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FAX TRANSMITTAL FORM

TO: Darren Owen
Company: _____
Fax # 479-246-6840
Phone # _____

FROM: Margie Carr
Date Sent: 4/19/05
Number of Pages: _____
Re: _____



Doc ID: 006593900011 Type: REL
Recorded: 10/10/2003 at 11:25:25 AM
Fee Amt: \$38.00 Page 1 of 11
Washington County, AR
Bette Stamps Circuit Clerk

BILL OF ASSURANCE

File **2003-00053594**

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, CB VENTURES, LLC, an Arkansas limited liability company (hereinafter called CB Ventures), is the owner of the property located in an addition to the City of Fayetteville, Washington County, Arkansas (the Subdivision), more fully described on Exhibit A attached hereto and incorporated herein by this reference.

WHEREAS, the Subdivision is part of the community known as Clabber Creek Subdivision Phase I and is subject to those certain Covenants and Restrictions filed October 10, 2003 in the office of the Circuit Clerk of Washington County as Instrument No. 2003-53593 (the Covenants and Restrictions); and

WHEREAS, CB Ventures has caused to be incorporated Clabber Creek Property Owners Association, Inc. for the purpose of administering the maintenance of the common area and amenities in the Subdivision; and

WHEREAS, all owners of lots within the Subdivision will be members of Clabber Creek Property Owners Association, Inc. as provided for herein and for the Covenants and Restrictions; and

WHEREAS, all of the property shown on the plat hereinafter mentioned has been subdivided into building lots, tracts and streets as shown on the plat tiled herewith, and it is hereby deemed advisable that said property be held, owned and conveyed subject to the protective covenants herein contained and in the Covenant and Restrictions in order to enhance the value of the Subdivision.

NOW THEREFORE, CB Ventures, for and in consideration of the benefits to accrue to it, its successors and assigns, which benefits it acknowledges to be of value, has caused to be made a plat, showing a survey made by David Jorgensen, Registered Land Surveyor dated Sept 11, 2003 and bearing a Certificate of Approval executed by the Department of Comprehensive Planning of the City of Fayetteville, and showing the boundaries and dimensions of the property now being subdivided into lots, tracts and streets (the Plat).

CB Ventures hereby donates and dedicates to the public an easement of way on, over and under the streets on said Plat to be used as public streets. In addition to the said streets, there are shown on said Plat certain easements for drainage and/or utilities which CB Ventures hereby donates and dedicates to and for the use of public utilities, the same being, without limiting the generality of the foregoing, electric power, gas, telephone, water, sewer and cable television with the right hereby granted to the persons, firms or corporations engaged in the supplying of such utilities to use and occupy such easements, and to have free ingress and egress there from for the installation, maintenance, repair and replacement of such utility services.

The areas designated on the Plat as Lot 110, an addition to the City of Fayetteville, Arkansas, are hereby donated and dedicated by CB Ventures to the owners, as they may exist from time to time, of lots within the Subdivision with the right to use these areas for utility, drainage, buffer, park and aesthetic purposes and the Clabber Creek Property Owners Association, Inc. shall maintain such areas and improvements at its sole cost. Additionally, CB Ventures hereby grants to the public utilities the right to use these areas for utility and drainage easements provided such improvements are maintained by said public utilities. No improvements shall be placed on the areas designated as Lot 110, other than improvements for those designated purposes, unless first approved by the appropriate agencies of the City of Fayetteville, Clabber Creek Property Owners Association, Inc. and the Architectural Control Committee established pursuant to the Covenants and Restrictions and By-Laws of Clabber Creek Property Owners Association, Inc. (the Architectural Control Committee).

The filing of this Bill of Assurance and Plat for record in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County shall be a valid and complete delivery and dedication of the streets and easements subject to the limitations herein set out.

The lands embraced in the Plat shall be forever known as Lots 1-112, Clabber Creek Subdivision, an addition to the City of Fayetteville, Arkansas and any and every deed of conveyance of any lot in the Subdivision describing the same by the number shown on said Plat shall always be deemed a sufficient description thereof.

