

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HOOD §

THIS AGREEMENT, made this 19th day of September, 1991, by and between ACTON MUNICIPAL UTILITY DISTRICT (herein A.M.U.D.) and MacEachin Family Trusts (herein Owner);

WHEREAS, A.M.U.D. proposes to extend water service to certain real property owned by Owner and Owner desires to receive water service from A.M.U.D. to said real property, which is more fully described as follows:

16.9 Acres more or less out of the William Blair Survey, Abst. 45, Hood County, Texas more fully described on Exhibit "A" attached hereto and made a part hereof for all purposes.

WHEREAS, it is the desire and intention of the parties hereto to restrict said land so that no water wells shall be drilled upon the land so long as water is furnished to the land by A.M.U.D.;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements of the parties hereto, A.M.U.D. and Owner agree that no water well shall be drilled upon the hereinabove described real property by Owner, Owner's heirs, successors, and assigns so long as water shall be provided to said land by A.M.U.D. This restriction shall run with the land and shall be binding upon Owner and Owner's heirs, administrators, executors, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ACTON MUNICIPAL UTILITY DISTRICT

By: [Signature]

OWNER: MCNB Texas National Bank, Trustee  
of the MacEachin Family Trusts

BY: [Signature]

STATE OF TEXAS

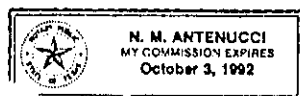
John McCullough - Vice President

COUNTY OF HOOD

Ronald Rawdon - Assistant Vice President

This instrument was acknowledged before me by John McCullough, as General Manager of Acton Municipal Utility District, on the 19th day of September, 1991, on behalf of Acton Municipal Utility District.

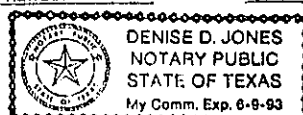
N. M. Antenucci  
NOTARY PUBLIC, STATE OF TEXAS



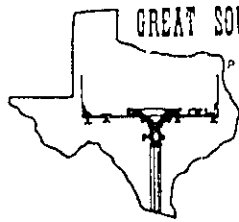
STATE OF TEXAS

COUNTY OF TARRANT

This instrument was acknowledged before me by John McCullough and Ronald Rawdon on the 20th day of September, 1991.



Denise D. Jones  
NOTARY PUBLIC, STATE OF TEXAS



## GREAT SOUTHWESTERN SURVEYORS OF TEXAS

P.O. BOX 23 • CLEBURNE, TEXAS 76031 • (817)641-3345

## EXHIBIT "A"

FIELD NOTES  
FOR  
16.90 ACRES  
IN THE  
WILLIAM BLAIR SURVEY  
ABSTRACT NO. 45  
HOOD COUNTY, TEXAS

All that certain lot, tract or parcel of land lying and being situated in the William Blair Survey, Abstract No. 45, Hood County, Texas and being a portion of that certain tract of land conveyed to Graham C MacEachin and being known as Parcel 2 of the first tract according to the deed filed of record in Volume 212, Page 24, Deed Records of Hood County, Texas and being more particularly described in metes and bounds as follows:

BEGINNING at a one inch iron pipe found in the North line of County Road No. 303, the southeast corner of said 35 acre tract for the southeast corner of this tract;

THENCE S 61-25-33 W, along the North line of said county road and along or near a fence a distance of 1008.55 feet to an iron rod set for the southwest corner of this tract;

THENCE N 30-18-35 W, along the East line of a 60 foot county road right-of-way, a distance of 26.39 feet to an iron rod found, said point being the beginning of a curve to the right;

THENCE along the easterly line of said 60 foot county road right-of-way and along said curve whose central angle is 68-24-07 and whose radius is 630.00 feet, an arc distance of 752.12 feet to an iron rod set for corner, said point being the beginning of a curve to the left;

THENCE along the easterly line of said county road right-of-way and along said curve whose central angle is 67-53-11 and whose radius is 704.55 feet, an arc distance of 834.78 feet to an iron rod found for corner;

THENCE N 29-48-56 E, along the easterly line of said county road right-of-way, a distance of 6.69 feet to an iron rod set in the North line of said 35 acre tract for corner;

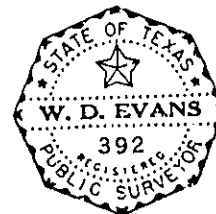
THENCE N 61-23-36 E, along the North line of said 35 acre tract a distance of 133.70 feet to an iron rod found for the northeast corner of said 35 acre tract and the northeast corner of this tract;

