

**DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS,
EASEMENTS, AND RESTRICTIONS FOR FOUNTAIN CREEK ESTATES
PHASE I
A SUBDIVISION TO THE CITY OF POTTSBORO, GRAYSON COUNTY, TEXAS**

THE STATE OF TEXAS }

}

COUNTY OF GRAYSON }

This Declaration of Restrictive Covenants for **Fountain Creek Estates Phase I**, a subdivision to the City of Pottsboro, Grayson County, Texas that is recorded in **Volume 15, Page 56, Plat Records, Grayson County, Texas**; hereinafter referred to as the **Subdivision**, is made this **12th day of June, 2002** by **Fountain Creek Estates, L.L.C.**; hereinafter referred to as the **Developer**. **Developer** is also the owner of all lots of the **Subdivision**.

RECITALS:

Developer is the owner of the Property, as described in Section 1.24 below, and desires to own, develop, improve, lease and sell the Property for **single-family** residential housing purposes, subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property. Lot 1, Block B is a Commercial Lot, all other lots will be single-family residential lots.

Developer has heretofore caused the Association, as defined in Section 1.06 below, to be formed as an **Texas** nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined in Section 1.09 below, establishing annual budgets for maintaining the Common Areas and paying all costs and expenses incurred by the Association in connection therewith, making Assessments, as defined in Section 1.05 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

Now, therefore, Developer does hereby declare that all of that certain real property situated in **Grayson County, Texas**, shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property described hereto and any of the Additional Property, as described in Section 1.01 below (but only to the extent Developer submits

any portion of the Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors and assigns.

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ARTICLE I DEFINITIONS

As used throughout this Declaration, the following terms shall have the following definitions and meanings:

1.01 **Additional Property.** The term "Additional Property" shall refer to any real property and any Improvements situated on, lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Development) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 3.02 below. Additional Property may also include additional Common Areas.

1.02 **ARC.** The term or letters "ARC" shall mean the Architectural Review Committee appointed pursuant to Section 6.02 of this Declaration with the rights and obligations conferred upon such Architectural Review Committee pursuant to this Declaration.

1.03 **Architectural Standards.** The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Section 6.04 below for the purpose of reviewing and approving all exterior improvements, landscaping and any other improvements which may be made to any Lot, Dwelling or Common Area.

1.04 **Articles of Incorporation.** The term "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, as defined in section 1.06 of this Declaration, and all amendments thereto.

1.05 **Assessment.** The term "Assessment" shall mean the annual and special assessments and any other charges assessed against an Owner by the Association pursuant to Article X of this Declaration.

1.06 **Association.** The term “Association” shall mean **Fountain Creek Estates Homeowners’ Association, Inc.**, a **Texas** nonprofit corporation.

1.07 **Board.** The term “Board” shall mean and refer to the Board of Directors of the Association, as defined in section 1.06 of this Declaration, and their duly elected successors as may be provided in the Articles of Incorporation.

1.08 **Bylaws.** The term “Bylaws” shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

1.09 **Common Areas.** The term “Common Areas” shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall include recreational facilities and any other areas or Improvements on or within the Development designated as Common Areas by Developer from time to time. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof. Common Areas are currently defined as Lot A, of Block A; Lot B, of Block B; and Lot C, of Block C, as more fully described on the Plat recorded in Volume 15, Block 56, of the Plat Records of Grayson County, Texas.

1.10 **Common Expenses.** The term “Common Expenses” shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 10.04(e) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.11 **Declaration.** The term “Declaration” shall mean and refer to this Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for **Fountain Creek Estates Phase I, a subdivision to the City of Pottoboro, Grayson County, Texas** that is more fully described in the Plat Recorded in Volume 15, Page 56, of the Plat Records of Grayson County, Texas, together with all future amendments, modifications, supplements and restatements thereof as may from time to time hereafter be recorded among the Public Records of the County.

1.12 **Developer.** The term “Developer” shall mean **Fountain Creek Estates L.L.C.**, their heirs, successors, and assigns.

1.13 **Development.** The term “Development”, with an initial capital letter, shall mean and refer to the Property as defined in Section 1.24 of these declarations and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 3.02 hereof; and is hereinafter referred to as the “Development”.

1.14 **Dwelling.** The term “Dwelling”, with an initial capital letter, shall mean and refer to any improvement Lot.

1.15 **Governmental Authority.** The term “Governmental Authority” shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Development.

1.16 **Improvement.** The term “Improvement”, with an initial capital letter, shall mean and refer to all Dwellings, any building, structure or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Dwelling or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling. “Improvements” shall also mean any grading, excavation or fill, with volume exceeding **eight (8)** cubic yards.

1.17 **Institutional Mortgage.** The term “Institutional Mortgage” shall mean and refer to any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust or other recognized lending institution which normally or customarily engages in the business of making Mortgage loans and shall include any Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds as a first Mortgage on any Lot or Dwelling which has been duly and properly recorded in the Official Real Property Records of **Grayson County, Texas.**

1.18 **Living Space.** The term “Living Space” shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

1.19 **Lot.** The term “Lot” shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed. Upon the recording of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot rather than a Dwelling, until the Improvements constructed are sufficiently complete to reasonably permit habitation. Upon such completion, such Lot and Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is resubdivided by the Developer pursuant to the provisions of Section 3.05 of the declaration, the resubdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

1.20 **Mortgage.** The term “Mortgage”, with an initial capital letter, shall mean and refer to any mortgage, deed of trust, or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Official Real Property Records of **Grayson County, Texas.**

1.21 **Mortgagee.** The term “Mortgagee”, with an initial capital letter, shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgagee, and shall refer to the Beneficiary and/or Trustee of any Deed of Trust.

1.22 **Occupant.** The term “Occupant”, shall mean and include any Owner, family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Dwelling within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

1.23 **Owner.** The term “Owner”, with an initial capital letter, shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

1.24 **Property.** The term “Property”, with an initial capital letter, shall mean and refer to that certain real property situated in **Grayson County, Texas** which is incorporated herein by reference. The Property refers to the Fountain Creek Estates Phase I, a subdivision to the City of Pottsboro, Grayson County, Texas as recorded in Volume 15, Page 56 of the Plat records of Grayson County, Texas and as described in exhibit “B” which is attached to these Declarations and incorporated by reference herein as if set forth at length. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 3.02 hereof.

ARTICLE II OBJECTS AND PURPOSES

2.01 **Objects and purposes.** The covenants, conditions, restrictions, easements and reservations set forth in this Declaration are hereby imposed upon the Property for the following objects and purposes; to wit:

- (a) To establish **Fountain Creek Estates** as the **premier single-family** residential community in the **Area**.
- (b) To create, develop, foster, maintain, preserve and protect within **Fountain Creek Estates** a unique, pleasant, attractive and harmonious physical environment which will contribute to and enhance the quality of life for all future residents of **Fountain Creek Estates**.
- (c) To ensure that the development of **Fountain Creek Estates** will proceed pursuant to a uniform master plan of development with consistently high architectural, environmental, ecological and aesthetic standards.
- (d) To ensure the proper and appropriate subdivision, development, improvement, occupation, care, maintenance, use and/or enjoyment of each Lot, piece, parcel or tract of land within **Fountain Creek Estates**.
- (e) To protect each Lot, piece, parcel or tract of land within **Fountain Creek Estates** against the improper, undesirable, unattractive or inappropriate subdivision, development, improvement, occupation, care, maintenance, use and/or enjoyment of contiguous, adjacent or neighboring Lots, pieces, parcels or tracts of land.
- (f) To encourage the development, construction, erection, installation, placement, care, maintenance, repair, replacement and preservation and protection of architecturally attractive and aesthetically compatible Improvements appropriately designed for and properly located on each Lot, piece, parcel or tract of land within **Fountain Creek Estates**.

(g) To guard and protect against the development, construction, erection, installation and placement of unsuitable, undesirable, unattractive or inappropriate Improvements and the use of unsuitable, undesirable, unattractive or inappropriate construction materials within **Fountain Creek Estates**.

(h) To provide for the future ownership, operation, management, administration, improvement, care, maintenance, repair, replacement, use, regulation, preservation and protection of all Common Areas within **Fountain Creek Estates** and to provide a source for and assure the availability of the funds required therefor.

(i) To accomplish, meet, satisfy and fulfill certain Governmental Regulations, specifically including, without limitation, those of the United States Army Corps of Engineers, the **Texas** Department of Environmental Protection, the City of Pottsboro, Texas, including, without limitation, those imposed by the City.

(j) To provide Developer with effective control over the subdivision, development, management, administration, care, maintenance, appearance, marketing and sale of the construction of Improvements within **Fountain Creek Estates** for so long as Developer shall own any portion of **Fountain Creek Estates**.

(k) In general, to provide for the development, creation, operation, occupancy, use, enjoyment and preservation within **Fountain Creek Estates** and upon the Property of a **single family** residential community **of the highest quality** and order.

2.01 **Developer's Intent.** The intent of the Developer is to maintain the quality of the environment of **Fountain Creek Estates** as a premier single-family residential community within the terms of these Declarations.

ARTICLE III PROPERTY SUBJECT TO THE DECLARATION

3.01 **General Declaration.** Developer hereby declares that the Property, as defined in Section 1.24 of this Declaration, is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the land and the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot, Dwelling and Common Area thereof and their heirs, successors and assigns.

3.02 **Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may

be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Real Property Records of **Grayson** County, Texas which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating the book and page number in the Real Property Records of **Grayson** County, **Texas**, where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Real Property Records of **Grayson** County, **Texas**, submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Development. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 3.02 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 3.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 3.02 of this Declaration.

3.03 Mutuality of Benefit and Obligation. The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot, Dwelling and Common Area within the Property and are intended to create mutual, equitable servitude upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot or Dwelling within the Development and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

3.04 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling in the Development, to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by the Developer, including without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by Developer or of the Common Areas, (iii) installation and maintenance of any water, sewer and any other utility systems and facilities within the Common Areas and (iv) installation of security, trash and refuse facilities.

3.05 Subdivision Plat. Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Developer may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage

easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide, redivide, combine or resubdivide any Lots owned by Developer.

ARTICLE IV EASEMENTS

4.01 Grant of Nonexclusive Easements to Owner. Subject to the terms and conditions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, their heirs, successors, and assigns and all other Owners and Occupants. The easement and rights granted pursuant to this Section 4.01 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling.

4.02 Reservation of General Access Easement. Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, heirs, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot and Dwelling for the purpose of providing ingress to and egress from each Lot and Dwelling for (a) inspecting each Lot and Dwelling and any Improvements therein in order to determine compliance with the provisions of the Declaration and (b) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot or Dwelling directly affected thereby.