Said lands herein platted and any interest therein shall be held, owned and conveyed subject to and in conformity with the following covenants:

1. Additions to Subdivision. Additional lands of CB Ventures may become subject to this Bill of Assurance and added to Subdivision in the following manner: CB Ventures shall have the right but not the obligation to bring within the Subdivision additional properties, regardless of whether or not said properties are presently owned by CB Ventures, as future phases of the Subdivision, provided that such additions are in accord with the general plan of development for the Subdivision (the General Plan) which has been prepared prior to the date of this Bill of Assurance and prior to the sale of any lot in the Subdivision and is maintained in the office of CB Ventures and provided such proposed additions, if made, become subject to assessments of the Clabber Creek Property Owners Association, Inc. for their share of expenses. UNDER NO CIRCUMSTANCES shall this Bill of Assurance or any supplement or the General Plan bind CB Ventures to make the proposed additions or to adhere to the General Plan or any subsequent development plan shown on the General Plan. Nor shall CB Ventures be precluded from conveying lands in the General Plan not subject to this Bill of Assurance or any supplement free and clear of this Bill of Assurance or any supplement thereto. Any additional phases added to the Subdivision shall be made by filing of record a supplemental Bill of Assurance with respect to the additional property and shall extend the covenants and restrictions of this Bill of Assurance to said additional property and the owners, including CB Ventures, of lots in those additions shall immediately be entitled to all rights and privileges provided in this Bill of Assurance. The supplemental Bill of Assurance may contain such complimentary additions and modifications of the provisions of this Bill of Assurance necessary to

reflect the different character, if any, of the added properties as are not inconsistent with the plan of this Bill said lands herein platted and any interest of Assurance. In no event, however, shall such supplement revoke, modify or add to the covenants established by this Bill of Assurance as to the property herein described. No entity, other than CB Ventures, shall have the right to subject additional lands to the Subdivision unless CB Ventures shall indicate in writing that such additional lands may be included.

2. Architectural Control. No improvement shall be constructed or maintained upon any lot and no alteration or repainting to the exterior of a structure shall be made and no landscaping performed unless approved by the Architectural Control Committee as provided in the Covenants and Restrictions.

3. Use of Land. The land herein platted shall be held, owned and used only as residential building sites. No structures shall be erected, altered, placed or permitted to remain on any building site other than a single detached single-family residence.

4. Common Amenities. The areas designated on the Plat as Lot 110, and all improvements thereon, including but not limited to, all walls, lighting, irrigation and landscaped areas shall be maintained by the Clabber Creek Property Owners Association, Inc. except for public utility improvements which are maintained by such public utilities.

5. Delegation of Authority. CB Ventures has caused the formation of the Clabber Creek Property Owners Association, Inc., a nonprofit corporation. CB Ventures shall have title right, but not the obligation, by a written instrument recorded in the Office of the Recorder for Washington County, Arkansas, to delegate, convey and transfer to such corporation all authority, rights, privileges and duties reserved by CB Ventures in this Bill of Assurance.

6. Creation of Obligation for Assessments. By acceptance of a deed or other conveyance of property covered by this Bill of Assurance, each owner, other than CB Ventures, of a lot within the Subdivision shall be deemed to covenant and agree to pay any assessments, charges and/or special assessments which may hereinafter be levied by the Clabber Creek Property Owners Association, Inc. for the purpose of promoting the recreation, health, safety and welfare of the owners within the Subdivision and, in particular, for the acquisition, servicing, improvement and maintenance of common properties within the Subdivision and facilities which may be hereafter dedicated for use by CB Ventures or otherwise acquired by the Clabber Creek Property Owners Association, Inc., which amount together with interest, costs of collection and a reasonable attorney's fee, shall be a continuing lien upon the lot.