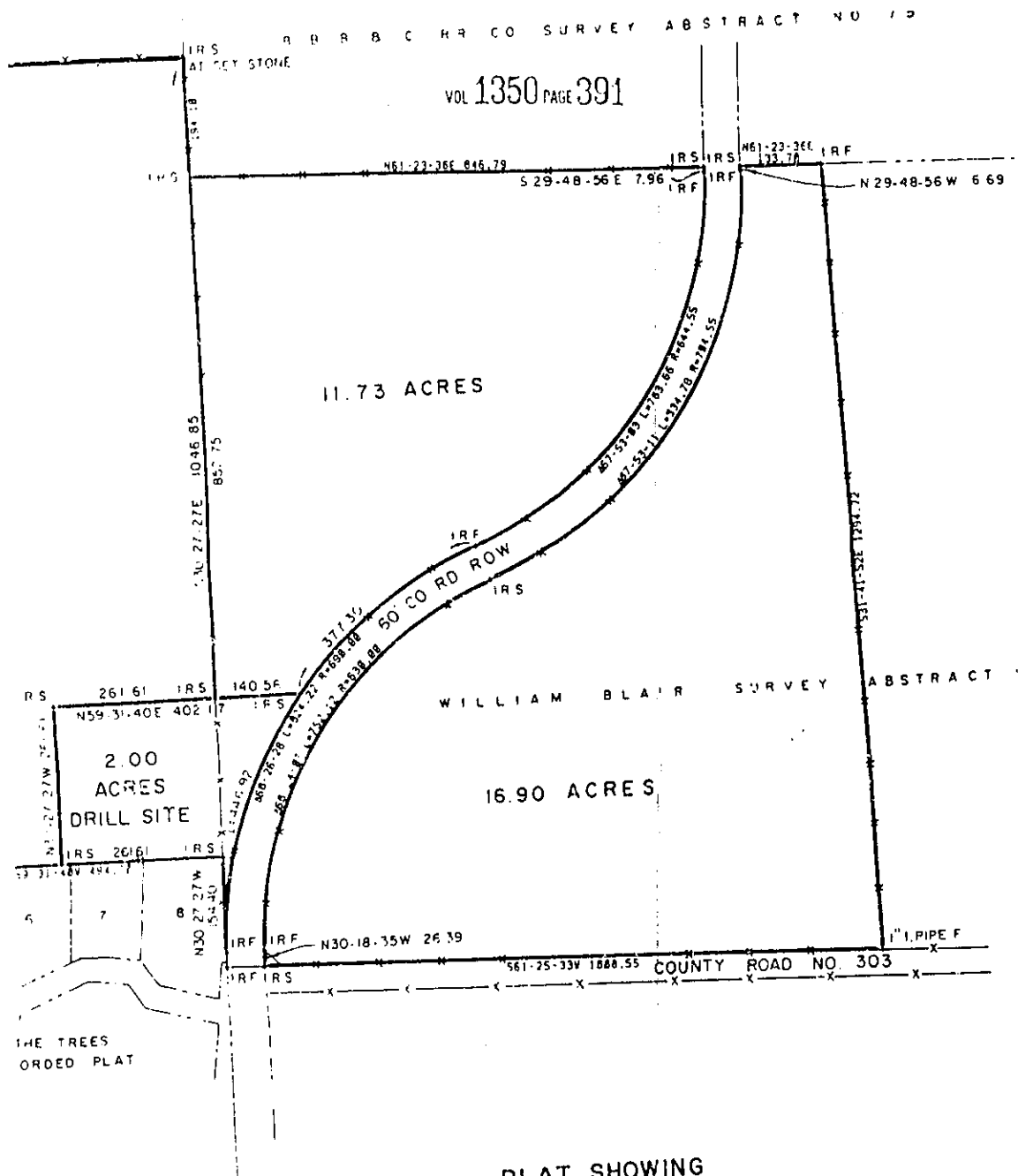
THENCE S 31-41-52 E, along the East line of said 35 acre tract and along or near a fence, a distance of 1294.72 feet to the PLACE OF BEGINNING, and containing 16.90 acres of land, more or less.

I hereby certify that a survey was made upon the ground on November 23, 1987 and that these field notes correctly represent the facts found at the time of the survey.

*W. D. Evans*  
W. D. EVANS

REGISTERED PUBLIC SURVEYOR NO. 392  
Job No. 1739C





PLAT SHOWING  
A  
78.31 ACRE TRACT IN THE  
M. HARRIS SURVEY ABSTRACT NO. 238,  
11.73 AND 16.90 ACRE TRACTS IN THE  
WILLIAM BLAIR SURVEY, ABSTRACT NO. 45 AND A  
2.00 ACRE TRACT IN THE M. HARRIS  
SURVEY

*Return to:*

ACTON MUNICIPAL UTILITY DISTRICT  
RT. 2, BOX 40-3  
GRANBURY, TX 76049

VOL 1350 PAGE 392

Any instrument on file herein which restricts the sale, rental or use of  
real property because of color or race is hereby  
declared void and unenforceable under federal law.  
STATE OF TEXAS COUNTY OF HOOD  
I hereby certify that this instrument was filed on the date and  
time stamped herein by me and was duly RECORDED  
in the OFFICIAL PUBLIC RECORDS OF HOOD COUNTY,  
TEXAS, in the Volume and Page as shown hereon.



*Anjanette Ables*  
ANJANETTE ABLES, County Clerk  
Hood County, Texas

FILED FOR RECORD  
AT 4:00 P.M.

MAR 23 1992

*Anjanette Ables*  
County Clerk, Hood County, TX



**Notice of confidentiality rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your social security number or your driver's license number.**

**Date:** May 12, 2005

**Grantor:** DANNY KEITH THOMAS and BARTON J. SMITH, not joined herein by our spouses as the property herein conveyed is subject to our sole management and control and constitutes no part of our residential or business homesteads

**Grantor's Mailing Address:**

3103 Walnut Creek Pkwy.  
Granbury, Texas 76049

**Grantee:** LEAP HOLDINGS, LTD., a Texas limited partnership

**Grantee's Mailing Address:**

P.O. Box 5375  
Granbury, Texas 76049

**Consideration:** TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration.

**Property (including any improvements):**

All that certain 1.01 acre tract of land, more or less, part of the WILLIAM BLAIR SURVEY, Abstract No. 45, Hood County, Texas, being more fully described by metes and bounds on Exhibit "A" attached hereto and made a part hereof by reference for all purposes.

**Reservations from Conveyance:**

For Grantor and Grantor's heirs, successors, and assigns forever, a reservation of all oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it.

**Exceptions to Conveyance and Warranty:**

1. This conveyance is accepted subject to the following restrictive use covenants which shall run with the land and be binding upon the Grantee, its successors and assigns:

**No day care facilities shall be placed on the Property.**

2. Any and all restrictions, covenants, easements, if any, relating to the hereinabove described property, but only to the extent they are still in effect, shown of record in Hood County, Texas and to all zoning laws, regulations or ordinances of municipal and other governmental authorities, if any, but only to the extent they are still in effect, relating to the hereinabove described property.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

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Danny Keith Thomas  
DANNY KEITH THOMAS

Barton J. Smith  
BARTON J. SMITH

Accepted and Approved:

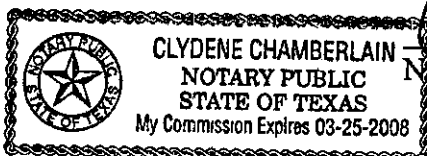
LEAP HOLDINGS, LTD.