4.03 Reservation of Easements With Respect to Common Areas.

(a) **Easement Upon Common Areas.** Developer does hereby establish and reserve, for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, heirs, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Dwellings and other Improvements in and to any Lots and Dwellings, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Lot or Dwelling within the Development, Developer hereby establishes and reserves for itself and its heirs, successors, and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as

Developer deems appropriate; provided, however, that Developer should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

(b) **Changes in Common Areas.** Developer does hereby establish and reserve unto itself and its heirs and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas, any Lots or Dwellings owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

4.04 **Reservation of Easement for Utilities.** Developer does hereby establish and reserve for itself and the Association and their respective heirs, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Development including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery, and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment, and machinery used to provide the same. Notwithstanding anything provided in this Section 4.04 (i) The utilization of any of the easements and rights established and reserved pursuant to this Section 4.04 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 4.04 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

4.05 **Reservation of Easements for Signs, Walks, Trails, Walls and Fences.**

(a) **Easement for Walks, Trails, and Signs.** Developer does hereby establish and reserve for itself and the Association and their respective heirs, successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land **ten (10) feet in width lying parallel to and running along the common exterior boundary between Lot 8 and Lot 9 of Block D and running the full length of the property line from Common Area of Lot C to the public road at the front of each lot for the purpose of construction , installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging lanes, and related improvements, provided however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements.** Furthermore, Developer does hereby establish and reserve for itself and the Association and their respective heirs, successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary

adjacent to each public or private roadway of each Lot or Dwelling and any public or private roadway which is directly adjacent to and abuts such Lot or Dwelling for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging lanes, traffic directional signs and related improvements; provided, however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements.

(b) **Easement for Perimeter Wall.** Developer does hereby establish and reserve for itself and the Association and the respective heirs, successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land **five (5) feet** in width running parallel to and along the boundary of any Lot or Dwelling which constitutes the perimeter boundary of the Development for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm around the perimeter boundary of the Development; provided, however, that neither Developer nor the Association shall have any obligation to construct any such perimeter wall, fence, mound or berm.

4.06 **Reservation of Maintenance Easement.** Subject to the terms and provisions of Section 9.02(b) below, Developer does hereby establish and reserve for the Association and its agents, employees, heirs, successors and assigns a permanent and perpetual right and easement to enter upon any Lot or Dwelling for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance with the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

4.07 **Reservation of Environmental Easement.** Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, heirs, successors and assigns a permanent and perpetual right and easement on, over, across and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Standards or any watershed, soil erosion or environmental rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 4.07 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

ARTICLE V ASSOCIATION

5.01 **Membership.** The Owner of each Lot or Dwelling shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling owned by Developer in the Development, (b) in the event any Lot or Dwelling is owned by more than one (1) person, then the Owner of such Lot shall, by written notice of the Board, designate only one (1) representative to serve as member of the Association who shall exercise all voting rights

attributable to the Lot or Dwelling owned by such Owner and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation) shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot or Dwelling. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

5.02 Board. The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot or Dwelling within the Development, except a Dwelling used as a personal residence. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 5.02.

5.03 Voting Rights. Subject to the rights reserved to Developer in the Articles of Incorporation and Bylaws (which, among other things, provide that only Developer, for so long as Developer owns any Lot or Dwelling in the Development, shall be exclusively entitled to take various actions and vote on all matters to be voted on by the members of the Association) and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 13.01 below, the Owner of each Lot or Dwelling shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one voter per Lot or Dwelling. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 3.05 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Dwelling or otherwise, shall more than one vote be allowed for any one Lot or Dwelling. Fractional voting shall not be permitted. For purposes of this Section 5.03, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Dwellings owned by Developer.

5.04 Duties and Powers of Association. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together

with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Law of **Texas**, this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations adopted by the Association, then the provisions of **Texas** Law, this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency. The powers of the Association shall include, but not be limited to, (i) the power to purchase one or more Lots and/or Dwellings and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell and otherwise convey the same, (ii) subject to the provisions of this Section 5.04, the right to borrow money for the purpose of acquiring additional Common Areas or any portion thereof or for providing any of the services authorized herein, (iii) subject to the provisions of this Section 5.04, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses and options reserved or established herein for the benefit of Developer, the ARC, the Association and all Owners and Occupants, (iv) the right to grant and accept easements, (v) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority; provided, however, that except as provided in Section 11.03 below, the dedication or transfer of title to any of the Common Areas must be approved by a majority of those Owners present in person or by proxy at a duly held meeting of the Association called for such purpose, and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer, and/or security services for the others, for the furnishing of trash collection, water, sewer, and/or security services for the Common Areas and/or the Lots and Dwellings. For so long as Developer shall own any Lot or Dwelling, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell or otherwise convey any interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association without further consent or action on the part of the Owners.

5.05 Agreements. Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions, and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager

may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation or the Bylaws. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the Board may require with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association.

5.06 Management by Developer or its Affiliates. Developer or any affiliate thereof may be employed as the manager of the Association and the Development for so long as Developer owns any Lot or Dwelling within the Development, at such compensation and on such terms as would be usual, customary, and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the **Southwestern** United States of the size, quality and nature of the Development. Each owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, shall be deemed to ratify the provisions of this Section 5.06 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

5.07 Rules and Regulations. The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Dwellings and Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas (including specifically, the use of any of the recreational facilities, if any, situated within the Common Areas), the enforcement of all of the terms and provisions of this Declaration and any rules and regulations adopted by the Board and such other matters. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, canceled or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, canceled or modified unless such action is also approved by Developer for so long as Developer owns any Lot or Dwelling in the Development.

5.08 Indemnification. The Association may indemnify Officers, agents, representative, and members of the Board of the Association according to the Bylaws of the Association and to the fullest extent allowed under Texas Law.

ARTICLE VI ARCHITECTURAL REVIEW COMMITTEE DEVELOPMENT AND ARCHITECTURAL STANDARDS

6.01 Committee Composition. The ARC shall consist of not less than **three (3)** nor more than **seven (7)** persons, each of whom shall be appointed or elected as provided in Section 6.02 below. The members of the ARC may, but shall not be required to be, members of the Association or Owners of any Lot or Dwelling. The regular term of office for each member of the ARC shall be **one (1)** year, coinciding with the fiscal year of the Association. Any member appointed or elected as provided in Section 6.02 below may be removed with or without cause in the manner provided in Section 6.02 below. Each Owner, by acceptance of a deed to or other conveyance to a Lot or Dwelling, shall be deemed to ratify the provisions of Section 6.02 below.

6.02 Appointment and Removal of ARC Members.

(a) For so long as Developer is the Owner of any Lot or Dwelling within the Development, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ARC.

(b) At such time as Developer is no longer the Owner of any Lot or Dwelling within the Development or upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the ARC as provided in Section 6.02(a) above, then the members of the ARC shall be appointed by the Board of the Association.

(c) Any member of the ARC may be removed, with or without cause, by (i) Developer, in its sole discretion, during the period of time that the provisions of Section 6.02(a) above are in effect or (ii) the Board, in the event the provisions of Section 6.02(b) above are in effect. In the event of death or resignation of a member of the ARC, then Developer, in the event the provisions of Section 6.02(a) above are applicable or the Board, in the event the provisions of Section 6.02(b) are applicable, as the case may be, shall appoint a substitute member of the ARC to fill the vacancy of such deceased or resigning member for the remainder of the term of such former member.

6.03 Procedure and Meeting. The ARC shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairman and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. A majority of the total number of members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board of the Association and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board of the Association. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC.

6.04 Architectural Standards. The ARC is hereby authorized to promulgate and amend or modify from time to time written Architectural Standards that are set forth in Exhibit "A" to these Declarations of Restrictive Covenants governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Dwellings and other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvements on a Lot are to be submitted to and approved by the ARC and any other matters affecting the construction, repair or maintenance of any Dwelling or other Improvements on any Lot. The Architectural Standards adopted by the ARC shall be in addition to the provisions and

requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

6.05 **Approval of Plans and Specifications.**

(a) In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Development, to establish and preserve a harmonious design for the development and to protect and promote the value of the property, the Lots, the Dwelling and all Improvements thereon, no improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Lot or Dwelling by any owner, other than Developer, which affect the exterior appearance of any Lot or Dwelling unless plans and specifications have been submitted to and approved by the ARC in accordance with the terms and provisions of Section 6.05(b) below. Without limiting the foregoing, the construction and installation of any dwellings, sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servant's quarters or any other outbuildings, shall not be undertaken, nor shall any exterior addition to or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any Dwelling or Improvements, unless the plans and specifications for the same have been submitted to and approved by the ARC in accordance with the terms and provisions of Section 6.05(b) below.

(b) The ARC is hereby authorized and empowered to approve all plans, specifications and the construction of all Dwellings and other Improvements on any part of the Property. Prior to the commencement of any Dwelling or other Improvements on any Lot or Dwelling, the Owner shall submit to the ARC plans, specifications and related data for all such Improvements, which shall include the following:

(i) **Two (2)** copies of an accurately drawn and dimensioned site plan indicating the location of any and all Improvements, including, specifically, the Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any setback requirements applicable to the Lot or Dwelling.

(ii) **Two (2)** copies of foundation plans, floor plans and exterior elevations of the front, back and sides of the Dwelling to be constructed on the Lot.

(iii) **Two (2)** copies of written specifications and, if required by the ARC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Dwelling on such Lot or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing and other materials to be utilized on the exterior of a Dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such Dwelling.

(iv) **Two (2)** copies of the exterior and accent lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Dwelling.

(v) **Two (2)** copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 6.06 below.

(vi) Such other plans, specifications or other information or documentation as may be required by the Architectural Standards.

(c) The ARC shall, in its sole discretion, determine whether the plans, specifications and other data submitted by any Owner for approval are acceptable. **One (1)** copy of all plans, specifications and related data submitted to the ARC shall be retained in the records of the ARC and the other copy shall be returned to the Owner submitting the same marked “approved”, “approved as noted” or “disapproved”. The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within his Dwelling that do not affect exterior appearance without the necessity or requirement that ARC approval or consent be obtained.

(d) The ARC shall have the right to disapprove any plans and specifications upon any ground which is inconsistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Development, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole judgement of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Development. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements or Dwelling. Approval of plans and specifications by the ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling within the Development.

(e) In the event the ARC fails to approve in writing any such proposed plans and specifications within **forty-five (45)** days after such plans and specifications have been submitted and the owner has been given a receipt for plans in writing indicating the date of receipt of the plans by the ARC, then the plans and specifications so submitted will be deemed to have been approved.

(f) Any revisions, modifications or changes in any plans and specifications previously approved by the ARC must be approved by the ARC in the same manner specified above.

(g) If construction of the Dwelling or the Improvements has not substantially commenced (e.g., by clearing and grading, pouring of footing and otherwise commencing framing and other related construction work) within one (1) year of approval by the ARC of the plans and specifications for such Dwelling or other Improvements, then no construction may be commenced (or continued) on such Lot or Dwelling and the Owner of such Lot or Dwelling shall be required

to resubmit all plans and specifications for any Dwelling or other Improvements to the ARC for approval in the same manner specified above.

6.06 Landscaping Approval. In order to preserve, to the extent practicable, the natural landscaping and plant life and enhance the aesthetic appearance of the Property after a certificate of occupancy has been issued for the property; any landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner that has a total value greater than \$500.00 on any Lot or Dwelling shall not be installed unless and until landscaping plans have been submitted to and approved by the ARC. As long as Developer owns at least one lot of the Development, Developer reserves the right to make Landscaping improvements without the approval of the ARC. The provisions of Section 6.05 above regarding the method that such plans are to be submitted to the ARC, the time approval or disapproval of the same and the method of approving modifications or changes shall be applicable to such landscaping plans.

6.07 Construction Without Approval. If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot or Dwelling without ARC approval of the plans and specifications for the same or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 6.13 below.