In lieu of assessments being imposed upon such lots owned by CB Ventures, CB Ventures may but shall not be obligated to underwrite all reasonable costs for the operation of Clabber Creek Property Owners Association, Inc. not covered by assessments paid by owners of lots other than CB Ventures until ninety percent (90%) of all lots are owned by persons or entities other than CB Ventures. Once ninety percent (90%) of all lots are owned by persons or entities other than CB

Ventures, the remaining lots owned by CB Ventures shall be subject to the same assessments as lots owned by persons or entities other than CB Ventures.

7. Height and Type of Residence. The residences in the Subdivision shall be of similar size and architectural style so as to create a neighborhood of architectural continuity. All construction shall be approved by the Architectural Control Committee, in its sole and absolute discretion, as further provided for in paragraph 2 of this Bill of Assurance. No residence shall be erected, altered, placed or permitted to remain on any lot in the Subdivision other than one detached single-family residence not to exceed two stories in height.

8. Setback Requirements. No residence shall be located on any lot nearer to the front lot line or the side street line than the minimum building setback lines shown on the Plat; provided, such setback requirements may be modified if such modification is approved by the Architectural Control Committee, the Fayetteville Planning Commission or the Fayetteville Board of Adjustment, and such other regulatory agency as may succeed to their functions. No building shall be located nearer to an interior lot side line than a distance of ten percent (10%) of the average width of the lot, but in no event nearer than eight (8) feet to an interior lot side line. No principal dwelling shall be located on any lot nearer than twenty (20) feet to the rear lot line. For the purposes of this covenant, eaves, steps and porches not under roof shall not be considered as a part of the building. Where two or more lots are acquired as a single building site, the site building lines shall refer only to those bordering the adjoining property owner.

9. Minimum Square Feet Area. No residence shall be constructed or permitted to remain on any building site in the Subdivision unless the finished heated living area, exclusive of porches, patios, garages, breeze ways, exterior stairways, storage areas and outbuildings, shall equal to exceed that shown in the following schedule:

<u>Lot Number</u>	<u>One-Story Minimum Sq. Ft.</u>	<u>Multi-Story Minimum Sq. Ft.</u>
All Lots	<u>1,600</u>	<u>1,600</u>

Finished heated living area shall be measured in a horizontal plane to the face of the outside wall on each level. All homes must have a minimum 10 X 12 roof pitch and must contain at least ninety (90%) percent brick around the home.

10. Frontage of Residence on Streets. Any residence erected on any lot in the Subdivision shall front or present a good frontage on the streets designated in the Plat, and for this purpose as applied to all inside lots, it shall mean that the residence shall front on the street designated, and on any corner lot it shall mean that the residence shall front or present a good frontage on both of the streets designated in the Plat.

11. Trees, Yards, and Landscaping Requirements. The Clabber Creek Property Owner's Association is entirely responsible to the City of Fayetteville for ensuring the planting, maintaining

and protection of the Native American trees in the front yard of each lot within the subdivision. Each lot within Clabber Creek Subdivision is required to have and maintain a minimum of two (2) Native American trees with a two (2) to three (3) inch diameter in the front yard before the structure is certified for occupancy. Each lot owner shall be responsible for the health of all trees planted on the lot and shall be bound for the maintenance, care and monitoring for each tree planted. If at any time any tree is damaged significantly or dies, it must be replaced within a two (2) month period. The Architectural Control Committee will provide a list of the types of trees permitted. Failure to replant or maintain the tree after notice by the Property Owners Association could result in an assessment and a lien upon the lot for the cost of planting and maintaining the tree. The lot owner agrees a lien which results from a failure to pay an assessment may be foreclosed in the same manner provided by Arkansas Law for the foreclosure of a real estate mortgage.

All Structures, landscape plans and additions must first be approved by the ACC. No approval is necessary for the planting of flowers, shrubs, or trees, except where it may affect easements or drainage onto adjacent Lots. The initial landscape plans and designs to be submitted to the ACC shall include a \$3,000.00 minimum for plants and shrubs. All toys, newspapers, etc., must be picked up so as not to accumulate in an unsightly manner in view of any Street. Only porch furniture, flower pots, etc., are permissible in front yards. Front Yard grass is to be kept mowed so as to never be above four inches (4").

