

# DIAMONDHEAD REVISED BILL OF ASSURANCE

Effective July 1, 1997

Now, Therefore, Grantor, 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 the Plat hereinabove described, signed by \_\_\_\_\_ Registered Land Surveyor, and by said Grantor, showing the bounds and dimensions of the property now being subdivided into lots and streets; and said Grantor hereby reserves unto itself and its assigns all rights of way, streets and easements (including but not limited to, easements for drainage and utilities) for the use of itself and assigns and the property owners in good standing. Grantor reserves unto itself and its assigns, the right to use and occupy such easements and to have free ingress and egress therefrom for the installation, maintenance, repair and replacement of such utilities or other services provided or to be provided.

The lands described in said plat shall be forever known as DIAMONDHEAD, and any and every deed of conveyance for any lots in said subdivision describing the same by the number or numbers shown on said plat shall always be deemed a sufficient description thereof.

Said land herein platted and any interest therein shall be held owned and conveyed subject to and in conformity with the following covenants, which, subject to being amended or canceled as hereinafter provided, to-wit:

**1. USE:** Said lots shall be used exclusively for residential purposes except those lots that may be designated (subject to rezoning, if any), and zoned as business or commercial area on the plats recorded or to be recorded by Grantor.

**2. SINGLE FAMILY QUALITY:** Not more than one single family dwelling house may be erected or constructed on any one lot, nor more than one building for a garage or storage purposes and provided further that no building or structure of any kind shall be erected prior to the erection of a dwelling house. If the home being constructed is too large to conform with the conditions of sections three (3) and four (4) of this Bill of Assurance and a second contiguous lot is required to meet the conditions set forth, such combined lots shall be considered one lot for the purpose of these restrictions and maintenance fees. No accessory or temporary building shall be used or occupied as living quarters. No structure shall have tarpaper; roll brick siding or similar material on outside walls. No house trailers, campers, tents, shacks, or similar structures shall be erected, moved to, or placed upon said premises in this subdivision, except for temporary structures used for the construction and sale and lease of residences by the Developer or builder. Nothing herein shall prevent a motorhome or travel trailer from being parked by a visitor for a period of up to 14 days. A homeowner may park their own personal recreational vehicle at their home in an appropriately constructed facility. The Architectural Control Committee sets as a normal goal, a period of 6 months for the completion of a home.

**2.1 MULTI FAMILY QUALITY:** Multi family units may only be constructed in unplatted areas.

**3. SIZE, SET-BACK:** No single family dwelling house shall have less than 1200 square feet of living space on the main floor exclusive of porch area. The square footage area of any basement shall not be included in the total square footage area unless the basement is a walkout basement, which has been designed and finished for occupancy. The Architectural Control Committee shall, in its sole and absolute discretion, determine whether or not a basement satisfies the requirements of this provision. All foundations and structural plans for any

building or structure must receive the prior approval in writing of the Architectural Control Committee of the Property Owners Association, its successors or assigns, before construction may be commenced. No porch, projection, appurtenance or appendage of any building shall extend or encroach nearer than thirty (30) feet to any road right of way. No building may extend nearer than ten (10) feet to the property line of any adjoining property owner, provided, however, that eaves and cornices on permitted structures may overhang the required side or back yards no closer than seven (7) feet to the side or back lot lines. A variance to set back restrictions, for road right of ways, required in the construction of a home, must receive prior approval of the Architectural Control Committee and the Executive Committee of the Property Owners Association Board of Directors. No building may extend or encroach nearer than fifty (50) feet from the normal water line of Lake Catherine. Grantor reserves on behalf of itself, its successors and assigns, the right to increase or otherwise modify the restriction contained in the paragraph.

**4. SEWERAGE, WATER SUPPLY:** No outside toilets shall be allowed on the premises. No untreated waste shall be permitted to enter Lake Catherine. Each dwelling shall have an individual sanitary unit and the owner of said lot shall install a septic type of sewerage treatment plant approved by the Governmental Entity having jurisdiction for the county in which the land is located. All sanitary units, disposal systems, and/or drain fields will be installed as designated by this entity. Any malfunction of any system after being reported to the lot owner by the responsible entity, and not repaired within seven (7) days shall be cause for termination of water service until such repairs are affected. All building permits must be accompanied by the State Health Department approval. No individual water wells shall be allowed on any residential lot and each resident shall use the water supply from the public utility or other organization supplying water to the subdivision.