6.08 Inspection. The ARC or any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot or Dwelling or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefor are being complied with. Any such entry shall not be deemed as trespassing or any other wrongful act by the ARC.

6.09 Subsurface Conditions. The approval of plans and specifications by the ARC for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by the ARC or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot or Dwelling are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot or Dwelling for the construction of any contemplated Improvements.

6.10 Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article VI, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article VI, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any

such Owner or Occupant or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by or arise as a result of any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sink-holes, underground mines, tunnels and water channels and limestone formations on or under any Lot or Dwelling) and (f) any other loss, claim, damage, liability or expense, including court costs and attorney's fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot, Dwelling or any Improvements situated thereon.

6.11 Commencement and Completion of Construction. Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year of the commencement date of said construction, such completion to be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities.

6.12 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, successors and assigns, shall have the right and option to maintain and carry on such facilities and activities as may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots and/or Dwellings or the development of Lots, Dwellings, Common Areas and the Additional Property, including, without limitation, the installation and operation of sales trailers and offices, signs and model Dwellings, all as may be approved by Developer from time to time; provided, however, that the location of any sales trailers of any assignees of Developer's rights under this Section 6.12 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Dwellings as model residences and as offices for the sale of Lots and/or Dwellings and for any related activities.

6.13 Enforcement and Remedies. In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the ARC and the Association shall have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or connection of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article VI, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article VI, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 10.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 10.09 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein

shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified herein.

6.14 **Compliance Certification.** The ARC or any authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary ARC approvals have been obtained and whether any Dwelling or Improvement has been constructed in accordance with the provisions of this Declaration.

ARTICLE VII USE RESTRICTIONS-RESIDENTIAL PROPERTY

7.01 **Use Restrictions.** Except as otherwise provided to the contrary in Section 6.12 above and in this Section 7.01, each Lot and Dwelling shall be used for single-family residential purposes only and no trade or business of any kind may be carried on in or from any Lot or Dwelling, except that Lot 1, Block B is designated as a commercial lot and commercial activities may be conducted on Lot 1, Block B: provided, however, that any Additional Property may be used for single family residential dwelling purposes only. The use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such does not create regular customer, client or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling, (b) is for a term of at least six (6) months and (c) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association; provided, however, that Developer shall have the perpetual right to designate from time to time any Dwellings owned by Developer, its successors and assigns, which may be leased for such periods of time as Developer may determine, including daily or weekly rentals. Notwithstanding anything provided in this Section 7.01 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting Property; provided, however, that in the event any portion of the Property is to be developed or used for any residential uses authorized above for Additional Property, then such use must be approved in writing by the ARC.

7.02 **Subdivision and Interval Ownership.** No Lot may be subdivided or resubdivided without the prior written approval of the ARC; provided, however, that the provisions of this Section 7.02 shall not be applicable to Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

7.03 **Animals and Pets.** No livestock (including, without limitation, horses, ponies, cattle, goats, pigs and the like), poultry, reptiles or animals of any kind, nature or description shall be kept, bred or raised upon Residential Property, except for dogs, cats, birds and other usual and customary types of urban household pets which may be reasonably kept, raised and maintained upon Residential Property, provided, however, that the same are not kept, raised or maintained thereon for breeding or other business of commercial purposes or in numbers deemed unreasonable by Developer or the Association, in the exercise of their reasonable discretion. Numbers in excess of **three (3)** of each such type of household pet (other than aquarium-kept tropical fish) shall be considered unreasonable. Notwithstanding the foregoing provisions of this Section 7.03 permitting dogs, cats, birds and other usual and customary types of urban household pets, however, no reptiles, animals, birds or other pets may be kept, raised or maintained on

Residential Property under circumstances which, in the good faith judgment of Developer or the Association, shall constitute an unreasonable annoyance, nuisance or safety hazard to Owners and residents of **Fountain Creek Estates** and their guests and invitees or an unreasonable interference with the comfortable and quiet use, occupancy and enjoyment of other Residential Property, Common Area or Public Property. In furtherance of the foregoing, no such household pet shall be permitted to make an unreasonable amount of noise, disturb the peace or otherwise become an annoyance or nuisance. All household pets shall be kept indoors or be confined by fencing, walls or similar barriers on the Residential Property of its or their owners. No pet shall be allowed to run at large within **Fountain Creek Estates**. Accordingly, when not confined to the Residential Property of its or their owner, all pets shall be on leash or under effective voice control.

7.04 **Commercial and Recreational Vehicles.**

(a) No truck, bus, trailer or other “commercial or recreational vehicle” (as that term is hereinafter defined) and no mobile home, motor home, house trailer, camper, van, boat, boat trailer, horse trailer or other recreational vehicle or the like shall be permitted to be parked or stored on Residential Property, unless the same shall be parked or stored entirely within and fully enclosed by a garage; provided, however, that commercial or recreational vehicles shall be permitted to be parked on Residential Property on which ongoing construction activity is taking place; and provided, further, that the foregoing provisions of this subsection 7.04(a) apply to parking on “a temporary or short-term basis” (as that term is hereinafter defined). The constructions of all garages must be approved according to the terms of this Declaration by the ARC prior to being constructed.

(b) No bus, multi-passenger van, motorcycle, motor scooter, moped, all terrain vehicle, go-cart or other two-wheeled, three-wheeled or four-wheeled motorized recreational or utility vehicle, or the like, shall be permitted to be parked or stored on Residential Property, unless the same shall be parked or stored entirely within and fully enclosed by a garage; provided, however, that the foregoing provisions of this subsection 7.04(b) shall not apply to parking on a “temporary” or “short term” basis (as that term is hereinafter defined).

(c) No passenger automobile, commercial, recreational or other motorized vehicle, or the like, shall be dismantled, serviced, rebuilt, repaired or repainted on Residential Property, except entirely within and fully enclosed by a garage; provided, however, that the foregoing restriction shall not be deemed to prevent or prohibit those activities normally associated with and incident to the day-to-day washing, waxing, polishing, vacuuming and detailing of such vehicles other than as a business.

(d) For purposes of this Section 7.04, parking on a “temporary or short-term basis” shall mean and be defined as parking, on a non-recurring basis and for a single period not exceeding **forty-eight (48) hours** in duration, of commercial, recreational or utility vehicles or the like belonging to guests of Owners, commercial vehicles used in connection with the furnishing of services and/or the routing pick-up and delivery, respectively, of materials from and to Residential Property (including those commercial vehicles used in connection with current on-going construction of Improvements on Residential Property) and commercial or recreational vehicles belonging to or being used by Owners for loading and unloading purposes only. Any vehicle parked under this paragraph shall not create a nuisance

(e) For purposes of this Section 7.04 the term “commercial or recreational vehicle” shall mean and be defined as a truck, motor home, camper, camping trailer, utility trailer, bus or van of greater than three-quarter (1) ton capacity and any vehicle, including a passenger automobile, with a sign displayed on any part thereof advertising any kind of business or on or within which any commercial materials and/or construction materials or tools are visible.

(f) The Association shall be entitled and is hereby empowered to adopt additional reasonable rules and regulations governing the parking, storage and use of commercial, recreational and utility vehicles and the like within the Property, and if so adopted the same shall be binding upon all Residential Property and all Owners and residents of **Fountain Creek Estates** and their guests and invitees.

(g) Any commercial, recreational, utility or other vehicle parked, stored or used in violation of these restrictions or in violation of any rules and regulations adopted and promulgated by the Association concerning the same may be towed away or otherwise removed from the Property by or at the request of Developer or the Association and at the sole expense of the owner after being given 24 hours written notice delivered in person to the owner of the residence. In the event of such towing or other removal, neither Developer nor the Association or their respective officers, partners, employees or agents shall be liable or responsible to the owner of any such vehicle for trespass, conversion or damage incurred as a result of or incident to, or for the cost of, such towing or removal or otherwise; nor shall Developer or Association, or their respective officers, partners, employees or agents be guilty of any criminal act or have any civil liability by reason of such towing or removal, and neither such towing or removal nor the failure of the owner of the towed or removed vehicle to receive any notice of the violation of the provisions of this Section 7.04 shall be grounds for relief of any kind.

7.05 Closed Garage Doors. Except during periods of their actual use and operation, all garage doors on Residential Property shall be kept and maintained in the closed position such that the interior of any garage shall not be visible from any adjacent or nearby Residential Property, Common Property or Public Property, including any public streets.

7.06 Maintenance. Each Lot and all Improvements, including landscaping, located thereon shall at all times be kept and maintained in a safe, clean, wholesome and attractive condition and shall not be allowed to deteriorate, fall into disrepair or become unsafe or unsightly. In particular, no weeds, underbrush or other unsightly growth and no trash, rubbish, refuse, debris or unsightly objects of any kind shall be permitted or allowed to accumulate on any Lot.

7.07 Reconstruction of Damaged Improvements. In the event that a residential dwelling or other Improvements on a Lot shall be damaged or destroyed by hazard, casualty or other cause, including fire or windstorm, the Owner of the affected Lot shall, within a reasonable period, not exceeding six (6) months following the occurrence of the offending incident, cause the damaged or destroyed Improvements to be repaired, rebuilt or reconstructed, or to be removed and cleared from such Lot. Any such repair, rebuilding or reconstruction shall be approved and accomplished as otherwise required pursuant to the provisions of this Declaration.

7.08 Garbage and Garbage Containers. Except when placed curbside on, and only on, regularly scheduled garbage and trash pick-up days, all garbage and trash containers and the like shall be kept in a closed garage or other outbuilding or placed inside of or behind opaque masonry

walls attached to and made a part of the single family residential dwelling or any garage or other outbuilding and otherwise in conformity with applicable provisions of the Architectural Standards and Guidelines, if any. Except when placed curb-side for pick up, garbage and trash containers and the like shall, in no event, be visible from any adjacent or neighboring property, whether Residential Property, Common Area or Public Property, including any public streets.

7.09 **Burning.** No burning leaves, trash, rubbish, garbage or other waste materials of any type shall be permitted or conducted on any Lot. Nothing herein contained, however, shall be deemed to prohibit the burning of wood, logs or charcoal in properly constructed or installed fireplaces, barbecue cookers or the like, whether inside or outside of any building or other structure located on a Lot.

7.10 **Storage Tanks.** No storage tanks, including but not limited to, those for water, oil, propane gas or other liquid, fuels or chemicals, including those used for swimming pools or the like, shall be permitted outside of a building on Residential Property unless the same shall be underground or placed inside of or behind opaque walls, fences, landscaping screens or similar type enclosures in conformity with applicable laws and applicable provisions of the Architectural Standards and Guidelines, if any. In no event shall any of the same be visible from any adjacent or neighboring property, whether Residential Property, Common Area or Public Property.

7.11 **Mineral Exploitation.** No exploration, mining, quarrying or drilling for or other exploitation of gas, oil, phosphate or other minerals of any type or kind shall be permitted or conducted on any Lot.

7.12 **Laundry & Clothes Drying.** No laundry or clothes drying lines or areas shall be permitted outside of any building on any Lot unless the same shall be placed inside of walls, fences, landscaping screens or similar type enclosures in conformity with application provisions of the Architectural Standards and Guidelines, if any, or rules and regulation adopted and promulgated by the Association. In no event shall any of the same be permitted if visible from adjacent or neighboring property, whether Residential Property, Common Area or Public Property.