12. Commercial Structures. No building or structure of any type may ever be placed, erected or used for business, professional, trade or commercial purposes on any portion of any lot. This prohibition shall not apply to any business or structure that may be placed on any lot or portion of a lot that is used exclusively by a public utility company in connection with the furnishing of public utility services to the Subdivision.

13. Outbuildings Prohibited. No outbuildings or other detached structure, including, but not limited to, tree houses, playhouses, and flagpoles, appurtenant to the residence may be erected on any of the lots hereby restricted without the consent in writing of the Architectural Control Committee.

14. Noxious Activity. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall any garbage, trash, rubbish, tree limbs, pine straw, leaves or cuttings, ashes or other refuse be thrown, placed or dumped upon any vacant lot, street, road or common areas, nor on any site unless placed in a container suitable for garbage pickup; nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood.

15. Oil and Mineral Operations. No oil drilling, oil development operating, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any building site, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any building site. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any building site.

16. Cesspool. No leaching cesspool shall ever be constructed or used on any lot.

17. Existing Structure. No existing, erected building or structure of any sort may be moved onto or placed on any of the above-described lots.

18. Temporary Structure. No trailer, basement, tent, shack, garage, barn or other outbuilding, other than a guest house and servants quarters, erected on a building site covered by these covenants shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

19. Easements for Public Utilities and Drainage. Easements for the installation, maintenance, repair and replacement of utility services, sewer and drainage have heretofore been donated and dedicated, said easements being of various widths, reference being hereby made to the Plat filed herewith for a more specific description of width and location thereof. No trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be grown, built or maintained within the area of such utility or drainage easement. In the event any trees, shrubbery, incinerators, structures, buildings, fences or similar improvements shall be grown, built or maintained within the area of such easement, no person, firm or corporation engaged in supplying public utility services shall be liable for the destruction of same in the installation, maintenance, repair or replacement of any utility service located within the area of such easement.

20. Fences. No fences, enclosure or part of any building of any type or nature whatsoever shall ever be constructed, erected, placed or maintained closer to the front lot line than the building setback line applicable and in effect as to each lot, provided, however, that chain link or similar fences are in all events strictly prohibited and shall not be used under any circumstances; provided, further, that it is not the intentions of this paragraph to exclude the use of evergreens or other shrubbery to landscape the front yard. Fencing of any type must be approved by the Architectural Control Committee as provided in paragraph 2 hereof.

21. Sight Line Restrictions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed, or permitted to remain, on any corner lot within the triangular area formed by the street property lines and a line connecting them at points fifty (50) feet from the intersection of the street lines, or in the case of a rounded property corner, within the triangle formed by tangents to the curve at its beginning and end, and a line connecting them at points fifty (50) feet from their intersection. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of at least eight (8) feet to prevent obstruction of such sight lines. The same sight line limitations shall apply on any lot within ten (10) feet of the intersection of the street property line with the edge of a driveway or alley pavement.

22. Property Lines and Boundaries. Iron pins have been set on all lot corners and points of curve and all lot dimensions shown on curves are chord distances, and all curve data as shown on the Plat filed herewith is centerline curve data. In the event of minor discrepancies between the dimensions or distances as shown on the Plat and actual dimensions and distances as disclosed by the established pins, the pins as set shall control.

23. Driveway Obstructions. No obstruction shall be placed in the street gutter. Curbs shall be saw cut at driveways with a diamond blade, and driveway grades lowered to meet the gutter line not more than two inches above the gutter grade.

24. Subdividing Lot. No lot shall be subdivided. The only exception to subdividing a lot will be made if a Lot is located in the 100 year flood plain as designated by FEMA.

