

BILL OF ASSURANCE

LOTS 700 THROUGH 763 OF

FIANNA HILLS VIII ADDITION TO THE CITY OF FORT SMITH,

ARKANSAS

*Fianna Hills
VIII*

KNOW ALL MEN BY THESE PRESENTS:

That the following declarations as to limitations, restrictions, and uses to which property known as Fianna Hills VIII, Lots 700 through 763, an Addition to the City of Fort Smith, Arkansas are to apply only to those residential lots, numbered 700 through 763 as set forth on the plat of the property to be filed contemporaneously with this Bill of Assurance.

That the undersigned, FIANNA HILLS DEVELOPMENT CORPORATION, an Arkansas corporation, is the developer of the property situated in the Fort Smith District of Sebastian County, Arkansas, and described above, said property being known as Fianna Hills VIII, Lots 700 through 763, an Addition to the City of Fort Smith, Arkansas, and the said FIANNA HILLS DEVELOPMENT CORPORATION, as 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 constitute a covenant running with the land for the period of time hereinafter set out, as provided by law, and shall be binding upon all purchasers of Lots 700 through 763 in Fianna Hills VIII Addition to the City of Fort Smith, and upon such purchaser's heirs, personal representatives, successors and assigns, and all persons claiming under them; and that said declarations 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 architectural design and uses herein specified.

This Bill of Assurance shall be binding upon all parties and all persons claiming under them until May 1, 1993, at which time said covenant shall be automatically extended for an additional ten (10) years, unless by a vote of the majority of the then owners of Lots 700 through 763 in Fianna Hills VIII, included in said addition, it is agreed to change said covenants in whole or in part.

If the parties hereto 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 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 to recover damages or other dues for such violations. Any right reserved hereunder to the owner 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 court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Nothing herein shall be interpreted or construed as a limitation upon or prohibition against the use and development of the property designated on the plat of Fianna Hills VIII as reserved multi-family, and reserved commercial by the present owners or then owners of said property at such time, and under such circumstances and in such manner as said owner or owners may deem appropriate.

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 Hills VIII Addition, and does hereby guarantee the title to all of the land covered by said streets. The owner further dedicates to the public, for public use forever, the easements and rights of way as shown and designated on plats of Fianna Hills VIII Addition for the several purposes of constructing, maintaining, operating, repairing, and replacing any and all public utilities including the storm and sanitary sewer, telephone lines, electric power lines, transformers, gas lines, water lines, and television cable lines, together with all fittings and equipment for each of such facilities and 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 owner hereby reserves the right to construct, maintain, operate, lay and re-lay water lines and sewer lines together with the right of ingress and egress for such construction, maintenance, operation, laying and re-laying over, across and along all of the public streets, alleys and easements shown on said plat, and/or sewer services to the area included in said plat and to any other areas. Said utility easements are for the use and benefit of the undersigned as well as the public utilities, their agents and employees. The rights and privilege 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 undersigned, or of said public utilities, interfere with or endanger such utilities.

2. All supply of electric service shall be located underground and the easement ways reserved for general utility services, as shown on the plat. Service pedestals and transformers, as sources of supply at secondary voltages, may also be located in said easement ways.

Underground service cables to all houses which may be located on all those lots covered by these restrictions may run from the nearest service pedestal or transformer to the point of use as determined by the location and construction of such house as may be located upon said lot; provided, that upon the installation of such a service cable to a particular house, the supplier of electric service shall thereafter be deemed to have a definite, permanent, effective, and exclusive right of way easement on said lot, covering a five foot strip extending 2.5 feet on each side of such service cable, extending from the service pedestal or transformer to the service entrance of said house. The supplier of electric service, through its proper agents and employees, shall at all times, have right of access to all such easement ways shown on said plat, or provided for in this deed of dedication for the purpose of installing, maintaining, removing or replacing any portion of said underground electric facilities so installed by it. This right shall apply to all suppliers of public utilities and quasi-public utilities, as for example, television cables. The owner of each lot shall be responsible for the protection of the underground facilities located on his property and shall prevent the alteration of grade or any construction activity which may interfere with said electric facilities. Repairs or costs of relocation required by the violation of this covenant, shall be paid for by the owner of the lot. In connection with gas meters and gas lines to the structures 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. An approved tracer wire will be installed in the trench with the plastic pipe and attached to the meter rise per the Gas Company's specifications. Meter set assemblies will be furnished the plumber to 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 material 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 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 must be submitted to an Architectural Coordination Committee for its approval prior to the start of construction. Said committee will consist of a representative of Fianna Hills Development Corporation and representatives of the individual lot owners, the latter group being duly elected by said lot owners, and the latter group consisting of a majority of said committee at any one time. Said committee will not have such wide discretion as to act arbitrarily