7.13 **Outdoor Furniture and Recreational Facilities.**

(a) No furniture shall be placed, kept, installed, maintained or located in or on the front or side yards or areas of a Lot or Dwelling. Any furniture placed, kept, installed, maintained or located at the rear of or behind a Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any street.

(b) Wood piles shall be located only at the rear of a Dwelling and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Lots and Dwellings

(c) Children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be allowed only at the rear or behind a Dwelling and shall, to the extent practicable, be located so that the same are not visible from any street.

(e) Free standing playhouses and tree houses shall be permitted but only after ARC approval of the same.

- (f) Basketball backboards shall be located in a location approved by the ARC.
- (g) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and, to the extent practicable, shall not be visible from the street.
- (h) Bird feeders, wood carvings, plaques and other types of home crafts shall not be permitted in the front or side yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques and other types of home crafts shall be located only at the rear of a Dwelling and shall not be visible from any street.

7.14 **Signs.** No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the ARC. Notwithstanding the foregoing (a) the restrictions set forth in this Section 7.15 shall not be applicable to Developer or to any signs erected pursuant to Section 8.06(c) below and (b) Developer and the Association shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established in Section 4.05 above.

7.15 **Trees.** No trees shall be cut down or otherwise destroyed or removed from any Residential Property without the prior written consent of the ARC. As used herein the term “trees” shall mean and be defined as any tree **four (4) inches** or greater in diameter as measured **one (1) foot** above the ground level.

7.16 **Fire Arms.** The discharge of fire arms of any type, including, without limitation, “B-B” guns, pellet guns, air powered dart guns or “paint ball” guns on Residential Property is prohibited.

7.17 **Garage Sales or Yard Sales.** “Garage Sales” or “Yard Sales” shall be permitted on Residential Property only for the purpose of the sale and/or disposal of the private property and personal effects of the Owner of a Lot on an isolated basis as an incident to an impending sale of such Lot and the Improvements located thereon. Each owner shall hold not more than two garage sales in one calendar year, and each garage sale shall be no more than two days in length. The yard and driveway shall be promptly cleaned immediately after the completion of the garage or yard sale.

7.18 **Rules and Regulations.** In addition to the foregoing restrictions on the use of Residential Property, the Association shall have the right, power and authority, subject to the prior written consent and approval of Developer, so long as Developer shall be the Owner of any Lot, to promulgate and impose reasonable rules and regulations governing and/or restricting the use of Residential Property and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however that no rules or regulations so promulgated shall be in conflict with the provisions of this Declaration or violate applicable Governmental Regulations. Any such rules and regulations so promulgated by the Association shall be applicable to and binding upon all

Residential Property and the owners thereof and their successors and assigns, as well as all guests or invitees of and all parties claiming by, through or under such Owners.

7.19 **Violations.** In the event of a violation of or failure to comply with the requirements of this Article VII and the failure of the Owner of the affected Lot, within **fourteen (14) days** following written notice by Developer, so long as Developer is the Owner of any Lot, or by the Association of such violation or non-compliance to cure or remedy such violation, Developer, so long as Developer is the Owner of any Lot, or the Association or its duly appointed employees, agents or contractors, shall have and are specifically granted the right and privilege of and an easement and license to enter upon the affected Lot or any portion or portions thereof, without being guilty of any trespass, for the purpose of undertaking such acts or actions as may be reasonably necessary to cure or eliminate such violation; all at the sole cost and expense of the Owner of the affected Lot. Such costs and, shall be assessed by the Association as an Individual Lot Assessment to the affected Lot and the Owner.

7.20 **Precedence Over Less Stringent Governmental Regulations.** In those instances where the covenants, conditions and restrictions set forth in this Article VII set or establish minimum standards or limitations or restrictions on use in excess of Governmental Regulations, the covenants, conditions and restrictions set forth in this Article VII shall take precedence and prevail over less stringent Governmental Regulations.

7.21 **Developer's Sales and Marketing Activities.** Notwithstanding anything to the contrary set forth in this Article VII or elsewhere in this Declaration, Developer and its affiliates may use any portion of the Property (other than Lots owned by others) for sales and marketing activities related to the sale of Lots, including without limitation, the construction and operation of a sales and administrative center.

ARTICLE VIII DEVELOPMENT RESTRICTIONS - RESIDENTIAL PROPERTY

8.01 Generally. The development, construction, erection, placement and installation of all Improvements on Residential Property shall be subject to and governed by the following covenants, conditions, restrictions and reservations, to wit:

8.02 **ARC Approval.** No Dwelling or other Improvements of any nature whatsoever shall be constructed on any Lot or Dwelling unless such Dwelling and/or Improvements have been approved by the ARC in the manner set forth in Article VI above.

8.03 **Building Type.** Since the permitted use of Lots is limited to **single family** residential dwelling and related purposes only, except for Lot 1, of Block B, which is a Commercial Lot, no building or structure other than one (1) **single family residential** dwelling and its related appurtenances, facilities and improvements, which may include facilities for live-in servants and/or guest quarters, garages, out buildings and accessory structures, shall be constructed, erected, placed, installed, located or permitted to remain on any Lot.

8.04 **Compliance with Governmental Regulations.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the Governmental Authorities.

8.05 Architectural Standards and Guidelines. All improvements shall be constructed, erected, placed, installed, located and maintained on Residential Property in conformance with this Declaration and the Architectural Standards and Guidelines, as set forth in exhibit "A" to this Declaration which is incorporated by reference herein, and as they may be changed, amended or modified from time to time.

8.06 Construction of Improvements.

(a) During the construction of any Improvements or Dwelling, (i) all Lots and Dwellings shall be maintained in a clean condition, free of debris and waste materials, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any street and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Development **at least weekly**. Used construction materials may be burned onsite so long as such burning is conducted at the rear of such Lot or Dwelling and does not create a nuisance to other Owners or violate the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials, trash or debris be buried on or beneath any Lot, Dwelling or any other portion of the Development. No Owner shall allow dirt, mud, gravel or other substances to be removed from the treads and wheels of all vehicles traveling on any streets within the Development.

(b) During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, material-men and suppliers shall (i) utilize off-street parking **only**, (ii) enter the Lot or Dwelling on which such Improvements are being constructed only from the driveway for such Lot or Dwelling and (iii) not damage trees or other vegetation on such Lot which, pursuant to the provisions of Section 7.15 above, are to be preserved.

(c) Up to **two (2)** signs, in size and color to be approved by the ARC, may be posted on a Lot at a height not to exceed **five (5) feet** from the ground level advertising the Lot or the Dwelling thereon for sale or, during the construction of such Dwelling, containing information identifying the builder of such Dwelling. No other signage, banners, flags or advertising posters shall be allowed without obtaining ARC approval. Appropriate location of such signage shall be established by the ARC, but in no event shall any signage authorized by this Section 8.06 or which may be approved by the ARC be attached, nailed or otherwise adhered to any tree or other plant life on a Lot.

(d) No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any streets or roads within the Development. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials, and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition.

(e) All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations, zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the Architectural Standards

and all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.

8.07 **Height Limitations.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed **two (2) stories** in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway.

8.08 **Building Setbacks.**

(a) Subject to the provisions of Section 8.09 below, minimum building setback lines for all Dwellings shall be established either (i) by the ARC, (ii) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development), or (iii) in the deed from Developer to the Owner of such Lot. Where the recorded subdivision plat does not set forth building setbacks, each Dwelling shall be setback from the **SIDE LOT LINES** of each lot a minimum of **seven (7) feet or ten (10) percent of the total building width, whichever is greater.** Where the recorded subdivision plat does not set forth the building setbacks, each Dwelling shall be setback from the **BACK OR REAR LOT LINES** of each lot a **minimum of twenty (20) feet.** The ARC reserves the right to grant variances to these setback lines.

(b) No Dwellings shall be built within the setback areas established in accordance with any of the procedures specified in Section 8.08(a) above. All eaves, steps, stoops, porches, terraces, decks and patios shall be deemed a part of the Dwelling for the purposes of determining building setback areas pursuant to this Section 8.08.

8.09 **Siting of Dwellings.** Prior to commencing any construction-related activities on any Lot (including any grading or clearing), the location of any Dwelling to be constructed shall be set forth on the site development plan for such Lot which must be approved by the ARC pursuant to the provisions of Section 6.05 above. Notwithstanding anything provided in Section 8.08 above to the contrary, the ARC may require building setback requirements different from those described in Section 8.08, including building setbacks which are greater than those specified in Section 8.08 above.

8.10 **Minimum Living Space.** Minimum Living Space requirements shall be established (i) by the ARC, (ii) on the subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development) or (iii) in the deed from Developer to the Owner of the Lot.

8.11 **Temporary Structures.** No buildings, structures, improvements or other facilities of a temporary nature, including trailers, tents or shacks shall be permitted on a Lot; provided, however, that temporary improvements or facilities used solely in connection with and only during the period of the construction of approved permanent Improvements may be permitted by the ARC, in its discretion, during the actual period of the construction of such permanent Improvements so long as the same are removed immediately following the completion of such construction. The particular location of any such temporary improvements during construction shall be subject to the approval of the ARC.

8.12 **Garages.**

(a) Each Dwelling shall provide for parking for at least **two (2)** automobiles in garages equipped with garage doors. Carports shall not be permitted. Each Dwelling shall provide adequate off-street parking within the property lines of each lot. Vehicles shall be parked only in driveways constructed in accordance with the provisions of Section 8.13 below. Vehicles shall not be parked on any landscaped or natural areas of a lot or Dwelling.

(b) No garage doors shall open onto or front a street. Garage doors shall be constructed of such materials as are approved by the ARC. Garage doors shall be kept closed at all times, except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ARC.

(c) All automobiles owned or used by the Owner or Occupant of any Dwelling and their respective family members shall be parked in garages to the extent garage space is available. Garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein.

8.13 **Driveways and Sidewalks.** All driveways and sidewalks for each Lot or Dwelling shall be constructed of concrete. Other materials (e.g. brick) may be used but only if approved by the ARC. All driveways and sidewalks shall be paved. Gravel and loose stone driveways and sidewalks are prohibited. Provided, however, that the foregoing shall not be applicable to any of the roadways within the Development which may constitute Common Areas.

8.14 **Roofing.**

(a) The ARC shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials which may be utilized for any Dwelling.

(b) No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or Dwelling, including, without limitation, the roof of any Dwelling if the same would be visible from any street.

(c) No plumbing or heating vents, stacks and other projections of any nature shall be placed on the roof on the front of a Dwelling. All such vents, stacks and any other projections from the roof of any Dwelling shall be located on the rear roof of such Dwelling and shall (i) be painted the same color as the roofing material used for such Dwelling and (ii) to the extent practicable, not be visible from any street.

(d) No projections of any type shall be placed or permitted to remain above the roof of any Dwelling except for approved chimneys and vent stacks.

8.15 **Antennas, Etc.** No antennas, aerials, discs, dishes or other devices for the transmission or reception of radio or television signals or any other form of electro-magnetic radiation or communication shall be erected, constructed, installed, used or maintained outside of any building or structure on a Lot whether or not the same located on the roof of any structure or is otherwise attached to or detached from a building or a structure unless the same shall be first approved in writing by the ARC. If approved by the ARC, the same shall nevertheless be subject to such

height and location restrictions as imposed by the ARC as an incident to such approval or as otherwise specified in the applicable provisions of the Architectural Standards and Guidelines.