BY: LEAP MANAGEMENT, LLC, General Partner

BY: Godwin Thomas  
Godwin Thomas, Manager

STATE OF TEXAS  
COUNTY OF HOOD

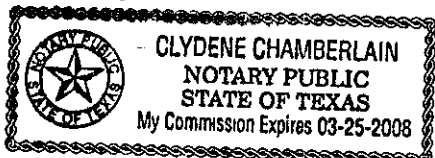
This instrument was acknowledged before me on May 12<sup>th</sup>, 2005, by  
DANNY KEITH THOMAS



Clydene Chamberlain  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS  
COUNTY OF HOOD

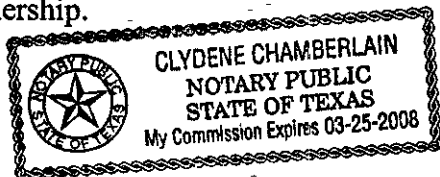
This instrument was acknowledged before me on May 12<sup>th</sup>, 2005, by  
BARTON J. SMITH



Clydene Chamberlain  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS  
COUNTY OF HOOD

This instrument was acknowledged before me on May 12<sup>th</sup>, 2005, by  
Godwin Thomas as Manager of LEAP MANAGEMENT, LLC, a Texas limited liability company,  
general partner of LEAP HOLDINGS, LTD., a Texas limited partnership, on behalf of said limited  
partnership.



Clydene Chamberlain  
NOTARY PUBLIC, STATE OF TEXAS

ChgCTT  
1806

AFTER RECORDING RETURN TO:  
LEAP HOLDINGS, LTD.  
P.O. Box 5375  
Granbury, Texas 76049

PREPARED IN THE OFFICE OF:  
Brown & Walton, P.C.  
107 E. Pearl St.  
Granbury, TX 76048

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**EXHIBIT A**

All that certain tract or parcel of land, part of the William Blair Survey, Abstract No. 45, Hood County, Texas and being a portion of a called 16.90 acre tract of land described in a deed to Danny Keith Thomas and wife, Carolyn Thomas, recorded in Volume 1813, Page 474 of the Real Records of Hood County, Texas and being more completely described as follows:

Beginning at a ½" iron rod set in the intersection of the East line of James Road, a 60 foot right-of-way, and the North line of North Gate Road, a 60 foot right-of-way, and for the South corner of said 16.90 acre tract and this tract,

Thence North 30°18'35" West, along the East line of said James Road, a distance of 26.39 feet to a ½" iron rod set at the beginning of a curve to the right having a radius of 630.00 feet,

Thence continuing along the East line of said Road, same being the West line of said 16.90 acre tract, with said curve to the right having an arc length of 174.89 feet (chord N 22°21'24" W, 174.33 feet) to a ½" iron rod set for the West corner of this tract,

Thence across said 16.90 acre tract, North 61°25'33" East, a distance of 200.00 feet to a ½" iron rod set and South 31°47'15" East, a distance of 200.00 feet to a ½" iron rod set in the North right-of-way line of said North Gate Road for the East corner of this tract,

Thence South 61°25'33" West, along the North line of said North Gate Road, a distance of 229.29 feet to the point of beginning, containing 1.01 acres of land.

FILED FOR RECORD  
AT 3:40 P.M.

MAY 13 2005

*Sally Oubre*  
County Clerk, Hood County, TX

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under Federal law.

STATE OF TEXAS  
COUNTY OF HOOD  
I hereby certify that this instrument was filed on the date and at the time stamped hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS OF HOOD COUNTY TEXAS, in the Volume and Page as shown hereon.



*Sally Oubre*  
SALLY OUBRE, County Clerk  
Hood County, Texas

GF#0420930

**GENERAL WARRANTY DEED**

VOL.

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**Notice of confidentiality rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your social security number or your driver's license number.**

**Date:** May 12, 2005

**Grantor:** DANNY KEITH THOMAS and BARTON J. SMITH, not joined herein by our spouses as the property herein conveyed is subject to our sole management and control and constitutes no part of our residential or business homesteads

**Grantor's Mailing Address:**  
3103 Walnut Creek Pkwy.  
Granbury, Texas 76049

**Grantee:** NORTH GATE DEVELOPERS, L.P., a Texas limited partnership

**Grantee's Mailing Address:**  
P.O. Box 5375  
Granbury, Texas 76049

**Consideration:** TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration.

**Property (including any improvements):**

All that certain 8.99 acre tract of land, more or less, part of the WILLIAM BLAIR SURVEY, Abstract No. 45, Hood County, Texas, being more fully described by metes and bounds on Exhibit "A" attached hereto and made a part hereof by reference for all purposes.

**Reservations from Conveyance:**

For Grantor and Grantor's heirs, successors, and assigns forever, a reservation of all oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it.

**Exceptions to Conveyance and Warranty:**

1. This conveyance is accepted subject to the following restrictive use covenants which shall run with the land and be binding upon the Grantee, its successors and assigns:

**No day care facilities shall be placed on the Property.**

2. Any and all restrictions, covenants, easements, if any, relating to the hereinabove described property, but only to the extent they are still in effect, shown of record in Hood County, Texas and to all zoning laws, regulations or ordinances of municipal and other governmental authorities, if any, but only to the extent they are still in effect, relating to the hereinabove described property.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

PG.

Danny Keith Thomas  
DANNY KEITH THOMAS

Barton J. Smith  
BARTON J. SMITH

Accepted and Approved:

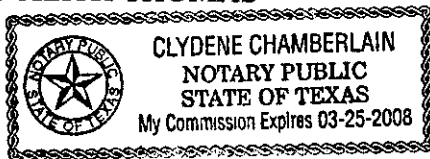
NORTH GATE DEVELOPERS, L.P.

BY: NORTH GATE DEVELOPERS  
MANAGEMENT COMPANY, General  
Partner

BY: Godwin Thomas  
Godwin Thomas, President

STATE OF TEXAS  
COUNTY OF HOOD

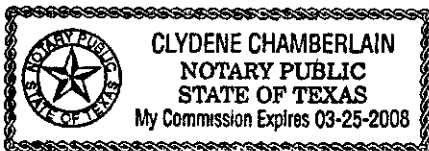
This instrument was acknowledged before me on May 12<sup>th</sup>, 2005, by  
DANNY KEITH THOMAS



Clydene Chamberlain  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS  
COUNTY OF HOOD

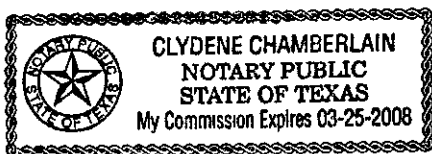
This instrument was acknowledged before me on May 12<sup>th</sup>, 2005, by  
BARTON J. SMITH



Clydene Chamberlain  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS  
COUNTY OF HOOD

This instrument was acknowledged before me on May 12<sup>th</sup>, 2005, by  
Godwin Thomas as President of NORTH GATE DEVELOPERS MANAGEMENT COMPANY,  
a Texas corporation, general partner of NORTH GATE DEVELOPERS, L.P., a Texas limited  
partnership, on behalf of said limited partnership.