25. Right to Enforce. The restrictions herein set forth shall run with the land and shall bind the present owner, its successors and assigns. All parties claiming by, through or under the present owner shall be taken to covenant with the owner of the lots hereby restricted, and its successors and assigns, to conform to and observe these restrictions. No restriction herein shall be personally binding upon any corporation, person or persons, except with respect to breaches committed during its, his or their term of holding title to said land. CB Ventures, its successors and assigns (for so long as CB Ventures owns lots within the Subdivision but not thereafter), the Clabber Creek Property Owners Association, Inc. and also the owner or owners of any of the lots hereby restricted shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions above set forth, in addition to ordinary legal action for damages and failure by owner or owners of any lot or lots in this addition to observe any of the restrictions herein. Any delay in bringing such action shall in no event be deemed to be a waiver of the right to do so thereafter.

26. Modification of Restrictions. Any and all of the covenants, provisions or restrictions set forth in this Bill of Assurance may be amended, modified, extended, changed or canceled, in whole or in part, by a written instrument signed and acknowledged by owner or owners of more than seventy five percent (75%) in area of the total land contained within the Subdivision. Each covenant in this instrument, unless expressly provided otherwise, shall remain in full force and effect until January 1, 2028 after which time each covenant in this instrument shall be automatically extended for successive periods of ten (10) years unless an instrument terminating the covenants signed by the then owners of seventy five percent (75%) of the lots in the Subdivision has been recorded prior to the commencement of any ten-year period.

27. Attorney Fee. In any legal or equitable proceeding for the enforcement or to restrain the violation of this instrument or any provisions thereof, by reference or otherwise, the prevailing party or parties 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.

28. Oil, Gas and Other Minerals. CB Ventures, for and in consideration of Ten and No/100 Dollars (\$10.00), executes this Bill of Assurance solely upon the belief that it may own a portion of the oil, gas and minerals except the coal, sand, clay and gravel in and under the above-described land and hereby subordinates its interest in the oil, gas and other minerals except coal, sand, clay and gravel to the Bill of Assurance and pursuant to paragraph fourteen (14) hereof will not engage the use of the surface in any oil drilling, oil development operating, oil refining, quarrying or mining operations.

29. Extension. All covenants for which extension is not otherwise provided in this instrument shall automatically be extended for successive periods of ten (10) years each unless modified, terminated or canceled as provided herein.

30. Severability. Invalidation of any restriction set forth herein or any part thereof by any order, judgment or decree of any court or otherwise, shall not invalidate or affect any of the other restrictions or any part thereof as set forth herein, but they shall remain in full force and effect.

31. Mailboxes. All mailboxes shall be constructed entirely of wrought iron (National Home Centers Durable Barcelona in Black) and must be approved by the ACC as to design and location, solely at the Owner's expense. Additionally, all mailboxes must be of a type approved by the United States Postal Service, and shall be kept in a good state of repair at all times.

EXECUTED this 9th day of October, 2003.