8.16 **Windows, Window Treatments and Doors.**

(a) Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or other purposes.

(b) No aluminum or metal windows shall be utilized on the front or sides of any Dwelling. Cantilevered bay windows shall be reviewed by the ARC, (which may require additional landscaping in front of such bay windows). Burglar bars or doors (including wrought iron doors) shall not be permitted.

(c) Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

8.17 **Swimming Pools and Tennis Courts.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts may be constructed, installed and maintained on any Lot or Dwelling subject to the prior written approval of the plans by the ARC and the restrictions contained herein. Above-ground pools shall not be permitted. The ARC shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water features or amenities and tennis courts within the Development.

8.18 **Exterior Air Conditioning and Swimming Pool Equipment.** All air conditioning, swimming pool and other mechanical or electrical equipment or the like located outside of a residential dwelling shall be screened from the view of street rights-of-way and adjacent or neighboring properties by opaque walls attached to and made an architectural part of each single family residential dwelling and otherwise in conformity with the applicable provisions of the Architectural Standards and Guidelines, if any, or otherwise approved by the ARC. Absolutely no window or wall mounted air conditioning units shall be permitted.

8.19 **Chimneys.** The exterior of all chimneys shall be constructed of either brick, stone, stucco or synthetic plaster (e.g., Dryvit Brand EIFS) unless other exterior materials are approved by the ARC. No cantilevered chimneys or chimneys with siding shall be permitted except that chimneys on the rear of a dwelling may be constructed with siding if it is not visible from the street. If a fireplace utilizes a metal spark arrestor or other metal venting apparatus at the top of the chimney, then a painted metal cowling or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be painted to blend with the color of the roofing material used for such Dwelling.

8.20 **Fences.** No chain link, vinyl coated or wire fences shall be permitted within the Development except within the Common Areas and those fences erected by Developer or approved by the ARC. No fences shall be allowed in front yards. Electric fences shall not be permitted. The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ARC. All fences shall be constructed of cedar or other material approved by the ARC. All cedar picket fences shall be “good neighbor” or “alternate picket” design fences. No wood posts will be allowed. All cedar picket fences shall receive a water

sealant treatment to prolong the aesthetic appearance of the cedar. All fences shall be maintained regularly to maintain their appearance which includes regular re-application of water sealant treatment. **For the safety of the users of the Common areas, the following lots are restricted and the owners will only be allowed to construct open picket ornamental iron fences that must be first approved by the ARC:** Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Block D; Lots 8, 9, 14, 15, and 16 of Block C and Lots 1, 2, and 3 of Block B as set for in Volume 15, Page 56 of the Plat Records of Grayson County, Texas.

8.21 **Exterior Building Materials, Finishes and Colors.**

(a) All exterior building materials, finishes and colors shall be in conformance with the applicable provisions of the Architectural Standards and Guidelines, if any, or as otherwise approved by the ARC. The foregoing restriction shall be equally applicable to the initial as well as by subsequent painting of any Improvements. Uncovered or exposed (whether or not painted) concrete or concrete block shall not be permitted as the exterior finish of any building, structure or wall unless approved by the ARC and Developer, so long as Developer is the Owner of any Lot.

(b) Metal flashings, valleys, vents and gutters installed on a Dwelling shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

(c) No wooden steps or stoops shall be allowed on the front or side of any Dwellings, unless approved by the ARC.

(d) All brick, stonework and mortar, as to type, size, color and application, must be approved by the ARC. No black grout (mortar) shall be utilized for any exterior brick or stone. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, synthetic plaster (e.g., Dryvit Brand EIFS), wood, trim, cornices, eaves, railings, doors and shutters shall be subject to ARC approval.

8.22 **Exterior Lighting.** All exterior lighting for any Dwelling, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to a Dwelling, must be approved by the ARC.

8.23 **Equipment Storage Areas.** All exterior equipment storage areas shall be enclosed by opaque masonry walls attached to and made part of each single family residential dwelling or any garage or other outbuilding and otherwise in conformity with the applicable provisions of the ARC.

8.24 **Mailboxes.** Only one (1) mailbox shall be allowed on any Lot or Dwelling. All mailboxes shall be of the type, design, color and location as may be established in the Architectural Standards or as approved by the ARC. The location of the mailboxes shall be approved by the ARC prior to installation. Mailboxes shall contain only the house number of the Lot or Dwelling as approved by the ARC, but no further inscription, paintings, ornaments or artistry shall be allowed. No Brick mailboxes will be allowed. All mailboxes shall be a cast iron mailbox approved by the ARC.

8.25 **Underground Utilities.** Except for existing utility lines, all new utility lines and facilities within **Fountain Creek Estates** shall be located and installed underground or concealed under or within a building or other on-site Improvements; provided, however, that the foregoing restriction

shall not be deemed to prohibit (a) temporary electric power and telephone service poles and water lines which are incident to the ongoing construction of approved Improvements, provided that the same are removed immediately following the completion of such construction; (b) above-ground electric transformers, meters and similar apparatus properly screened as specified in the applicable provisions of the Architectural Standards and Guidelines, if any, or as otherwise approved by the ARC; or (c) permanent outdoor safety/security light poles located and installed in conformance with the applicable provisions (including height limitations) of the Architectural Standards and Guidelines, if any, or as otherwise approved by the ARC.

8.26 Minimum Landscaped Areas. The entire surface area of each Lot which is pervious, open and uncovered by buildings, structures, driveways, walkways, parking areas, sidewalks, swimming pools, decks, patios or other impervious surfaces shall be landscaped with lawn grass, ground covers, shrubs, bushes, trees, flowers and other plant materials or vegetation in accordance with a landscape plan and plant materials approved by the ARC.

8.27 Landscaping.

(a) The landscaping plan for each Lot or Dwelling in the Development shall be submitted to the ARC for approval pursuant to the provisions of Section 6.06 above. Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers and natural environment, including drainage channels, which exist on such Lot.

(b) All front and side yards of each Lot shall, unless approved by the ARC as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with grass.

(c) All landscaping for a Lot shall be completed no later than **thirty (30)** days following the issuance of a certificate of occupancy for the Dwelling situated thereon. The ARC reserves the right to require that the front of each Dwelling be landscaped prior to occupancy.

(d) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Lot or Dwelling where such hedge or shrubbery interferes with traffic sight-lines for roadways within the Development. The determination of whether any such obstruction exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners.

(e) No bird baths, fountains, reflectors, flagpoles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot or Dwelling.

(f) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or Dwelling or in the rear (back) yard of any Lot or Dwelling if the same would be visible from any street.

(g) The ARC may from time to time promulgate rules and regulations adopting an approved list of plant life which may be utilized on any Lot or Dwelling, which rules and regulations may

prescribe that a minimum dollar amount be established and utilized as the landscaping budget for each Lot or Dwelling.

(h) No Owner shall allow the grass on his Lot or Dwelling to grow to a height in excess of **six (6)** inches, measured from the surface to the ground.

(i) Seasonal or holiday decoration (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot or Dwelling as soon as such holiday passes.

(j) The owner of each lot shall be required to plant two (2) trees in the front of each lot prior to occupancy. The trees **shall be** Oak, Ash, Cedar Elm, Maple, Bald Cypress, Pecan, Walnut. **No** Willow, Silver Leaf Maple, Sycamore, China Berry, or Cottonwood trees are **allowed**. Other varieties of trees may be approved by the ARC.

8.28 **Grass.** No type or variety of lawn grass other than of the **Bermuda Grass** variety or other varieties approved by the ARC shall be planted or installed on Residential Property, and such lawn grass shall be planted and installed only in those areas where specified on the landscape plan approved by the ARC. The planting and installing of lawn grass on Residential Property shall be accomplished by the installation of full sod covering the entire area required to be grassed. Partial sodding, sprigging, plugging or seeding shall not be permitted.

8.29 **Artificial Vegetation.** No plastic, vinyl or other type of artificial vegetation shall be permitted on the exterior of any building on Residential Property.

8.30 **Additional Regulations.** In addition to the restrictions set forth in this Declaration, the (i) ARC shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, Lots and Dwellings, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling, and (ii) Board of the Association shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interests of all Owners, which rules and regulations shall be binding on all Owners, Lots and Dwellings.

8.31 **Variances.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article VI above and this Article VIII with respect to any Lot or Dwelling. Any variances request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance executed by either the chairman or vice chairman of the ARC. The provisions of Section 6.03 above concerning meetings, a quorum of members, and the number of votes necessary to approve action taken by the ARC shall be binding upon the ARC in any matters regarding the granting of variances.

8.32 **Enforcement and Remedies.** In the event any of the provisions of this Article VIII are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitee, agents, employees or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees,

representatives and independent contractors enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article VIII, including, without limitation, attorney's fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VIII, shall constitute an individual Assessment to such Owner pursuant to Section 10.06 below, and if the same is not paid when due, shall be subject to the lien provided for in Section 10.09 below, and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified herein.

8.33 Precedence Over Less Stringent Governmental Regulation. In those instances where the covenants, conditions and restriction set forth in this Article VIII set or establish minimum standards in excess of Governmental Regulations, including, without limitation, building, zoning, land use and environmental regulations, the covenants, conditions and restrictions set forth in this Article VIII shall take precedence and prevail over less stringent Governmental Regulation.

8.34 Waivers, Exceptions and Variances by Developer. Notwithstanding anything to the contrary set forth in or which may otherwise be implied from the terms and provisions of this Declaration, Developer specifically reserves exclusively unto itself, for the duration hereinafter specified, the right and privilege (but Developer shall have absolutely no obligation), to: (a) grant waivers with respect to any existing or proposed future deviation from, or violation or infraction of, the building restrictions specified in this Article VIII where, in the discretion of Developer, Developer shall determine or decide that such deviation, violation or infraction is minor, or insignificant, (b) grant waivers of, exceptions to, or variances from, the building restrictions specified in this Article VIII where special conditions and circumstances exist which are peculiar to a particular Lot and not generally applicable to other Lots (e.g., because of its size, location, unusual location or other unique characteristics) or where a literal interpretation or application of any such building restriction to a particular Lot would be inappropriate, inequitable or otherwise work or result in a hardship or deny such Lot and the Owner thereof specific rights which are generally enjoyed by other Lots and Owners; it being expressly provided, however, that, in all cases, Developer, in its exercise of such right and privilege shall, in its discretion, determine or decide that its grants of any such waiver, exception or variance shall not result in, represent, be or constitute a significant deviation of or derogation from (a) the master plan of development for **Fountain Creek Estates**, (b) the high architectural, aesthetic, ecological and environmental standards otherwise established for **Fountain Creek Estates** or (c) the objects and purposes of this Declaration as hereinabove enumerated in Article II of this Declaration. Developer shall have such right and privilege to grant waivers, exceptions and variances, as aforesaid, until either (a) the expiration of a period of **fifteen (15) years** from the date of the recordation of this Declaration among the Public Records of **Grayson County, Texas** or (b) the sale by Developer in the ordinary course of business, and not in bulk of all Lots in **Fountain Creek Estates**, whichever shall last occur. Following the occurrence of the last of the foregoing events to occur, the right and privilege of Developer to and thereafter vest in the ARC. To the extent that any such waiver, exception or variance is granted in a particular instance or with respect to any

particular Lot or Improvement pursuant to the provisions of this Section 8.35, as aforesaid, the same shall not be deemed to be a precedent for the granting of such, or any similar, waiver, exception or variance in any other particular instance or in respect to any other particular Lot or Improvement.