or capriciously or unreasonably, but will be limited to the approval or disapproval of plans so long as said plans meet the requirements of this Bill of Assurance and are in architectural conformity with the existing construction. Said conformity shall include 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 on, 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. Residential lots in this addition subject to these restrictions shall be used for single family residences and for no other purposes except that duplexes, triplexes and quadruplexes may be permitted with the consent of the Architectural Coordination Committee. In making such decision the Architectural Coordination Committee will give due consideration to the surrounding area and will give notice to adjacent property owners.

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. In regard to any duplex, triplex or quadruplex, each unit must have a minimum of one garage or carport per living unit.

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 onto any lot in the addition by the owner, except construction trailers during the period of construction. No structure of any temporary character shall be 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 lines shown on any plat recorded in connection with said 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 approved by the Architectural Coordination Committee. All fences must be of ornamental design. No fences consisting of wire or metal posts will be allowed. *Same as Sept 1964 Council Staff*

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 a nuisance to the neighborhood. No future mineral development of any kind shall be permitted affecting the service 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 will be used for the storage of materials for a period greater than thirty days prior to the start of construction and thereupon construction for single family dwellings shall be completed within 12 months. In the case of multi-family dwellings, a proportionately longer time shall be allowed. 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.

12. 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 cannot be construed as an assent or waiver of any such covenant or agreement generally or any subsequent breach thereof.

13. Notwithstanding anything contained herein to the contrary, this Bill of Assurance shall be applicable and pertain to and be for the benefit of owners of the land described herein, which consists of a description of 64 residential lots located within Fianna Hills

VIII Addition to the City of Fort Smith, Arkansas, and to no other land, except that additional land may become part of said addition, and these restrictive covenants may become applicable thereto, if the owners of said lands so elect and so adopt, in whole or in part, as a matter of record.

14. There shall be no automobile repairs or parking of dead or junk 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 said vehicles on any of the residential sites so that said vehicles under repair may be readily seen by occupants and owners of neighboring residences, except for those emergency repairs which would be only occasionally 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.

Last para 15 which only VII par.

EXECUTED at Fort Smith, Arkansas, this 30TH day of August, 1978.

FIANNA HILLS DEVELOPMENT CORPORATION

By *Harmon J. Kelley*
President

ATTEST:

Al Motte
Secretary

THE REVISED BILL OF ASSURANCE OF 1993 TO THE BILL OF ASSURANCE
TO FIANNA HILLS VIII ADDITION TO THE CITY OF FORT SMITH,
SEBASTIAN COUNTY, ARKANSAS
(LOTS 700-763)

WHEREAS, the existing Bill of Assurance provides for a majority of the owners of the lots in the captioned addition to change the covenants contained in the existing Bill of Assurance in whole or in part by so voting prior to May 1, 1993; and,

WHEREAS, a majority of the owners of the lots in said addition seek a longer duration of the covenants; and,

WHEREAS, such an election provides an opportunity to update and provide for uniformity of the covenants among more recent Fianna subdivisions;

KNOW ALL MEN BY THESE PRESENTS:

A majority of the owners of the lots in said addition captioned above hereby accept, adopt and establish the following "Revised Bill of Assurance of 1993 To The Bill of Assurance To Fianna Hills VIII Addition to the City of Fort Smith, Sebastian County, Arkansas, (Lots 700-763)" hereinafter referred to as "The Revised Bill of Assurance of 1993".