Clydene Chamberlain  
NOTARY PUBLIC, STATE OF TEXAS

18<sup>00</sup> chgCTT  
AFTER RECORDING RETURN TO:  
NORTH GATE DEVELOPERS, L.P.  
P.O. Box 5375  
Granbury, Texas 76049

PREPARED IN THE OFFICE OF:  
Brown & Walton, P.C.  
107 E. Pearl St.  
Granbury, TX 76048

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## EXHIBIT A

All that certain tract or parcel of land, part of the William Blair Survey, Abstract No. 45, Hood County, Texas and being a portion of a called 16.90 acre tract of land described in a deed to Danny Keith Thomas and wife, Carolyn Thomas, recorded in Volume 1813, Page 474 of the Real Records of Hood County, Texas and being more completely described as follows:

Commencing at a ½" iron rod set in the intersection of the East line of James Road, a 60 foot right-of-way, and the North line of North Gate Road, a 60 foot right-of-way, for the South corner of said 16.90 acre tract and this tract;

Thence North 30°18'35" West, along the East line of said James Road, a distance of 26.39 feet to a ½" iron rod set at the beginning of a curve to the right having a radius of 630.00 feet;

Thence continuing along the East line of said Road, same being the West line of said 16.90 acre tract, with said curve to the right an arc distance of 174.89 feet (chord N 22°21'24" W, 174.33 feet) to a ½" iron rod set for the most southern West corner of this tract and the Point of Beginning;

Thence continuing along the East line of said Road and said curve to the right, an arc length of 292.56 feet (chord N 01°06'01" W, 289.94 feet) to a ½" iron rod set for the most northern West corner of this tract;

Thence North 61°25'33" East, across said 16.90 acre tract, a distance of 831.06 feet to a ½" iron rod set in a fence line in the Southwest line of a called 4.93 acre tract of land described in a deed to L. T. Solomon and wife, Betty K. Solomon, recorded in Volume 1095, Page 943 of said Real Records, same being the Northeast line of said 16.90 acre tract for the North corner of this tract;

Thence South 31°47'15" East, along the Southwest line of said 4.93 acre tract and generally along a fence line, a distance of 457.64 feet to a 3" steel fence post in the North line of said North Gate Road, same being the South line of said 16.90 acre tract, for the South corner of said 4.93 acre tract and being the East corner of this tract;

Thence South 61°25'33" West, along the North line of said North Gate Road, a distance of 779.26 feet to a ½" iron rod set for the most Southern corner of this tract;

Thence North 31°47'15" West, across said 16.90 acre tract, a distance of 200.00 feet to a ½" iron rod set for an inside corner of this tract;

Thence South 61°25'33" West, continuing across said 16.90 acre tract, a distance of 200.00 feet to the Point of Beginning, containing 8.99 acres of land.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under Federal law  
STATE OF TEXAS  
I hereby certify that this instrument was filed on the date and at the time stamped hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS OF HOOD COUNTY TEXAS, in the Volume and Page as shown hereon.



*Sally Oubre*  
SALLY OUBRE, County Clerk  
Hood County, Texas

FILED FOR RECORD  
AT 3:40 P M.

MAY 13 2005

*Sally Oubre*  
County Clerk, Hood County, TX

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**DECLARATION OF TERMS, CONDITIONS,  
RESTRICTIONS AND PROTECTIVE COVENANTS FOR  
FOUNTAIN VILLAGE**

herein the

**"PROTECTIVE COVENANTS"**

**OF**

**FOUNTAIN VILLAGE**

**HOMEOWNERS ASSOCIATION, INC.**

**(A Texas Property Owners Association)**

**PROPERTY**

Fountain Village is an addition to the ETJ of the City of De Cordova, Hood County, Texas, the Plat having been recorded on June 27, 2006, as Slide No. C-66, in the Plat Records, Hood County, Texas. These Protective Covenants are to be recorded in the Real Property Records of Hood County, Texas.

STATE OF TEXAS )

VOL.

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COUNTY OF HOOD )

**DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND  
PROTECTIVE COVENANTS FOR FOUNTAIN VILLAGE**

(herein the "PROTECTIVE COVENANTS")

**THIS DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND PROTECTIVE COVENANTS FOR FOUNTAIN VILLAGE**, (hereinafter referred to as the "Protective Covenants") made and entered into this the 2nd day of August, 2006 by and between **Acton Associates II, L.P.**, a Texas Limited Partnership (herein "Declarant") and all Future Lot Owners in the **FOUNTAIN VILLAGE SUBDIVISION** (herein "Subdivision") as hereinafter described, and as may be redefined and amended in the future.

**WITNESSETH:**

**THAT WHEREAS**, Declarant is the owner and developer of certain real property in the County of Hood, State of Texas, described in Exhibit "A" attached hereto (the "Property"), being 79 platted Patio Home Lots contained in the Fountain Village Subdivision, being more particularly described and shown on that Final Plat recorded on June 27, 2006, as Slide No. C-66 in the Plat Records of the Hood County, Texas (herein "Plat"), the property shown on said Plat being and comprising the Subdivision.

**WHEREAS**, the Declarant desires, for the protection and benefit of all persons who may hereafter become owners of Lots located within the Subdivision, that the Property be developed with limitations, restrictions and uses. This Declaration (herein the "Protective Covenants") shall run with the land and be binding upon all parties purchasing Lots within the Property and all persons claiming by, through or under Declarant until July 31, 2050, at which time said Protective Covenants shall be automatically extended for successive periods of (10) years, unless by vote of two-thirds ( 2/3<sup>rd</sup>s ) majority of persons then owning Lots within the Subdivision (which Lots are subject to the terms, conditions and provisions of these Protective Covenants) it is agreed to change these Protective Covenants in whole or in part.

**AGREEMENT:**

**NOW THEREFORE**, Declarant does hereby make the following declaration as to terms, conditions, restrictions, protective covenants and uses (herein "Protective Covenants") to which the above-described Property and all additional parcels of real property (herein "Subdivision") hereinafter shall be and are hereby subjected:

Declarant desires to establish a general plan of development for the planned community to be known as Fountain Village. Declarant also desires to provide a reasonable and flexible procedure by which Declarant may expand the Property to include additional real property, and to maintain certain development rights that are essential for the successful completion and marketing of the Property.

