

This Instrument Prepared by, and
upon Recordation to be Returned to:
Timothy W. Grooms, Esq.
QUATTLEBAUM, GROOMS, TULL & BURROW PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas 72201
(501) 379-1700

200223

**AGREEMENT MODIFYING BILL OF ASSURANCE
DEERBERRY NEIGHBORHOOD IN BRODIE CREEK COMMUNITY AND
MODIFYING DECLARATION OF COVENANTS AND RESTRICTIONS
OF BRODIE CREEK**

THIS AGREEMENT, dated this 26th day of September, 2001, by and between Don Holeman, an individual, Bart Holeman, an individual, and Holeman Construction Company, an Arkansas corporation (hereinafter collectively referred to as "Holeman"), and Brodie Creek Property Owners Association, Inc., an Arkansas corporation (hereinafter "Brodie Creek").

RECITALS

WHEREAS, on or about September 24, 1996, a Bill of Assurance was executed ("Bill of Assurance") for Deerberry Neighborhood in Brodie Creek Community, which is an addition to the City of Little Rock, Pulaski County, Arkansas, and which Bill of Assurance was recorded in the real estate records of the Pulaski County Circuit Clerk having instrument number 96-66835 and applying to and restricting that certain tract of land described on Exhibit "A" attached hereto and made a part hereof (hereinafter the "Property"); and

WHEREAS, on or about September 23, 1996, a Declaration of Covenants and Restrictions of Brodie Creek ("Declaration of Covenants") was executed and recorded in the real estate records of the Pulaski County Circuit Clerk having instrument number 96-66834 and applying to and restricting the Property as well; and

WHEREAS, Holeman is the owner of certain lots (hereinafter the "Holeman Lots") located in the area generally known as Deerberry Neighborhood in Brodie Creek Community, an addition to the City of Little Rock, Pulaski County, Arkansas, and more particularly described on Exhibit B attached and made a part hereof; and



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WHEREAS, certain of such Holeman Lots were re-platted by Holeman and such re-plat was filed and approved with the City of Little Rock in direct violation of the terms and conditions of the Bill of Assurance, and specifically Section 20 thereof, and the Declaration of Covenants applying to and affecting the Holeman Lots; and

WHEREAS, Holeman desires to close certain real estate loans associated with the Holeman Lots but must have the outstanding issues related to the Bill of Assurance and the Declaration of Covenants satisfied for title purposes prior to doing so; and

WHEREAS, Brodie Creek desires to satisfy said outstanding Bill of Assurance and Declaration of Covenants issues for Holeman in exchange for certain assurances from Holeman.

AGREEMENT

NOW, THEREFORE, for Ten United States Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, both Holeman and Brodie Creek agree as follows:

1. **Recitals.** The recitals above are not mere statements of fact but are contractual in nature and are incorporated herein by this reference.
2. **Partial Waiver.** Brodie Creek waives Holeman's non-compliance with the terms of the Bill of Assurance and the terms of the Declaration of Covenants and approves re-plat of the Holeman Lots previously known as follows:

Lots 7, 8, 9, 10, 11, 12 and 13 of Brodie Creek Community, City of Little Rock, Pulaski County, Arkansas;

into the following:

Lots 7R, 8R, 9R, 10R, 11R and 12R of Brodie Creek Community, City of Little Rock, Pulaski County, Arkansas;

(hereinafter the "Re-platted Lots") upon the terms and conditions of this Agreement.

3. **Prorated Expenses for All Lots.** Holeman agrees it will pay expenses to Brodie Creek, in the form of assessments as that term is used in defined in the Articles of Incorporation and Bylaws of the Brodie Creek Property Owners Association, Inc. (hereinafter the "Bylaws") and the Bill of Assurance, for each of the Re-platted Lots on a basis which may result in Holeman paying a larger assessment per lot than other lot owners. The formula for calculating the assessment for each Re-platted Lot shall be the square footage of each individual Re-platted Lot, divided by the total square footage of the Re-platted Lots (which is calculated to be 54,218 square feet), and then multiplied by the total number of original Lots which were ultimately re-platted (which is 7). This result will then be multiplied by the "Annual Assessment" amount, or any "Special Assessment" amount, being assessed by the Brodie Creek Property Owners Association, Inc. against each lot or "share" (as such terms are used and defined in the By-Laws) in the Deerberry Neighborhood of the Brodie Creek Community.
4. **Each Holeman Lot to Equal One "Site".** It is understood and agreed to by the parties hereto that each and every one of the Holeman Lots, including but not limited to the Re-platted Lots, regardless of relative size to other lots in the Deerberry Neighborhood, shall meet the definition of, and therefore qualify as, a "Site" as that term is defined in the Bylaws and therefore the owners thereof shall each be entitled to only one (1) vote as a Class A Member of the Brodie Creek Property Owners Association, Inc. in accordance with said Bylaws.
5. **Right to Enforce.** The obligations and restriction herein set forth shall run with the land and shall bind and present Holeman, their heirs, successors and assigns. All parties claiming by, through or under Holeman shall be considered to have covenant with Holeman for any and all of the Re-platted Lots hereby obligated or restricted, and their heirs, successors and assigns, to conform to and to observe these obligations and restrictions.
6. **No Waivers.** All terms and conditions of the Bill of Assurance remain in full force and effect except as amended or changed herein. To the extent such documents or instruments are contrary hereto,