CB VENTURES, LLC

By: **BARBER PROPERTIES, LLC,**
Authorized Member

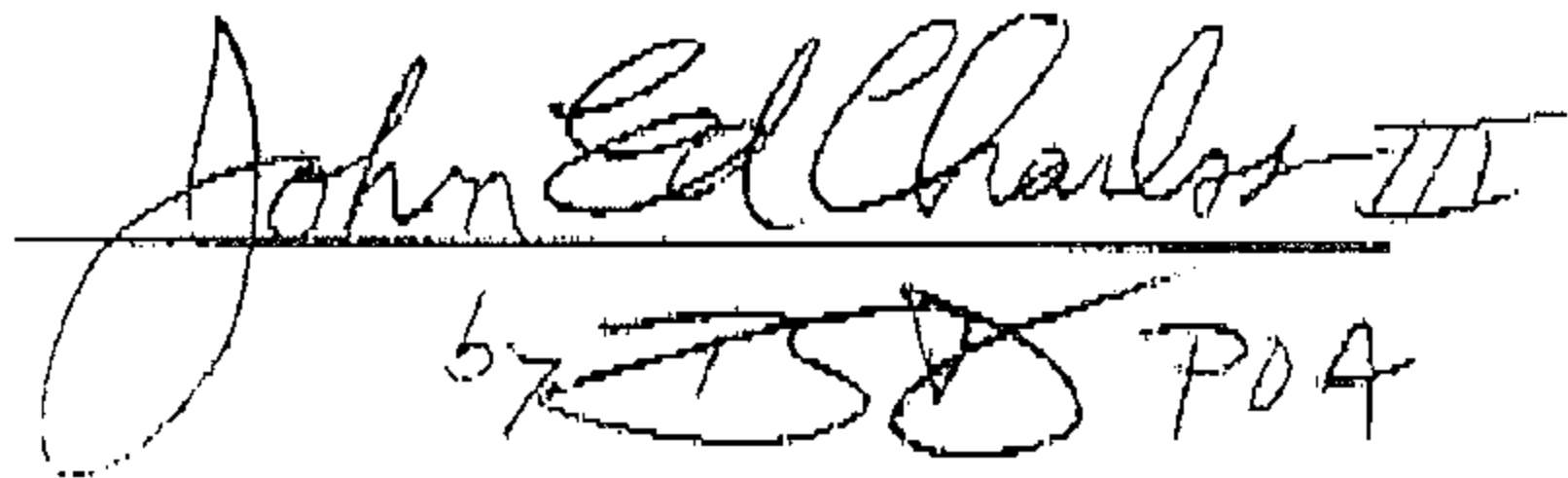
By:
Brandon Barber, Member

ATTEST:

 member

John Ed Chambers, III, Family
Limited Partnership, Authorized Member

By:
John Ed Chambers, General Partner

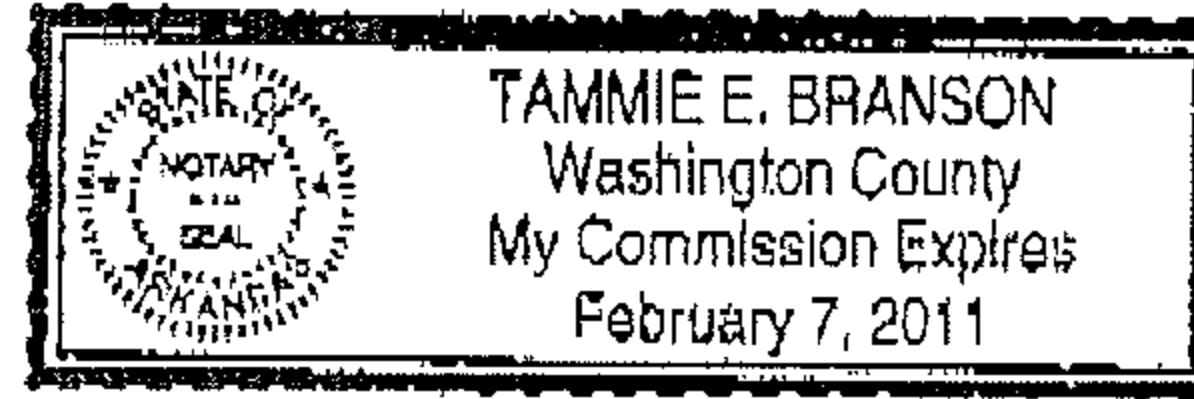

by  POA

ACKNOWLEDGMENT

STATE OF ARKANSAS)

COUNTY OF WASHINGTON)

)ss:



Before me, a Notary Public duly commissioned, qualified and acting, within and for the County and State aforesaid, appeared in person the within named Brandon Barber, in his capacity as a Member of Barber Properties, LLC, an Arkansas limited liability company, Authorized Member of CB Ventures, LLC, an Arkansas limited liability company, to me personally well known, who stated that he was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said Limited Liability Company, and further stated and acknowledged that he had so signed, executed and delivered the 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 9th day of October, 2003.