Declarant further desires to provide for the preservation, administration, and



maintenance of portions of Fountain Village, and to protect the value, desirability, and attractiveness of Fountain Village. As an integral part of the development plan, Declarant deems it advisable to create a property Homeowners Association to perform these functions and activities more fully described in the Documents described below.

Declarant declares that the Property described in Appendix A, and any additional property made subject to these Protective Covenants by recording one or more amendments of or supplements to these Protective Covenants, will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of these Protective Covenants, including Declarant's representations and reservations in the attached Appendix C, which run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of any part of the Property.

## **ARTICLE 1** **DEFINITIONS**

The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. **"Additional Land"** means real property which may be added to the Property and subjected to these Protective Covenants by Declarant and the owner of such Property, as described in Section C.3.2 of this Declaration.

1.2. **"Applicable Law"** means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of any provision in any Document. Statutes and ordinances specifically referenced in the Documents are "Applicable Law" on the date of the Document, and are not intended to apply to the Property or to the Subdivision if they cease to be applicable by operation of law, or if they are replaced or superceded by one or more other statutes or ordinances.

1.3. **"Architectural Reviewer"** means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural Reviewer is Declarant, Declarant's designee, or Declarant's delegatee. Thereafter, the board-appointed Architectural Control Committee is the Architectural Reviewer.

1.4. **"Assessment"** means any charge levied against a Lot or Owner by the Association, pursuant to the Documents or State law, including but not limited to Annual Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article 9 of these Protective Covenants.

1.5. **"Association"** means the association of Owners of all Lots in the Property, initially organized as "Fountain Village Homeowners Association, Inc." a Texas nonprofit corporation, and serving as the "Property Owners' Association" defined in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from these Protective Covenants and the

- 1.6. **"Board"** means the Board of Directors of the Association.
- 1.7. **"City ETJ"** means the Extra Territorial Jurisdiction of the City of De Cordova, Texas, in which the Property is located.
- 1.8. **"Common Area"** (inclusive, but not limited to the designation of real property as **"Recreational Area"**) means portions of real property and improvements thereon that are owned and/or maintained by the Association, as described in Article 4 below and as referenced in Appendix C of these Protective Covenants.
- 1.9. **"Declarant"** means Acton Associates II, L.P., a Texas limited partnership, which is developing the Property, or the successors and assigns of Acton Associates II, L.P., which acquire any portion of the Property for the purpose of development and which are designated a Successor Declarant by Acton Associates II, L.P., or by any such successor and assign, in a recorded document.
- 1.10. **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix C of these Protective Covenants.
- 1.11. **"Development Period"** means the 12-year period beginning the date these Protective Covenants are recorded, during which Declarant has certain rights pursuant to Appendix C hereto, including rights relating to development, construction, expansion, and marketing of the Property and the Additional Land. The Development Period is for a term of years and does not require that Declarant own land described in Appendix A. Declarant may terminate the Development Period at any time by recording a notice of termination. **DURING THE DEVELOPMENT PERIOD, APPENDIX C HAS PRIORITY OVER THE MAIN BODY OF THESE PROTECTIVE COVENANTS.**
- 1.12. **"Documents"** means, singly or collectively as the case may be, these Protective Covenants, the Plat, the ByLaws, the Association's Articles of Incorporation, and the Rules of the Association, as any of these may be amended from time to time. An Appendix, Exhibit, Schedule, or Certification accompanying a Document is a part of that Document.
- 1.13. **"Lot"** means a portion of the Property intended for independent ownership, on which there is or will be constructed a Patio Home (aka "Garden Home") residential dwelling, as shown on the Plat. As a defined term, "Lot" does not refer to Common Areas, even if platted and numbered as a Lot. Where the context indicates or requires, "Lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the Lot. Unplatted tracts may be included in the meaning of "Lot" pursuant to Section C 3.1 of Appendix C of these Protective Covenants.
- 1.14. **"Majority"** means more than half. A reference to "a majority of Owners" in any Document or applicable law means "Owners of at least a majority of the Lots," unless a different meaning is specified. A reference to a 2/3<sup>rd</sup>s Majority of Owners" in any Document or applicable law means "Owners of at least a two-thirds ( 2/3<sup>rd</sup>s ) majority of the Lots," unless a different meaning is specified.

1.15. "**Member**" means a Member of the Association, each Member being an Owner of a Lot, unless the context indicates that member means a member of the Board or a member of a committee of the Association. In the context of votes and decision-making, each Lot has only one Membership, although it may be shared by Co-Owners of a Lot.

1.16. "**Owner**" means a holder of recorded fee simple title to a Lot. Declarant is the initial Owner of all Lots. Contract sellers and mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through judicial or nonjudicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association. A reference in any Document or applicable law to a percentage or share of Owners or Members means Owners of at least that percentage or share of the Lots, unless a different meaning is specified. For example, "a Majority of Owners" means Owners of at least a majority of the Lots.

1.17. "**Plat**" means all plats, singly and collectively, recorded in the Real Property Records of Hood County, Texas, and pertaining to the real property described in Appendix A of these Protective Covenants, including all dedications, limitations, restrictions, easements, notes, and reservations shown on the Plat, as it may be amended from time to time. The Plat of Fountain Village was recorded on June 27, 2006, as Slide No. C-66, in the Plat Records, Hood County, Texas.

1.18. "**Property**" means all the land subject to these Protective Covenants and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Fountain Village. The Property is located on land described in Appendix A to these Protective Covenants, and includes every Lot and any Common Area thereon.

1.19. "**Protective Covenants**" means this Document, as it may be amended from time to time.

1.20. "**Resident**" means an occupant of a Patio Home residential dwelling, regardless of whether the person owns the Lot.

1.21. "**Rules**" means rules and regulations of the Association adopted in accordance with the Documents or applicable law. The initial Rules may be adopted by Declarant for the benefit of the Association.

1.22. "**Underwriting Lender**" means Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or U.S. Department of Veterans Affairs (VA), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options nor as a representation that the Property is approved by any institution.