1. Unless modified, changed or amended herein, the existing Bill of Assurance dated August 30, 1978 and filed of record for the aforesaid Fianna Hills VIII Addition to the City of Fort Smith, Arkansas (Lots 700-763), is hereby incorporated herein by reference and adopted verbatim. If there is any conflict in any term, provision, clause, sentence or paragraph between the Revised Bill of Assurance of 1993 and the existing Bill of Assurance of 1978, then the 1993 Amendments will take precedence and be controlling. It is specifically intended that the existing covenants which are not being changed in these amended covenants (along with the additional covenants contained in the Revised Bill of Assurance of 1993) will remain in force beyond the ten year period following May, 1993 (and for successive ten year periods) unless so changed pursuant to the conditions and requirements referred to in paragraph 2. Therefore, all existing covenants and the existing covenants which have been changed herein and the additional covenants, all of which are set out in the Revised Bill of Assurance of 1993 shall be in force until so changed in whole or part as set out in paragraph 2.
2. This Revised Bill of Assurance of 1993 shall remain in full force and effect up until May 1, 2003 at which time

the said Revised Bill of Assurance of 1993 shall be automatically extended for subsequent ten year periods unless by vote of a majority of the then owners of the lots included in said addition, it is agreed to change the Revised Bill of Assurance of 1993 in whole or in part. An owner shall have as many votes as the number of lots he or she owns. However, such proposed changes in the covenants cannot be voted on and changed except within a six month period immediately prior to the expiration of each ten year period. For example, a vote to change these covenants in whole or part may take place only from November 1, 2002 to May 1, 2003; the next time a vote to change the covenants could take place would be November 1, 2012 to May 1, 2013 and so forth.

3. Paragraph 8 is hereby modified, changed and amended to read in its entirety as follows:

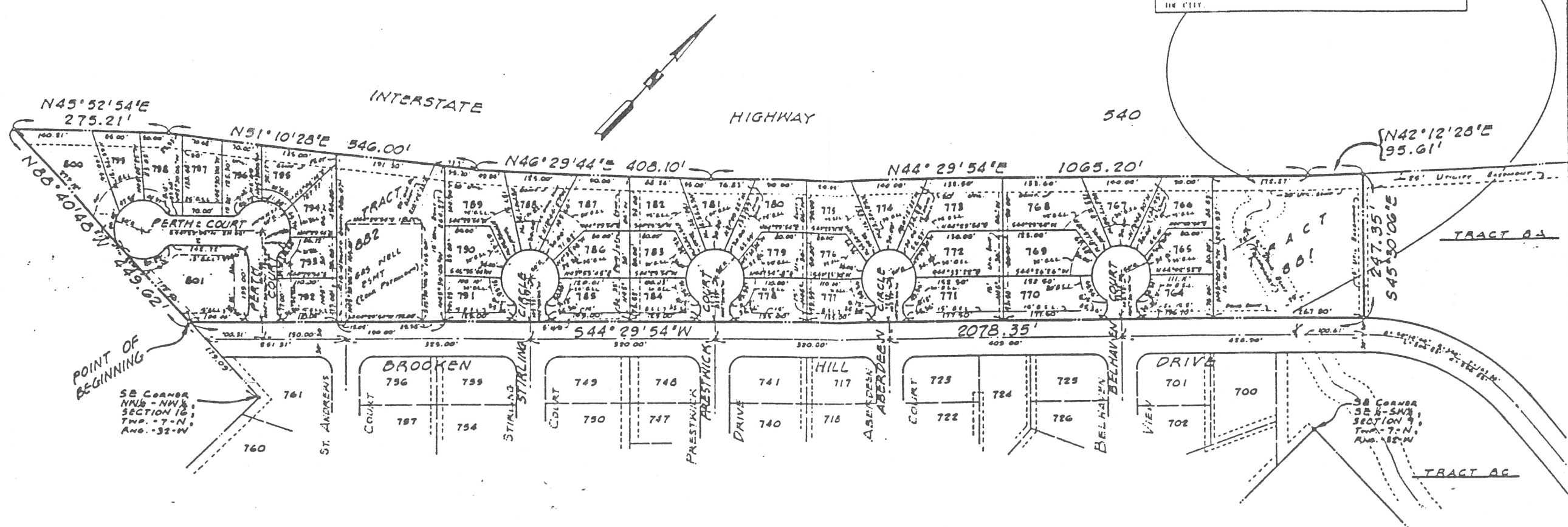
All exposed foundations shall be of brick or stone. No concrete block foundation will be exposed unless approved by the Architectural Coordination Committee. All fences must be approved by the Architectural Coordination Committee. All fences must be of ornamental design. No fences consisting of wire or metal posts will be allowed. The design and construction of all swimming pools constructed after May, 1993 must be approved by the Architectural Coordination Committee.

4. No modular homes or manufactured homes shall be placed on any of the lots.
5. No 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 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 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.
6. 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 Committee 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.