Tammie E. Branson
Notary Public

My Commission expires:

Feb 07, 2011

ACKNOWLEDGMENT

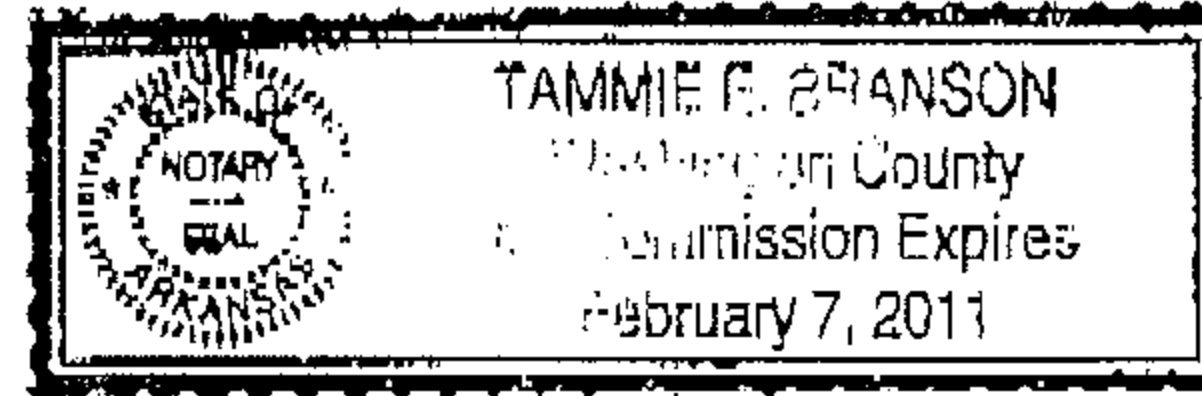
STATE OF ARKANSAS

)

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COUNTY OF WASHINGTON

)ss:



Before me, a Notary Public duly commissioned, qualified and acting, within and for the County and State aforesaid, appeared in person the within named John Ed Chambers, III, in his capacity as the General Partner of the John Ed Chambers, III, Family Limited Partnership, an Arkansas limited partnership, an Authorized Member of CB Ventures, LLC, an Arkansas limited liability company, to me personally well known, who stated that he was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said limited partnership, and further stated and acknowledged that he had so signed, executed and delivered the 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 9th day of 9th October, 2003.

Tammie E. Branson
Notary Public

My Commission expires:

Feb 7, 2011

Exhibit AProperty DescriptionLEGAL DESCRIPTION:

A PART OF THE FRACTIONAL SECTION 31, T-17-N, R-30-W, AND PART OF THE SECTION 1, T-16-N, R-31-W, ALL IN WASHINGTON COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NE CORNER OF FRACTIONAL SECTION 1, T-16-N, R-31-W, THENCE N01°00'27"E 141.32 FEET TO THE POINT OF BEGINNING, THENCE N89°59'06"W 1143.52 FEET, THENCE S00°00'54"W 764.20 FEET, THENCE S00°29'14"E 15.99 FEET, THENCE S01°47'20"E 369.49 FEET, THENCE S01°21'49"E 325.82 FEET TO THE CENTERLINE OF MOUNT COMFORT ROAD, THENCE ALONG SAID CENTERLINE N89°10'08"W 31.58 FEET, THENCE N69°59'08"W 122.60 FEET, THENCE N52°15'08"W 94.14 FEET, THENCE LEAVING SAID CENTERLINE N04°19'06"W 713.63 FEET, THENCE S89°41'00"W 183.06 FEET, THENCE N00°31'55"W 1167.86 FEET, THENCE N85°16'25"E 147.99 FEET, THENCE N65°25'37"E 1417.34 FEET, THENCE S31°54'30"E 119.08 FEET, THENCE N65°26'55"E 134.98 FEET, THENCE S01°34'08"W 1060.51 FEET TO THE POINT OF BEGINNING, CONTAINING 40.67 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND R/W OF RECORD.