## ARTICLE 2 PROPERTY SUBJECT TO DOCUMENTS

2.1. **Property.** The real property described in Appendix A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms,

covenants, conditions, restrictions, liens, and easements of these Protective Covenants, including Declarant's representations and reservations in the attached Appendix C, which run with the Property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. **Additional Property.** Additional real property may be annexed to the Property and subjected to these Protective Covenants and the jurisdiction of the Association on approval of Owners representing at least two-thirds of the lots in the Property, or, during the Development Period, by Declarant as permitted in Appendix C. Annexation of Additional Property is accomplished by recording a Declaration of Annexation, including an Amendment of Appendix A, in Hood County's Real Property Records.

2.3. **De Cordova's Ordinance - General.** The City of De Cordova, Hood County, Texas may from time to time have an ordinance pertaining to planned developments with property owners associations in the City ETJ. No amendment of the Documents, nor any act or decision of the Association after the passage of an ordinance or an amendment to an ordinance, which is not in compliance with the ordinance during its period of effectiveness, may violate the requirements of the ordinance. The Association should stay informed about the city's requirements.

2.4. **Hood County Regulations.** Notwithstanding the fact that the development of property within the City ETJ is not regulated by Hood County, Declarant has and will continue to use its "best efforts" to comply with Hood County Regulations. Specifically, Declarant has obtained written verification from Hood County (a) that the planned construction of Patio Homes does meet the density requirements for a development served by a public water and wastewater system within the Water Quality District; that (b) the planned emergency accessibility, as well as the placement of fire hydrants, as shall be approved by the Acton Municipal Utility District ("AMUD") meets the requirements of Hood County; and (c) that Declarant will provide an engineered drainage plan, along with density reports during roadway construction, for comment by Hood County. Notwithstanding the fact that the development of property within the City ETJ is not regulated by Hood County, Declarant and the Association shall continue to use their respective "best efforts" to remain in compliance with the Hood County Regulations, specifically as they pertain to Patio Home density, emergency accessibility and fire hydrant placement, property drainage, and the paving density of the road construction.

2.5. **Adjacent Land Use.** Declarant makes no representations of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property.

2.6 **Plat Dedications, Easements & Restrictions.** In addition to the easements and restrictions contained in these Protective Covenants, the Property is subject to the dedications, limitations, notes, easements, restrictions, and reservations shown or cited on the Plat, which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by the Plat, and further agrees to maintain any easement that crosses his Lot and for which the Association does not have express responsibility.

2.7. **Streets Within Property.** Because streets, alleys, and cul-de-sacs within the Property (herein "streets") are capable of being converted from privately owned to publicly dedicated, and vice versa, this Section addresses both conditions. Private streets are part of the Common Area, which is governed by the Association. Public streets are part of the Common Area only to the extent they are not maintained or regulated by the city or county. To the extent not prohibited by public law, the Association, acting through the Board of Directors (herein "Board"), is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of the streets - whether private or public - including but not limited to:

- a. Identification of vehicles used by Owners and residents and their guests.
- b. Designation of speed limits and parking or no-parking areas.
- c. Limitations or prohibitions on curbside parking.
- d. Removal or prohibition of vehicles that violate the Association's applicable rules and regulations.
- e. Fines for violations of the Association's applicable rules and regulations.

### **ARTICLE 3**

#### **PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS**

3.1. **General.** In addition to other easements and rights established by the Documents, the Property is subject to the easements and rights contained in this Article.

3.2. **Public Access Easement.** As noted and shown on the Plat of Fountain Village, various Common Areas are burdened by specific public access easements that may be used by emergency personnel.

3.3. **Drainage Easement.** Certain Common Areas are burdened by a "Drainage Easement." The Drainage Easement, including drainage maintenance and related matters thereon, shall be maintained by the Association as a Common Expense.

3.4. **Easement for Screening Wall.** The Association is hereby granted a perpetual easement (the "**Screening Wall Easement**") over each Lot (1) on or along North Gate Road and James Road, and (2) that abuts or contains a portion of the Property's main entry and emergency entry features or screening walls, fences, or berms, or other landscaping for the purposes stated in this Section, regardless of whether or how the Plat shows the easement or the entry feature, screening wall, fence, berm, or other landscaping. The purpose of the Screening Wall Easement is to provide for the existence, repair, improvement, and replacement of the Property's entry features, screening walls, fences, berms, and landscaping to be maintained by the Association as a Common Area. In exercising this Screening Wall Easement, the Association may construct, repair, maintain, improve, and replace improvements reasonably related to the entrances and screening of the residential subdivision, including: screening walls, fences, community gates, the **Trail Easement** from Fountain Village to Acton School Road, berms, planter beds, landscaping, plant material, electrical and water meters, fountains, water falls, and all related equipment, street lamps and fixtures, light fixtures

and sprinkler systems, all Recreational Area facilities and equipment, <sup>86</sup>all other Common Area equipment, and all signage relating to the Property. The Owners of the Lots burdened with the Screening Wall Easement will have the continual use and enjoyment of their Lots for any purpose that does not interfere with and prevent the Association's use of the Screening Wall Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of any potentially burdened Lot as may be reasonably necessary for the Association to perform its contemplated work on the Screening Wall Easement. This easement is perpetual. The Screening Wall Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may assign this easement, or any portion thereof, to a third party agreeing to accept such assignment. This Screening Wall Easement does not apply or pertain to fences installed on individual Lots, even though the Lot abuts a public or private roadway.

**3.5. Owner's Easement of Enjoyment** Every Owner is granted a right and easement of enjoyment over the Common Areas and to use of all improvements therein, subject to other rights and easements contained in the Documents. An Owner who does not occupy a Lot delegates this right of enjoyment to the residents of his Lot. Notwithstanding the foregoing, if a portion of a Common Area, such as a Recreational Area, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes.

**3.6. Owner's Ingress/Egress Easements** Every Owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his Lot. Similarly, every Owner is granted a perpetual easement over the Property's sidewalks and all Recreational Areas and Common Areas, subject to abiding by the rules of the Association.

**3.7. Rights of City and County** The City of De Cordova and the County of Hood, including their agents and employees, have the right of immediate access to the Common Areas at all times as necessary for the welfare and protection of the public, to enforce city and county ordinances, or for the preservation of public property. If the Association fails to maintain the Common Areas to a standard acceptable to the City, the City may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the City's written demand (at least 90 days), the City may maintain the Common Areas at the expense of the Association after giving written notice of its intent to do so to the Association. To fund or reimburse the City's cost of maintaining the Common Areas, the City may levy an assessment against the Association's Common Area property in the same manner as if the Association levied a special assessment against the Lots. The City may give its notices and demands to any officer, director, or agent of the Association. The rights of the City under this Section are in addition to other rights and remedies provided by law.