7. No person other than the developer shall be entitled to replat or subdivide a lot unless approved by the Architectural Coordination Committee.
8. 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.
9. If any provision of this Bill of Assurance or any section, clause, phrase, word or the application thereof in any circumstance 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.
10. For purposes of clarification among the various Bills of Assurances for all "Pianna" additions and subdivisions, the Architectural Control Committee and Architectural Coordination Committee shall be deemed to be one and the same.

THE ALLOTTERS OR THEIR ASSIGNS RESERVE THE RIGHT, AT THEIR COST AND ACCORDING TO PLANS AND AGREEMENT APPROVED BY THE CITY, TO REVERT THE DRAINAGE IN A DEDICATED DRAINAGE FACILITY AND, UPON SUCH DEDICATING AND APPROVAL OF CONSTRUCTION, THIS EASEMENT OR ANY PORTION THEREOF NOT NEEDED FOR THE RECONSTRUCTION OF THE FACILITY, SHALL REVERT TO THE ALLOTTERS OR THEIR ASSIGNS, WITHOUT ANY FURTHER ACTION BEING REQUIRED BY THE CITY.



DATE	
SCALE	1" = 100'
DRAWN BY	
DATE	JULY, 1978

FIANNA HILLS 8B

AN ADDITION TO THE CITY OF
FORT SMITH, SEBASTIAN COUNTY, ARKANSAS
SCALE: 1" = 100' MAY, 1978

P. DAVID UERLING
LAND SURVEYOR
STATE OF ARKANSAS
NO. 773
P. David Uerling

CERTIFIED CORRECT: *P. David Uerling*
P. DAVID UERLING
REGISTERED LAND SURVEYOR
ARRAHSAL NO. 773

PLANNING COMMISSION APPROVAL:
Chairman _____ Secretary _____ Date _____

ALLOTTERS: Fianna Hills Development Corp. And
By: *Ronald H. Udou*
Attest: *[Signature]*
[Harman J. Udou] - Wife
[Irene Udou] - Wife
[Ronald H. Udou]
[Jane T. Udou] - Wife
[Phillip D. Udou]
[Susan M. Udou] - Wife
[Anna F. Udou]
[Mary Jeanne Udou]
[Cliff C. Udou]
By: *Ronald H. Udou*
RONALD H. UDOU
Attorney in Fact

STATE OF ARKANSAS
COUNTY OF SEBASTIAN
Sworn and subscribed before me this day _____
Notary Public _____
My Commission Expires _____

FILED FOR RECORD This _____ day of _____, 1978, at _____
o'clock _____ m. _____, Clerk and Ex-Officio Recorder.
By: _____

LEGAL DESCRIPTION

Part of the NE 1/4 of the NW 1/4 and part of the SW 1/4 of the NW 1/4 of Section 10, and part of the SE 1/4 of the SW 1/4 of Section 9, Township 7 North, Range 32 West, Sebastian County, Arkansas more particularly described as follows:
Commencing at the SE Corner of said NW 1/4 of the NW 1/4 of said Section 10, thence N 88°40'48" W, 179.07 feet to the Point of Beginning; thence N 88°40'48" W, 449.02 feet to a point on the southeasterly right-of-way line of Interstate Highway 540; thence continuing along said right-of-way line N 45°52'54" E, 275.21 feet; thence S 31°10'28" E, 546.00 feet; thence N 46°29'44" E, 408.10 feet; thence S 11°29'54" E, 1065.20 feet; thence S 12°12'28" E, 95.61 feet; thence leaving said right-of-way line S 45°30'06" E, 247.35 feet; thence S 44°29'54" W, 2078.35 feet to the Point of Beginning, containing 13 1/4 acres more or less.

NOTE:
ALL LOT MEASUREMENTS ON CURVES ARE CHORD LENGTHS.
ALL PROPERTY LINE RETURNS ARE 25 FOOT RADIUS.
STREET RIGHT-OF-WAY AND EASEMENTS ARE HEREBY DEDICATED TO THE PUBLIC.

ENGINEERS:
BURROUGH-UERLING-BRASWELL
CONSULTING ENGINEERS, INC.
4320 PHOENIX AVENUE
FORT SMITH, ARKANSAS

DEVELOPERS:
FIANNA HILLS DEVELOPMENT CO.
1703 ROGERS AVENUE
FORT SMITH, ARKANSAS

FILE PLAT
FIANNA HILLS 8B
FORT SMITH, ARKANSAS