ARTICLE IX MAINTENANCE RESPONSIBILITIES

9.01 Responsibilities of Owner.

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots, Dwellings, all other Improvements situated thereon or therein, and all lawns, landscaping and grounds on or within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his or its Lot or Dwelling, as the case may be, in a neat, clean and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Dwellings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot or Dwelling, as the case may be, shall be landscaped in accordance with plans and specifications submitted to and approved by the ARC. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 9.01 (b) shall apply to all portions of a Lot or a Dwelling up to the edge of the pavement of any roadway abutting such Lot or Dwelling and shall be binding on the Owner of each Lot or Dwelling at all times, either prior, during or after the construction of any improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which dies shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage and waste materials shall be promptly removed from any Lot or Dwelling and properly disposed of outside of the Development.

(c) No Owner shall (i) decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the ARC or (ii) do any work which, in the reasonable opinion of the ARC, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement thereto, without in every case obtaining the prior written approval of the ARC.

9.02 Responsibilities of the Association.

(a) The Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of (i) all private

streets and roads within the Development, walks, trails, paths, walkways, bicycle and jogging paths and lanes, parking lots, landscaped areas, recreational areas, and other improvements made by Developer or the Association within any of the Common Areas or within any of the easements encumbering the Lots or Dwellings, (ii) such security systems, guardhouses, entrance gates and utility lines, pipes, plumbing, wires, conduits and related systems, appurtenances, equipment and machinery which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility or other person, (iii) all lawns, trees, shrubs, hedges, grass and other landscaping and all lakes and ponds situated within or upon the Common Areas and (iv) all retention lakes, ponds and other water areas and facilities constructed by Developer or the Association, wherever located (either within or outside of the Development so long as the same are utilized for the benefit of the Development), including, without limitation, implementing and maintaining siltation, soil erosion and sedimentation programs and otherwise dredging, cleaning and maintaining all siltation ponds and appurtenances thereto as may be necessary or otherwise required by any Governmental Authorities. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, act of God, or any Owner or person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Dwelling or (3) resulting from theft, burglary or other illegal entry into the Development, any Lot or Dwelling thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board of the Association determines that (i) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have **Fifteen** days within which to complete the same in a good and workmanlike manner, or if the same is not capable of completion within such **Fifteen** day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Section 10.09 below.

ARTICLE X ASSESSMENTS

10.01 Assessments and Creation of Lien. Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) annual Assessments, as established and to be collected as provided in Section 10.04 below, (b) special Assessments, to be established and collected as provided in Section 10.05 below and (c) individual Assessments against any particular Lot or Dwelling which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot or Dwelling in accordance with the provisions herein. All Assessments, together with late charges and interest as provided in Section 10.09(a) below and all costs and attorney's fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 10.09(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot or Dwelling and his grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 10.09(a) below, court costs and attorney's fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Areas or any other portion of the Development or any other cause or reason of any nature.

10.02 Purpose of Assessments. The Annual and special Assessments provided for herein shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Areas and any Improvements thereto, all as may be more specifically authorized from time to time by the Board of the Association.

10.03 Uniform Rate of Assessments.

(a) Both annual and special Assessments, as described in Section 10.04 and 10.05 below, shall be assessed against each Lot or Dwelling in the Development at a uniform rate, with the Owner of each Lot or Dwelling being required to pay his prorata portion of such annual and/or special Assessments, as determined by a fraction, the numerator of which shall be the total Lots or Dwellings owned by such Owner and the denominator of which shall be the total number of Lots and Dwellings in the Development at the time such annual or special Assessment is levied. Each Lot and Dwelling shall be subject to equal annual and special Assessments.

(b) Notwithstanding anything provided in Section 10.03(a) above to the contrary, in the event any Additional Property is added to the Development, then the Lots and/or Dwellings within the

Additional Property shall be subject to the same annual or special Assessments then being paid by the Owners of all other Lots and Dwellings in the Development, subject to proration as provided in Section 10.08 below.

10.04 Computation of Annual Assessments.

(a) Notwithstanding anything provided to the contrary in this Declaration, the annual Assessment for each Lot and Dwelling in the Development (including any Lot or Dwelling forming any part of the Additional Property) for the approximate **three (3)** year period commencing on the date hereof and continuing until and including **December 31, 2005**, shall be **(Six Hundred Dollars) (\$600.00)** per annum per Lot or Dwelling in the Development. The foregoing shall not limit or restrict any special Assessments levied pursuant to Section 10.05 below (with the approval of a majority of the Owners as provided therein) or any individual Assessments levied in accordance with the provisions of Section 10.08 below.

(b) Commencing with the fiscal year of the Association which begins January 1, 2003 (i.e., from **January 1, 2003**, through **December 31, 2003**, which period is hereinafter referred to as the "Base Year"), and annually thereafter, the Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his prorated share of the same as provided in Section 10.03 above. A copy of the budget setting forth the amount of annual Assessments levied against the Lots and Dwellings for the following year shall be delivered to each Owner. The provisions of Section 10.04(a) above shall not apply to the Base Year or any subsequent year thereafter.

(c) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of annual Assessments the increase of which exceed s(without regard to proration or adjustment as provided in Section 10.08 below) **ten percent (10%)** of the annual Assessments payable for the entire immediately preceding calendar year, then the budget and the amount of the annual Assessments shall be presented for approval of the Owners at the annual meeting of the Association and must be approved by the vote of a majority of the Owners who are voting in person or by proxy at such meeting. In the event the amount of the annual Assessments does not exceed the limitations set forth above or until such time as a majority of the Owners have approved such increase in the amount of the annual Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Assessments.

The limitations on increases in the amount of annual assessments provided in this Section 10.04(c) shall not be applicable to the Base Year.

(d) If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 10.05 below. If the actual amount of annual Assessments collected in any one year exceeds the actual costs incurred

for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

(e) The Common Expenses to be funded by the annual Assessments may include, but shall not be limited to, the following:

(i) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board and any third party contractors;

(ii) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association;

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Development, including, without limitation, trash collection and security services;

(iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors and officers liability insurance and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association or for any of the members of the ARC.

(v) The expenses of maintaining, operating, repairing and replacing any portions of the Common Areas for which the Association is responsible, including, without limitation, roads comprising Common Areas within the Development, which maintenance and repair obligation shall include mowing, landscaping, seeding, cleaning, trash pick-up and removal, paving, repaving, striping and patching all such roadways comprising Common Areas;

(vi) Expenses of maintaining, operating and repairing any other amenities and facilities serving the Development which the Board determines from time to time would be in the best interest of the Association to so maintain, operate and/or repair;

(vii) The expenses of the ARC which are not defrayed by plan review charges;

(viii) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;

(ix) The costs and expenses for conducting recreational, culture or other related programs for the benefit of the Owners and occupants;

(x) All other fees, costs and expenses incurred by the Association in accordance with the terms and provisions of this Declaration or which the Board, in its sole discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and

(xi) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any portions of the Common Areas for which

the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from Emergency expenditures and other matters, all as may be authorized from time to time by the Board.

10.05 Special Assessments. In addition to the annual Assessments authorized in Section 10.04 above and the Special Assessments authorized in Sections 11.01(b) and 11.03(a) (i) below, the Board of the Association may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments (other than special Assessments levied pursuant to Sections 11.01(b) and 11.03(a) (i) below) shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments pursuant to the provisions of Section 10.07 below. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 10.03 above.

10.06 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual Assessments provided for in this Section 10.06 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 10.06 shall apply, without limitation, to any individual Assessments levied pursuant to any other provisions hereof.

10.07 Notice of Meetings and Quorum.

(a) Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article X shall be sent to all Owners not less than **ten (10)** days nor more than **sixty (60)** days in advance of such meetings. With respect to annual meetings, the presence in person or by proxy of Owners entitled to cast over **50%** of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least **one-third (1/3)** of the total votes of the Association. At such times as a quorum is obtained, the vote of a majority of the Owners who are voting in person or by proxy at such meeting shall be required to approve any matter in which all of the members of the Association are entitled to vote, including any increase in the amount of annual Assessments in excess of the limitations specified in Section 10.04(c) above.

(b) With respect to all other meetings of the members of the Association, including, specifically, meetings pursuant to which special Assessments are to be levied upon each Lot or Dwelling pursuant to Section 10.05 above, there shall be no specific requirement establishing a quorum and the vote of a majority of the Owners who are voting in person or by proxy at any such special meeting shall be binding on all of the members of the Association.

10.08 Date of Commencement of Assessments. The annual Assessments provided for herein shall commence as to each Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Annual Assessments and any outstanding special Assessments shall be adjusted for each Lot or Dwelling according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such Lot or Dwelling is conveyed. Annual and special Assessments for Lots and Dwelling within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Dwelling on the date on which such Lot or Dwelling is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of annual or special Assessments on any Lots or Dwellings which it owns in the Development. Furthermore, for so long as Developer is the Owner of any Lot or Dwelling within the Development, Developer shall have the option to either pay annual Assessments on Lots or Dwellings owned by Developer or fund any deficits which may exist between the total amount of annual Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Expenses for the Development. At such times as Developer no longer has any interest in any Lot or Dwelling within the Development, except for a Dwelling used for a personal residence, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the Common Areas.

10.09 Effect of Non-Payment; Remedies of the Association.

(a) Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association all Assessments provided herein. In the event any Assessments or any portion thereof are not paid when due the same shall be subject to a late charge in an amount determined and uniformly applied by the Board from time to time and the Owner of such Lot or Dwelling shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within **thirty (30)** days after the due date of the same, then the unpaid portion of the Assessment shall accrue simple interest at the lesser of **ten percent (10%)** per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the **thirtieth (30)** day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorney's fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments or other amounts due to the Association are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies;

(i) The Association may commence and maintain a suit against an Owner to enforce such charges and obligations for Assessments, and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 10.09(a)

above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 10.01 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late charges and interest at the Applicable Rate assessed pursuant to Section 10.09(a) above and all attorney's fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than **sixty (60)** days, then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within **ten (10)** days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information and be recorded in the Probate Office of **Grayson County, Texas**.

(i) The name of the delinquent Owner;

(ii) The legal description and street address of the Lot or Dwelling upon which the lien claim is made;

(iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and

(iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot or Dwelling in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those Owners in default), and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of **Texas**, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot or Dwelling. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to (1) grant to and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

10.10 Subordination of Lien Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot or Dwelling in the Development is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgage, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office of **Grayson County, Texas**, prior to the filing of a claim of lien by the Association pursuant to Section 10.09(c) above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office of **Grayson County**, prior to the filing of a claim of lien by the Association pursuant to Section 10.09(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and any other charged levied, assessed or incurred by the Association, and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot or Dwelling.

10.11 Certificates. The Association or any officer or authorized representative shall upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

ARTICLE XI CASUALTY, CONDEMNATION AND INSURANCE

11.01 Damage or Destruction to Common Areas.

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article XI, then Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the conditions to which they existed immediately prior to such fire or other casualty.