**3.8. Association's Access Easement** The Association is granted an easement of access and entry to every Lot and Common Area to perform maintenance, to enforce architectural and use restrictions, to respond to emergencies, and to perform any other duties required by the Documents, specifically including but not limited to "Routine Yard Maintenance" and the Association's blanket "Lot Yards & Grounds Maintenance Easement" on and over the entire Property, including all Lots, as set out in

Section 7.15 below.

**3.9. Utility Easements.** The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of the Property and the Fountain Village community. Any company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television and/or internet, and security.

**3 10. Prohibition Against Water Wells.** The drilling of water wells on any Association Properties or Member Properties without the written consent of both the Association and the Acton Municipal Utility District ("AMUD") is prohibited. This Section 3 10 may not be amended by the Association or the Members without the written approval of AMUD.

**3 11. Mineral Rights.** Some or all of the Property may be subject to a previous owner's acquisition, reservation, or conveyance of oil, gas, or mineral rights pursuant to one or more deeds recorded in the Real Property Records of Hood County, Texas, including but not limited to rights to all oil, gas, or other minerals lying on, in, or under the Property and surface rights of ingress and egress. Because any deed reserving a mineral interest may have been recorded prior to these Protective Covenants, it would be a superior interest in the Property and is not affected by any provision to the contrary in these Protective Covenants. By accepting title to or interest in a Lot, every Owner acknowledges the existence of the mineral right or reservation referenced in this Section and its attendant rights in favor of the owner of the mineral interest.

**3 12. Notice of Limitation on Liability** The development of the Property occurs during a period when many local governments are trying to be absolved of liability for flood damage to private property. As a condition of Plat approval, a governmental entity may require a Plat note that not only disavows the entity's liability for flood damage, but affirmatively assigns the liability to the Association. Declarant does not intend or desire to impose such absolute liability on the nonprofit association of Lot Owners. Notwithstanding Plat notes or public codes or ordinances now in existence or hereafter created, the Association cannot and should not be liable for acts of God or for property damage that is not the result of the Association's negligence or willful misconduct. On behalf of the Association, Declarant hereby gives notice that the Association does not accept liabilities imposed by any governmental entity for which the Association cannot obtain insurance at a reasonable cost, or for which its Members refuse to fund reserve accounts at levels sufficiently high to pay the damages for which the governmental entity may seek to make the Association liable. This notice is not intended to create a liability for any governmental entity. Further, this notice may not be construed to create a duty for the Association to obtain insurance or to fund reserve accounts for damage from rising or flooding waters

**3 13. Security.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and resident acknowledges and agrees, for

himself and his guests, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

3.14. **Risk.** Each resident uses all Recreational Areas and Common Areas at his own risk. All Recreational Areas and Common Areas are unattended and unsupervised. Each resident is solely responsible for his own safety and that of his guests. The Association disclaims any and all liability or responsibility for injury or death occurring from use of the Common Areas.

#### **ARTICLE 4** **COMMON AREA**

4.1. **Ownership.** The designation of real property as a Common Area (inclusive, but not limited to the designation of real property as "Recreational Area") is determined by the Plat and these Protective Covenants, and not by the ownership of the Property. These Protective Covenants contemplate that the Association will eventually hold title to every Common Area capable of independent ownership by the Association. The Declarant may install, construct, or authorize certain improvements on Common Areas in connection with the initial development of the Property, and the cost thereof may or may not be a common expense of the Association, at the discretion of the Declarant. Thereafter, all costs attributable to Common Areas, including general maintenance, road and alley maintenance and repair, sidewalk maintenance and repair, landscaping and all landscaping features (including water fountains and related facilities and equipment) maintenance and repair, the maintenance of Common Area structures and improvements, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the Common Areas, unless these Protective Covenants elsewhere provide for a different allocation for a specific Common Area.

4.2 **Acceptance.** By accepting an interest in or title to a Lot, each Owner is deemed (1) to accept the Common Area of the Property, and any improvement thereon, in its then-existing "as is" condition; (2) to acknowledge the authority of the Association, acting through its Board of Directors, for all decisions pertaining to the Common Area; (3) to acknowledge that transfer of a Common Area's title to the Association by or through the Declarant is a ministerial task that does not require acceptance by the Association; and (4) to acknowledge the continuity of maintenance of the Common Area, regardless of changes in the Association's Board of Directors or management.

4.3. **Components.** The Common Area of the Property consists of the following



components on or adjacent to the Property, even if located on a Lot or a public right-of-way:

- a. All of the Property, save and except the Patio Home Lots, specifically including but not limited to all community roadways, alleys, sidewalks, courtyards, and community park, garden, or recreational areas which may exist and/or be depicted on the Plat.
- b. The land described in Appendix A as Common Area and all improvements thereon.
- c. Any area shown on the Plat as Common Area or an area to be maintained by the Association.
- d. The main James Road entrance and the emergency North Gate Road entrance to the Property, in addition to the entrance or entrances to the Trail Easement from the Property to Acton School Road, including (if any) the signage, landscaping, berms, fountains, water falls, electrical, security, lighting and water installations and related equipment, planter boxes, gates and related equipment, and fencing.
- e. The screening walls, fences, berms, or landscaping along the James Road and North Gate Road sides of the Property.
- f. Landscaping in Common Areas, including but not limited to on street islands, if any.
- g. The grounds between the perimeter streets and the screening walls, fences, berms or landscaping, to the extent that the Association has a right or duty to maintain or regulate that portion of the right-of-way.
- h. Any property adjacent to Fountain Village if the maintenance of same is deemed to be in the best interests of the Association, and is not prohibited by the Owner or operator of said property.
- i. Any modification, replacement, or addition to any of the above-described areas and improvements.
- j. Personal property owned by the Association, such as books and records, office equipment, and supplies.

## **ARTICLE 5**

### **PATIO HOME LOTS**

5.1. **General** As shown on the Plat, most of the Lots in Fountain Village are designed for rows of patio homes that are similar in design to Zero-Lot-Line developments. Typically, the sidewall of one Patio Home serves as the courtyard wall of the neighboring patio home. The below-defined Wall Lot and Patio Lot are paired for purposes of this Article. An interior Lot may be paired on both sides – being a Wall Lot in relation to the neighboring Lot on one side, and a Patio Lot in relation to the neighboring Lot on the other side

5.1.1. **Definitions.** As used in this Article, the following terms are defined.