the Articles of Incorporation and Bylaws of Brodie Creek Property Owners Association, Inc., and the Declaration of Covenants and Restrictions of Brodie Creek filed and recorded of record in the real estate records of the Pulaski County Circuit Clerk September 24, 1996, as Instrument No. 96-66834, are all deemed superceded solely to the extent inconsistent with the terms of this Agreement, and solely as to Brodie Creek and Holeman.

7. Signatures. The acknowledged signatures below represent the owners of more than seventy-five percent (75%) in area of the total land contained within the Decrberry Neighborhood of the Brodie Creek Community in accordance with section 22 of the Bill of Assurance.

[AREAS OF SIGNATURES OF NECESSARY PARTIES BEGIN ON NEXT PAGE]

IN TESTIMONY WHEREOF, the following have caused this Agreement to be executed as of the date and year first written above.

HOLEMAN CONSTRUCTION COMPANY,
an Arkansas corporation

By: Don J. Holeman

Name: Bart Holeman

Title: PRESIDENT

Don Holeman
Don Holeman

Bart Holeman
Bart Holeman

BRODIE CREEK PROPERTY OWNERS
ASSOCIATION, INC., an Arkansas
corporation

INDIVIDUAL SIGNATURES

✓ Winton McInnis
Name: Winton McInnis

✓ Patricia H. Scherer
Name: Patricia H. Scherer

✓ Joe P. Lewis
Name: Joe P. Lewis

✓ Brooks Kirkland
Name: Brooks Kirkland

✓ Mary Allison
Name: Mary Allison

✓ Michael J. Hufnagel
Name: Michael J. Hufnagel

✓ Darthe Lassiter & Louis Wilson
Name: Darthe Lassiter

✓ Christy Caceres
Name: Christy Caceres

✓ Brett & Gina Parks
Name: Brett Parks

✓ Brad D. Brown
Name: Brad D. Brown

Don J. Holeman
Name: Don J. Holeman

Bobby L. Ray
Name: Bobby L. Ray

✓ Virginia Trammell
Name: Virginia Trammell

✓ Christa L. Carter
Name: Christa Carter

✓ MeShelle Hays
Name: MeShelle Hays

✓ Mark A Miller
Name: Mark A Miller

✓ DeT Smith
Name: DeT Smith

✓ Jay Gaddy #126001
Name: Jay Gaddy #126001

✓ Patrick Cronin
Name: Patrick Cronin

✓ Beverly Hall
Name: Beverly Hall

✓ Tom Adams
Name: Tom Adams

✓ Frank Lawrence
Name: Frank Lawrence

✓ Anne Thomas
Name: ANNE THOMAS

✓ Keith Price
Name: Keith Price

✓ Carol Coleman-Kennedy
Name: Carol Coleman Kennedy

✓ Mary Beth Schmidt
Name: Mary Beth Schmidt

✓ Dave Jones
Name: DAVE JONES

✓ Donald Lee Galloway Jr. 34 Deerberry
Name: Donald Lee Galloway Jr.

✓ R M Gable
Name: R M Gable

✓ Beth Ann Williams
Name: Beth Ann Williams

✓ Kirkwood McGowan
Name: Kirkwood McGowan

✓ Tracy Davis
Name: Tracy Davis

✓ Joy C. Lewis
Name: J.C.L.

✓ Martin Taylor
Name: MARTIN TAYLOR

✓ Clyde Wimer
Name: Clyde Wimer #2 Brodie Circle

✓ [Signature]
Name: [Signature]

✓ Mark C. Carroll
Name: Mark C. Carroll

✓ Ken Freier
Name: Ken Freier

✓ Charles P. Gordon
Name: Charles P. Gordon

✓ Jim Wilson
Name: JIM WILSON

✓ DENISE SOLE
Name: Denise Cole

Name: _____

CORPORATE / ENTITY SIGNATURES

Brodie Creek Realty LLC
Name of Company

Holeman Const.
Name of Company

By: Mary Allison

By: Don J. Holeman

Name: Mary Allison

Name: Don Holeman

Title: Pres.

Title: owner

Crochet Construction Inc.
Name of Company

Name of Company

By: Fonda Crochet

By: _____

Name: Fonda Crochet

Name: _____

Title: CEO

Title: _____