(b) Notwithstanding anything provided in Section 11.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 10.05 and 10.07 above, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Such special Assessments shall be levied against each Owner equally as provided in Section 10.03 above. Further special Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement

or restoration of the Common Areas if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

11.02 Damage or Destruction to Lots and Dwellings. In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article VI above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within **one hundred eighty (180)** days following the occurrence of such fire or other casualty.

11.03 Condemnation of Common Areas.

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of, or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board of the Association is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Development, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 10.05 and 10.07 above, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction. Such special Assessments shall be levied against each Owner as provided in Section 10.03 above. Further special Assessments may be made by the Board without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon the completion of any such repair, replacement or restoration of the Common Areas if the award received as a result of such taking is insufficient to pay the costs of such repair or restoration.

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Development cannot be purchased by the Association in order to repair, replace or restore the Common Areas so taken, or if the Board of the Association shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 11.03(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

(c) If such taking or sale in lieu thereof includes all or any part of a Lot or Dwelling and also includes any part of the Common Areas, then the award from such taking shall be equitably apportioned in accordance with the decision of a court of competent jurisdiction and such award shall be disbursed separately to the Association and to the Owners so affected by such taking; provided, however, that the Owners of any Lot or Dwelling which is subject to any such taking and the Board of the Association may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

11.04 Condemnation of Lots or Dwellings. In the event that all or any portion of a Lot or Dwelling is taken as a result of, in lieu of, or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Dwelling shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot or Dwelling as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article VI above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot or Dwelling is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot or Dwelling and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

11.05 Insurance.

(a) The Board of the Association shall have the authority to obtain and maintain at all times adequate property and casualty insurance in such form as the Board deems appropriate for the benefit of the Association insuring all insurable Improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, which coverage shall be in an amount, with such insurance carriers, at such costs, and with such deductibles as the Board, in its sole discretion, may determine.

(b) The Board shall have the authority to obtain and maintain in effect at all times such public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association, its Board and all members, officers, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may deem necessary or desirable.

(c) The Board shall have the right and authority to obtain workman's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, error and omissions and directors and officers liability insurance coverage, in such

amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may determine.

(d) All insurance coverage authorized hereunder shall be written in the name of the Association and all costs thereof shall be a Common Expense. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Developer, the Association, the members of the Board and all officers, agents and employees of the Association, including the manager for the Development and the Association, the Owners and the family members, servants, agents, tenants and guests of the Owners and shall also name Developer as an additional insured.

(e) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his Lot and Dwelling. The Board may require all Owners to carry public liability insurance with respect to their respective Lots and Dwellings and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot or Dwelling, does hereby waive and release Developer, the ARC, the Association and their respective agents, employees, representatives, partners, shareholders, members, officers and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

ARTICLE XII TERMS AND AMENDMENTS

12.01 **Term.** The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns and shall be and remain in effect for a period of **fifty (50)** years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of **ten (10)** years each, unless, at any time after **fifty (50)** years from the date hereof, an agreement executed by the Owner of at least two-thirds (2/3) or more of the Lots or Dwellings within the Development agreeing to terminate or modify this Declaration has been recorded in the Probate Office of **Grayson County, Texas**; provided, however that the rights of way and easements established, granted and reserved in Article IV hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

12.02 **Amendment by Developer.** For so long as Developer owns any Lot or Dwelling within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of **Grayson County, Texas**, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 12.04 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Lot or Dwelling or materially and adversely affects the title to any Lot or Dwelling, then such amendment shall be valid only upon the written consent thereto by **fifty percent (50%)** of all of the Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the

written consent of all such Institutional Mortgagees affected thereby. Any amendment made pursuant to this Section 12.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of **Grayson County, Texas**. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, and each Mortgage, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 12.02 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Dwellings, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Dwelling or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Dwellings within the Development.

12.03 Amendment by Association. Amendments to this Declaration, other than those authorized by Section 12.02 above, shall be adopted by the Association in the following manner:

(a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board of the Association or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that (i) any amendment which materially and adversely affects the security, title or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, (ii) during any period in which Developer owns a Lot or Dwelling in the Development, then Developer must approve such proposed amendment and (iii) to the extent the proposed amendment affects any of the matters described in Section 12.04 below, then the provisions of Section 12.04 below shall be applicable to such proposed amendment.

(b) Any and all amendments which have been approved in accordance with the provisions of Section 12.03(a) above shall be executed by all parties whose consent to the same is required, including the Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording in the Probate Office of **Grayson County, Texas**.

12.04 Restrictions on Amendment. Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to Sections 3.02, 3.04, 3.05, 4.01 through 4.07, 6.02, 6.10, 6.12, 7.01, 7.14, 8.11, 10.03, 10.04, 12.02, 12.03, 12.04 and 14.01 hereof or any other provisions of this Declaration which require Developer's consent or approval be effective unless the same is consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

ARTICLE XIII ENFORCEMENT

13.01 **Authority and Enforcement.** In the event any Owner or Occupant or their respective agents, contractors or invitees violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any rules and regulations adopted by the Board of the Association from time to time, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Dwelling and shall be a personal obligation of such Owner which is guilty of such violation, (ii) suspend an Owner's right to vote in the Association or (iii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests and tenants) to use any of the recreational facilities located in or upon the Common Areas and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

13.02 **Procedure.** In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights pursuant to Section 13.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

- (i) The alleged violation;
- (ii) The action required to abate such violation; and

(iii) A time period of not less than **ten (10)** days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 13.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

13.03 **Nonexclusive Remedies.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article XIII are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

ARTICLE XIV MISCELLANEOUS PROVISIONS

14.01 **Constructive Notice and Acceptance.** Every person, corporation, partnership, limited partnership, limited liability company, trust, association or other legal entity, who or which shall hereafter have, claim, own or acquire any right, title, interest or estate in or to any portion of the Property, whether or not such interest is reflected upon the Public Records of the County, shall be conclusively deemed to have consented and agreed to each and every term, provision, covenant,

condition, restriction, easement and reservation contained or by reference incorporated in this Declaration (including those matters set forth in the Architectural Standards and Guidelines), whether or not any reference to this Declaration is contained in the document or instrument pursuant to which such person, corporation, partnership, limited partnership, limited liability company, trust, association or other legal entity shall have acquired such right, title, interest or estate in the Property or any portion thereof.

14.02 **Governing Law.** This Declaration and the interpretation and enforcement of the same shall be governed by and construed in accordance with the laws of the State of **Texas**.

14.03 **Construction.** The provisions of this Declaration shall be liberally construed so as to effectuate and carry out the objects and purposes specified in Article II of this Declaration.

14.04 **Article and Section Headings.** Article and Section headings contained in the Declaration are for convenience of reference only and in no way define, describe, extend or limit the intent, scope or content of the particular Articles or Sections in which they are contained or to which they refer and, accordingly, the same shall not be considered or referred to in resolving questions of interpretation or construction.

14.05 **Singular Includes Plural, Etc.** Whenever the context of this Declaration requires the same, the singular shall include the plural and the plural the singular and the masculine shall include the feminine and the neuter.

14.06 **Holidays, Etc.** Whenever a date or the expiration of any time period specified herein shall fall on a Saturday, Sunday or legal holiday, the date shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday under **Texas** law.

14.07 **Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Dwelling within the Development. All notices to the Association or to the ARC shall be delivered or sent in care of Developer to the following address:

**Fountain Creek Estates L.L.C.
501 Hwy 120, Suite 4N
Pottsboro, Texas 75076**

Or to such other address as the Association or ARC may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other addresses as Developer may notify the Association.

14.08 **Development and Construction by Developer.** Nothing set forth in this Declaration shall be deemed, either expressly or impliedly, to limit the right of Developer to change, alter or amend its master development plan or plans for **Fountain Creek Estates**, generally, the Property, specifically, or to construct such improvements as Developer deems advisable prior to the completion of the development of all of the Property. Developer reserves the right to alter its

COUNTY OF GRAYSON }

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This instrument was acknowledged before me on **June 11, 2002** by Scott Bates, President of Fountain Creek Estates, L.L.C., a Colorado Limited Liability Corporation, on behalf of said corporation.

State of Texas

Notary Public,

EXHIBIT "A"

ARCHITECTURAL STANDARDS AND GUIDELINES

Fountain Creek Estates Phase I

A Subdivision to the City of Pottsboro, Grayson County, Texas

These Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in the **Fountain Creek Estates** Subdivision Declaration of Covenants, Conditions and Restrictions and shall be binding upon and enforceable against all Owners.

SECTION I BUILDING POLICIES AND RESTRICTIONS

1.01 **Fountain Creek Estates Building and Setback Requirements.** The ARC, Developer and Association have the authority, as established in the Covenants and Restrictions, to grant variation to the building setback restrictions. The ARC will consider an exception if strict adherence to the setback restrictions has a detrimental effect on privacy, view, preservation of trees, vegetation, etc. A granted variance does not set any precedent and all requests shall be reviewed on an individual case-by-case basis.

1.02 **Heights.** In order to maintain the desired residential scale of **Fountain Creek Estates**, all single family homes shall be limited to **two (2) stories**. The ARC encourages the use of dormers and other varied rooflines to reduce the massiveness of roofs.

1.03 **Site Clearing Approval.** Prior to site clearing the dwelling and driveway must be staked out and all protection barriers in place. Prior to site clearing, a member of the ARC and the owner or his representative must meet on the site to approve the layout.

1.04 **Minimum and Maximum Living Space.** Minimum and Maximum Living Space requirements for heated and cooled living areas of single family residential dwellings, by Lot type shall be as follows:

(a) **Custom Lots.** A minimum of **One thousand eight hundred fifty (1,800)** square feet of heated and cooled living space up to a maximum number of square feet determined by a floor area ratio of **thirty percent (30%)**.

(b) **Estate Lots.** A minimum of **two thousand two hundred (2,100)** square feet of heated and cooled living space up to a maximum number of square feet determined by a floor area ratio of **twenty-five percent (25)**. **The Estate Lots of Phase I of the Development are Lot 1 of Block A; Lot 9 of Block E; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Block D; and Lots 8, 9, 14, and 15 of Block C** as set forth in Volume 15, Page 56 of the Plat Records of Grayson County, Texas.

1.05 **Additional Regulations.** In addition to the restrictions set forth in these Architectural Standards and the Declaration of Covenants, Conditions and Restrictions of **Fountain Creek Estates**, the (i) ARC shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, Lots and Dwellings, including the adoption of additional or more specific requirements and restrictions governing the

improvement and use of any Lot or Dwelling, and (ii) Board of the Association shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interests of all Owners, which rules and regulations shall be binding on all Owners, Lots and Dwellings.

SECTION II DESIGN STANDARDS

2.01 **Architectural Façade.** Many of the dwellings in **Fountain Creek Estates** will be viewed from multiple sides and angles particularly if the lot is located on a hill, lake, pond or corner. It is therefore important that all elevations of the dwelling be architecturally consistent and visually interesting.

(a) Long, blank or otherwise uninteresting walls will not be permitted and must be broken up with windows, breaks in wall planes, added detailing such as moldings, garden walls, etc. Common exterior building materials should be used in creating consistency.

(b) Window walls or expansive panes of glass are discouraged. Large windows should be divided with muntins or grilles unless this is incompatible with the architectural design. If window muntins or grilles are used on one elevation, they should be used consistently on all elevations.