In the event of build-up of homes, townhouses, motels, or any other type of development within the Diamondhead Community should require and justify a central sewer collection system in certain areas or throughout the entire project, the developer will provide the central sewer system at a cost to the property owners not to exceed the actual cost to the Developer. All costs for the sewer system must be directly attributable to the construction of the sewer system. This assessment to the property owners for the installation of a central sewer may be financed over a period of three years or pro-rated over a longer period and paid along with the monthly sewer service bill.

**5. NUISANCE:** No unlawful or noxious or offensive trade or activity shall be permitted on any lot, nor shall anything be done thereon which shall be or become an annoyance or nuisance to the neighborhood. Residences shall not be used to conduct, carry on any business, professional, trade or other commercial uses or activities, any uses of an organized social, civic, charitable, educational or religious organization, association, movement, club, corporation, non-profit corporation or other legal entity, and no improvements shall be placed on any lot for any such prohibited purposes. No animals or fowl shall be kept or maintained on said lot except customary household pets. All pets must be confined in a fenced in area or by a leash. No signs, billboards, posters or advertising devices shall at any time be placed on any lot without the written permission of the Grantor, its successors or assigns. Except that the owner of each lot may place house numbers and owner's or tenant's name upon the dwelling or decorative post. All lots must be kept in a manner consistent with the Community. Failure to

do so will result in maintenance of said lot by the Grantor or the Property Owners Association at the owner's expense.

**6. BOAT DOCKS:** No boat dock, floats or other structures extending into Lake Catherine shall be constructed, placed or maintained into or on said lake without prior written approval of the Arkansas Power and Light Company, its successors or assigns, as Licensee or Owner of Federal Power Commission licensed Project 271.

**7. UTILITY EASEMENTS:** Grantor, for itself, its successors, assigns and licensees reserves a ten (10) foot wide easement along all road rights of way and a five (5) foot wide easement along the side and rear lines of each and every lot for the purpose of installing, operating and maintaining utility lines and mains thereon, together with the right to trim and/or cut or remove any trees and/or brush and the right to locate guy wires, braces and anchors wherever necessary for said installations, operations or maintenance; together with the right to install, operate and maintain gas and water mains, sewer lines, culverts and drainage ditches, and other services and appurtenances thereto for the convenience of the property owners, reserving also the rights of ingress and egress to such areas for any of the purposes mentioned above. Exceptions: (1) Where an owner of two or more adjoining lots constructs a building which shall cross over to through a common lot line, said common lot line shall not be subject to the aforementioned five (5) foot easement unless it is shown on recorded plats; (2) no easement shall exist on that portion of any waterfront lot running along or abutting the shoreline of Lake Catherine unless shown on the recondensed plats, except, however, Grantor, for itself, its successors, assign and licensees, reserves the right to cause or permit drainage of surface waters over and/or through said lots. Grantor, its successors, assigns, or licensee's reserves an easement on, over or under all road rights of way for the purpose of installing, operating and maintaining the above-mentioned utilities and drainage. The owners of said property shall have no cause of action against Grantor, its successors, assigns or licensees, either at law or in equity, excepting in case of willful negligence, by reason of any damages caused said property in installing, operating and maintaining the above mentioned installations. Grantor, its successors or assigns, reserves all mineral rights to the lands hereto. Any variance in this section must be submitted to the Architectural Control Committee and approved by the Grantor and the Directors of the Diamondhead Property Owners Association.

**8. MAINTENANCE FEES, LIMITATION ON SALE:** As a part of the consideration herein, each property owner in DIAMONDHEAD agrees to pay an annual charge to the Diamondhead Property Owners Association, Inc., a non-profit corporation, its successors, or assigns, annually, on the 1<sup>st</sup> day of April (as provided in the by-laws of said Association). Lots classified as "Developer Status" are exempt from annual charges. All fees will be prorated from the date of purchase. Fees and assessments will be used for the administration, improvements and upkeep of facilities and amenities as well as the roads and various areas reserved for the use of the property owners, irrespective of whether the privileges of using such areas are exercised or not. The fees for such maintenance will be determined annually by the Directors of the Property Owners Association. A lien shall exist and shall continue to exist on each lot in said subdivision for the amount of such annual fees payable by the owner of such lot to Diamondhead Property Owners Association, Inc. Said Association shall have the right, power, and authority to add a penalty not to exceed 20% per annum of any such annual fees and penalties if not paid within a reasonable time fixed by the Directors of the Property Owners Association, by proceeding in the Chancery Court of the

