northwest Corner of the SE 1/4 of the SW 1/4 of said Section 16; thence S 89°05'57" E, 1304.80 feet; thence S 45°43'52" W, 75.00 feet; thence S 51°16'47" E, 198.10 feet; thence S 35°05'00" E, 50.00 feet; thence northeasterly 24.82 feet along the arc of a curve to the left, said curve having a central angle of 05°39'27", a radius of 251.31 feet, and a chord of 24.81 feet on a bearing of N 52°05'17" E; thence S 40°44'27" E, 158.67 feet; thence N 39°46'45" E, 95.18 feet; thence S 46°42'00" E, 186.98 feet; thence N 43°18'00" E, 14.85 feet; thence easterly 39.27 feet along the arc of a curve to the right, said curve having a central angle of 90°00'00", a radius of 25.00 feet, and a chord of 35.36 feet on a bearing of N 88°18'00" E; thence S 46°42'00" E, 345.00 feet; thence S 43°18'00" W, 150.00 feet; thence S 46°42'00" E, 150.00 feet; thence N 43°18'00" E, 53.73 feet; thence S 46°42'00" E, 150.00 feet; thence S 43°18'00" W, 73.73 feet; thence S 46°42'00" E, 74.35 feet; thence S 37°32'00" E, 289.39 feet; thence N 52°28'00" E, 30.00 feet; thence S 37°32'00" E, 140.00 feet; thence S. 65°03'29" E, 138.36 feet to the Southeast Corner of the Southwest 1/4 of the Southeast 1/4 of said Section 16; thence S 00°31'02" W, 1329.59 feet to the point of beginning, containing 87.042 acres more or less.