(c) Elevation quality, character and content should be continued on all sides. Rear and side elevations shall have similar aesthetic interest as front elevations.

(d) The use of roof structures such as dormers, offsets, overhangs, porte-cocheres, bay windows and entry courts is encouraged to create architectural interest.

2.02 **Accessory Structures.**

(a) **Mailboxes.** All mailbox designs must be approved by the ARC as set forth in Section 8.24 of the Declarations. Mailbox location and height must conform to postal service regulations.

(b) **Equipment Storage Areas.** All trash receptacles, HVAC equipment, pool equipment must be screened from all views with a service court. The court must be a minimum of 4' high and shall be a material compatible with the dwelling. The opening must be screened from view with plant material.

(c) **Fences.** All walls and fences must be designed to be compatible with the dwelling. Dog runs must tie in with the architecture of the dwelling. Fences may be used to enclose service areas, patios, pools or other approved areas. Fences, walls and hedges are not permitted to define property lines. No chain link, vinyl coated or wire fences shall be permitted within the Development except within the Common Areas and those fences erected by Developer or approved by the ARC. No fences shall be allowed in front yards. Electric fences shall not be permitted. The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ARC. All privacy fences shall be constructed of cedar or other material approved by the ARC. All cedar picket fences shall be "good neighbor" or "alternate picket" design fences. No wood posts will be allowed. All cedar picket fences shall receive a water sealant treatment to prolong the aesthetic appearance of the cedar. All fences shall be maintained regularly to maintain their appearance which includes regular re-application of water sealant treatment. **For the safety of the users of the Common areas, the following lots are**

restricted and the owners will only be allowed to construct open picket ornamental iron fences that must be first approved by the ARC: Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Block D; Lots 8, 9, 14, 15, and 16 of Block C and Lots 1, 2, and 3 of Block B as set for in Volume 15, Page 56 of the Plat Records of Grayson County, Texas.

(d) **Exterior Decks, Screens and Screen Enclosures.** Decks, screens and screen enclosures shall be designed to be compatible and integrate with the architectural design of the dwelling. Screen enclosures should be designed so as not to encroach or impair views of adjoining dwellings and shall tie in aesthetically with the dwelling. Screen enclosures shall be a maximum of **one** story height (unless building architecture requires a two story enclosure). Tree protection barricades shall remain throughout construction of all pools, spas, decks, etc.

(e) **Garages.** Garage doors shall be wood or metal and painted to be compatible with the dwelling. A maximum **four (4)** car garage is permitted. A minimum **two (2)** car garage is allowed. Side entries garages shall be required for all bts. Carports are not permitted. Garage doors shall be paneled or applied with lapped board siding. Detailing of garage doors must be included in the submission package.

(f) **Basketball Goals, Play Structures, Flagpoles.** Basketball goals and play structures must be approved by the ARC and must be located unobtrusively. Landscaping may be required to screen these structures from the street, adjacent lots, etc. Flagpoles are not permitted, but the flag may be temporarily displayed on national holidays.

2.03 **Foundations.**

(a) All finish floor elevations shall be the minimum required by **Pottsboro**. If the aesthetics of the lot warrant, the ARC may require the contractor to establish a higher finished floor elevation. Lots shall remain at natural grade when possible.

(b) Exposed concrete masonry or block is not permitted.

2.04 **Roofs.**

(a) The minimum recommended pitch for all major roof structures is **10/12**, or consistent with the architectural style of the dwelling. The ARC encourages the use of gable and hip roofs to break up the expanse of major roof planes.

(b) Flat roofing is acceptable only in **10%** of the roof area in connection with the pitched roof of the majority of the dwelling. All connecting roofs shall be of a material compatible with the roofing of the main structure. Detached garages are not permissible unless connected to the main dwelling with a breezeway and designed to be architecturally compatible with the main structure.

(c) The ARC recommends a minimum of **1'** overhang and **2" x 6"** fascia treatment for all dwellings, if these are consistent with the architectural plans that are subject to ARC approval. The ARC encourages all screened porches, pool enclosures, decks, etc. to be designed as an integral part of the main structure and compatible with the overall architectural style. The slope of the roof of these structures shall be similar to the main dwelling. It is recommended that

enclosures be designed as extensions of the dwelling. Screened enclosures shall be compatible with the colors of the main structure.

(d) Roof attachments such as lightning rods, weather vanes, etc. must be approved by the ARC.

(e) All vent stacks and roof vents shall either be painted to match the roof color or placed in a rear area of the roof. No raw aluminum or galvanized flashing is allowed where it is visible. All fireplace vents must be covered with a material compatible with the dwelling and approved by fireplace manufacturer.

(f) No Solar collection or water heating roof panels are allowed.

2.05 Antennas, Etc. No antennas, aerials, discs, dishes or other devices for the transmission or reception of radio or television signals or any other form of electro-magnetic radiation or communication shall be erected, constructed, installed, used or maintained outside of any building or structure on a Lot whether or not located on the roof of any structure or is otherwise attached to or detached from a building or a structure unless first approved in writing by the ARC. If approved in writing by the ARC, Satellite Dishes that are less than three (3) feet in diameter may be attached in the rear of the structure or on the rear roof of the structure, so as not to be visible above the roof line of the Dwelling.

2.06 Chimneys. All chimneys shall be designed to be compatible with the design and color of the dwelling. The exterior of all chimneys in front of the dwelling shall be constructed of either brick, stone, stucco or synthetic plaster (e.g., Dryvit Brand EIFS). No cantilevered chimneys or chimneys with siding shall be permitted except that chimneys on the rear of a dwelling may be constructed with siding if it is not visible from the street. If a fireplace utilizes a metal spark arrestor or other metal venting apparatus at the top of the chimney, then a painted metal cowl or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be painted to blend with the color of the roofing material used for such Dwelling and approved by the ARC. Chimneys in the rear of the Dwelling may be sided above the roof if approved by the ARC prior to construction.

2.07 Exterior Colors. The ARC shall review and approve all colors proposed for the exterior building materials, facade and roof. Colors shall blend with the natural environment and the structures in the immediate vicinity. Color samples must be submitted for approval prior to final plan approval.

2.08 Driveways.

(a) All driveways and walks shall be finished in aggregate, rock salt, stain, brick, concrete pavers, or broom finished concrete with decorative expansion joints and edges. Garages are encouraged to have courtyard type entry and must have, at a minimum, a side entry. Front entry garages are not permitted except in approved units. Side entries shall be required for all lots.

(b) Driveways must be a minimum of **1'** from the side property line.

(c) Garage and driveway locations are discouraged from being next to each other on adjacent lots.

(d) **Parking.** All turnaround areas shall be screened from view with landscaping. Separate parking spaces are not permitted.

2.09 **Exterior Materials and Finishes.**

(a) Brick, stucco, and stone are acceptable exterior finishes.

i. Wood trim shall be high quality finish, grade, stained or painted. Vinyl Material may be used for the soffits, but shall be submitted to the ARC For approval prior to construction.

i. All colors, styles, etc., shall be submitted for ARC approval.

(b) All exterior building materials, finishes and colors shall be approved by the ARC. Uncovered or exposed (whether or not painted) concrete or concrete masonry block shall not be permitted as the exterior finish of any building, structure or wall unless approved by the ARC.

(c) No wooden steps or stoops shall be allowed on the front or side of any Dwellings, unless approved by the ARC.

(d) All brick, stonework and mortar, as to type, size, color and application, must be approved by the ARC. No black grout (mortar) shall be utilized for any exterior brick or stone. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, synthetic plaster (e.g., Dryvit Brand EIFS), wood, trim, cornices, eaves, railings, doors and shutters shall be subject to ARC approval.

2.10 **Exterior Metals.** Bare metallic surfaces (vents, pipes, gutters, flashing, etc.) should be painted or covered from view consistent with the general exterior architecture design of the dwelling and should be located along the rear roof line whenever possible.

2.11 **Windows, Window Treatments and Doors.**

(a) Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or other purposes.

(b) No aluminum or metal windows shall be utilized on the front or sides of any Dwelling. Cantilevered bay windows shall be reviewed by the ARC, (which may require additional landscaping in front of such bay windows). Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any Dwelling

(c) Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

2.12 **Swimming Pools and Tennis Courts.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts may be constructed, installed and maintained on any Lot or Dwelling subject to the prior written approval of the plans by the ARC and the restrictions contained herein. All pools shall be built at existing grade unless otherwise approved by the ARC. Above-ground pools shall not be permitted. The ARC shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water features or amenities and tennis courts within the Development.

2.13 **Exterior Air Conditioning and Swimming Pool Equipment.** All air conditioning, swimming pool and other mechanical or electrical equipment or the like located outside of a residential dwelling shall be screened from the view of street rights-of-way and adjacent or neighboring properties by opaque walls attached to and made an architectural part of each single family residential dwelling and approved by the ARC. Absolutely no window or wall mounted air conditioning units shall be permitted.

2.14 **Exterior Lighting.** All exterior landscape and accent lighting including, without limitation, free standing lighting and utility lights attached to a Dwelling, must be 25 watt bulbs or less and approved by the ARC. All Flood lights must be 100 watt bulb or less and approved by the ARC.

2.15 **Minimum Landscaped Areas.** The entire surface area of each Lot which is pervious, open and uncovered by buildings, structures, driveways, walkways, parking areas, sidewalks, swimming pools, decks, patios or other impervious surfaces shall be landscaped with lawn grass, ground covers, shrubs, bushes, trees, flowers and other plant materials or vegetation in accordance with a landscape plan and plant materials approved by the ARC.

2.16 **Landscaping.**

(a) The landscaping plan for each Lot or Dwelling in the Development shall be submitted to the ARC for approval. Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers and natural environment, including drainage channels, which exist on such Lot. The ARC reserves the right to require that the front of each Dwelling be landscaped prior to occupancy.

(b) All front and side yards of each Lot shall, unless approved by the ARC as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with grass.

(c) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Lot or Dwelling where such hedge or shrubbery interferes with traffic sight-lines for roadways within the Development. The determination of whether any such obstruction exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners.

(d) No bird baths, fountains, reflectors, flagpoles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot or Dwelling.

(e) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or Dwelling or in the rear (back) yard of any Lot or Dwelling if the same would be visible from any street.

(f) The ARC may from time to time promulgate rules and regulations adopting an approved list of plant life which may be utilized on any Lot or Dwelling, which rules and regulations may prescribe that a minimum dollar amount be established and utilized as the landscaping budget for each Lot or Dwelling.

(g) The owner of each lot shall be required to plant two (2) trees in the front of each lot prior to occupancy. The trees **shall be** Oak, Ash, Cedar Elm, Maple, Bald Cypress, Pecan, Walnut. **No** Willow, Silver Leaf Maple, Sycamore, China Berry, or Cottonwood trees are **allowed**. Other varieties of trees may be approved by the ARC.

2.17 **Grass.** No type or variety of lawn grass other than of the **Bermuda Grass** variety or other varieties approved by the ARC shall be planted or installed, and such lawn grass shall be planted and installed only in those areas where specified on the landscape plan approved by the ARC. The planting and installing of lawn shall be accomplished by the installation of full sod covering the entire area required to be grassed. Partial sodding, sprigging, plugging or seeding shall not be permitted.

2.18 **Artificial Vegetation.** No plastic, vinyl or other type of artificial vegetation shall be permitted on the exterior of any building on Residential Property.