county in which the lot is located upon which such delinquent fees are applicable, the same as other liens are enforced on lands located in said county and said liens shall cover and include all costs including court costs and attorney fees of up to ten percent (10%) of the total owing or five hundred dollars (\$500.00) whichever is greater. All fees and penalties shall be completely paid by the delinquent member and shall be made part of the courts order. Grantee agrees for himself, his heirs, personal representatives and assigns that his use of any of the above mentioned areas shall be subject to the grantee being current in all fees and assessments due the Diamondhead Property Association, and further agrees to comply with its Articles of Incorporation and By-Laws, Rules and Regulations from time to time promulgated by said Association. Grantee, for himself, his heirs, personal representatives and assigns, further agrees that the charges herein set forth shall be and constitute a debt which may be collected by suit in any court of competent jurisdiction or otherwise; and that upon the conveyance of any part of the land described herein, the Purchaser thereof and each and every successive owner and/or owners shall from the time of acquiring title covenant and agree, as aforesaid, to pay the Diamondhead Property Owners Association, Inc. its successors or assigns, all charges past and/or further as provided in, and in strict accordance with the terms and provisions hereof.

**9. WATER AVAILABILITY, CONNECTION AND FEES:** Grantee for himself, his heirs, personal representatives or assigns, agrees that as a consideration of sale, and as a condition precedent to the installation of water mains adjacent to the lots herein described and as appears on the map of Arkansas Communities, Inc., development, known as "Diamondhead" which said mains are to be located by Arkansas Communities, Inc., its successors, assigns or licensees that the Grantee jointly and severally promise to pay to the Grantor or its assignee a fee established by the Arkansas Public Service Commission so long as water service is available. The foregoing charge is for the maintenance of the availability of water service and is not a contribution in the aid of construction. A Lien shall exist and shall continue to exist on each in said subdivision for the amount of said monthly charge payable by the owner of such lot to Grantor, its successors or assigns, for water availability. Said Corporation shall have the right, power and authority, to add a penalty not to exceed 20% of such monthly payment for failure to pay the same when due and to enforce collection of all such delinquent payments and penalties if not paid within a reasonable time to be fixed by it by proceedings in the Chancery Court of the county in which the lot is located upon which delinquent payments are applicable, the same as other liens are enforced on lands in said county, and said liens shall cover and include said penalties and all costs incurred in enforcing same. Owner agrees to pay such water tap fees and connection fees as are or may be established by the Arkansas Public Service Commission for the privilege of tying into water system provided by the developer.

The aforesaid charges are subject to change by the Arkansas Public Service Commission. Exceptions and further explanations pertaining to conditions for water service have been or will be recorded in the office of the County Recorder and are hereby incorporated in and expressly made a part of this Agreement by reference. Charges for water service and for the availability of water service which are not paid within ten (10) days after the first day of the month in which they are due shall be increased by an overdue charge agreed upon by the Water Company and the Arkansas Public Service Commission. Any cost incurred by the Grantor, its successors or assigns in the collection of the aforesaid charges shall be borne by the Grantee, his heirs, successors or assigns. It is

understood and agreed that the above mentioned considerations, if unpaid, shall constitute a lien encumbrance on or against said lot, tract or parcel of lands, which lien shall be equal to and shall participate with other liens as provided by law.

**10. GARBAGE AND TRASH DISPOSAL:** No lots shall be used as a dumping ground for rubbish. Trash, garbage, and other waste shall be kept in sanitary containers. Any incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean, sanitary and sightly condition. During the construction of improvements, no trash shall be burned on any lot except in a safe manner, and unless so burned, shall be removed by the lot owners, and at owner's expense.

**11. COVENANTS RUNNING WITH THE LAND, DURATION OF RESTRICTIONS:** These restrictions shall be considered as covenants, running with the land, and shall bind the Grantee, their heirs, personal representatives or assigns, and if Grantees, their heirs, personal representatives or assigns, shall violate, or attempt any of the covenants or restrictions herein contained, it shall be lawful for any person or persons owning any land in the subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions either or prevent him or them from doing so, or to recover damages for such violation. All the restrictions, conditions, covenants, or agreements contained herein shall continue until such time thereafter until changed, altered, amended or revoked in whole or in part by the owners of the lots in all lettered sections by an agreement in writing executed and acknowledged by the owners of at least two-thirds (2/3) of said lots. Any invalidation of any of these covenants or restrictions shall in no way affect any other of the provisions thereof, which shall thereafter remain in full force and effect.

This Bill of Assurance, properly promulgated and passed, hereby supersedes, nullifies and cancels all previous Bills of Assurance and will not be subject to change unless changed, altered, amended, modified or replaced by subsequent Bills of Assurance. Such changes can only be accomplished by a two-thirds (2/3) vote of the lot owners in the Diamondhead subdivision.

*Effective July 1, 1997*