- a. **"Wall"** means the side of a house that is in most cases approximately parallel to and within 5 feet of the Shared Lot Line, as defined below. Due to the curvature of the streets and the Property, some Lots are somewhat pie-shaped or shaped otherwise to conform to the curvatures; and therefore have larger varied distances from the Shared Lot Line. **"Wall Lot"** means the Lot on which the Wall is located. **"Wall House"** means the building of which the Wall is a structural component.
- b. **"Patio Lot"** means the Lot that shares the Shared Lot Line with the Wall Lot. **"Patio Home"** means the building on the Patio Lot. **"Patio"** means the fence-enclosed side yard or courtyard that may use all or part of the Wall as a courtyard wall. **"Patio Fence"** means the sections of fencing on the Patio Lot and the Wall Easement Area that are in most cases more or less perpendicular to the Wall and which may tie to the Wall House, thereby enclosing the Patio for use by the Owner of the Patio Home.
- c. **"Shared Lot Line"** means the actual platted boundary between the Wall Lot and the Patio Lot, although the boundary may not be apparent on the site.
- d. **"Wall Easement Area"** means the strip of land entirely on the Wall Lot along the full length of the Shared Lot Line, and being as wide as the distance between the Wall and the Shared Lot Line (a minimum typical on many Lots is 3 feet wide). The Wall Easement Area adjoins the Patio Easement Area.
- e. **"Patio Easement Area"** means the strip of land entirely on the Patio Lot along the full length of the Shared Lot Line, and in most cases being at least 3 feet wide. The Patio Easement Area adjoins the Wall Easement Area.
- f. **"Shared Easement Area"** means the combination of the Wall Easement Area and the Patio Easement Area.

5.1.2. **City Ordinances.** Ordinances which may be adopted by the City of De Cordova will be provided to Owners and will be complied with if the physical nature of the Property and each Lot permit.

5.1.3. **Purposes.** As a general rule, the Owner of a Lot has the sole and exclusive use of his Lot - from boundary to boundary, and is solely responsible for the maintenance of all portions of his Lot and all of the improvements on his Lot from boundary to boundary. The Patio Home concept at Fountain Village modifies that general rule. One purpose of this Article is to address the rights and responsibilities of the Owners of the paired Lots. Another purpose is to encourage a cooperative relationship between the Owners of the paired Lots. Reasons why the general rule of private property ownership are modified at Fountain Village

include, but are not limited to, the following:

- a. The Association needs access to front and rear yard areas on all Fountain Village Lots to perform regular mowing, trimming, fertilization, weed control, and other front and rear yard maintenance. Owners may separately contract with the Association's yard maintenance contract provider for Patio Yard, plant beds, sprinkler system and other landscaping maintenance.
- b. The Owner of the Wall Lot needs access to the Patio Lot to make repairs to the Wall House, which is located too close to the Shared Lot Line to provide a reasonable work area for equipment, materials, or personnel.
- b. The Owner of the Patio Lot needs use of the Wall and the Wall Easement Area as an extension of his Patio.
- c. The Owner of the Wall Lot needs use of the Wall Easement Area on the back side of the Wall Lot for utility meters and air conditioning equipment.
- d. The Owner of the Patio Lot needs use of the Wall Easement Area on the front side of the Wall Lot for maintenance of the Patio Fence and the front yard between the Patio Fence and the street.
- e. The Owner of either the Wall Lot or the Patio Lot may need use of either the Wall Easement Area or the Patio Easement Area on the back side of the Lots for the continued existence of the parking pad, if any, appurtenant to his driveway.

**5 2. Reservations and Easements.** The following reservations and easements are created by this Declaration and are in addition to easements, if any, shown on a Plat or created by separate instrument.

**5 2.1. Wall Lot Reservation.** Regardless of any right or easement created in favor of the Patio Lot, each Owner of a Wall Lot hereby reserves for himself the right to use the Wall Easement Area to maintain, use, remove, replace, or reconstruct the improvements on the Wall Lot that serve or support the Wall House, including without limitation the utility meters and air conditioning equipment located on the alley side or Patio Home side of the Wall Lot.

**5 2.2. Wall Lot Easement.** Subject to the foregoing reservation, the Patio Lot Owner is hereby granted an exclusive and perpetual right and easement of enjoyment and use over the Wall Easement Area, as may be reasonably required, for use as part of the Patio and the front yard area of the Patio Lot, including but not limited to landscaping, irrigation, and lighting. Specifically, the Patio Lot Owner is solely responsible for (1) maintenance, repair, and replacement of the Patio and Patio Fence, including any portion of the Patio and Patio Fence that is in the Wall Easement Area, and (2) the portion of the Wall Easement Area that is adjacent to the front yard of the Patio Home. The Patio Lot Owner is further hereby granted a non-exclusive and perpetual right and easement of enjoyment and use over the

exterior surface of the Wall.

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**5.2.3. Easement on Patio Lot** The Wall Lot Owner is hereby granted a non-exclusive and perpetual right and easement of access across the Patio Lot to use the Patio Easement Area for purposes of maintaining, repairing, replacing, or reconstructing the Wall House.

**5.2.4. Driveway & Parking Pad Encroachments** The concrete driveways and additional parking pads are constructed as the initial improvements on the Property without respect for individual Lot lines. A concrete driveway or parking pad that is on a Lot other than the Lot it is intended to serve is hereby deemed to be a permitted perpetual encroachment which may remain undisturbed as long as the driveway or parking pad exists. The Owner of the Lot that is served by the driveway or parking pad has exclusive use of those improvements and is solely responsible for the maintenance, repair, replacement, and reconstruction of same as if it were constructed entirely on the Owner's Lot.

**5.2.5. Walking Trail Easement to Acton School Road.** Declarant has obtained a Trail Easement permitting ingress and egress access by walking traffic for use by Fountain Village residents and guests only. This "Trail Easement" is 10 feet in width and exists over, on, along and across property owned by a third party, which property adjoins the Fountain Village Property and Acton School Road. The Trail Easement is part of the Common Areas of Fountain Village, and shall be recorded in the Real Property Records of Hood County.

**5.3. Limitations** The reservations and easements created by this Article are subject to and conditioned by the following restrictions:

**5.3.1. Barriers** Except for the Patio Fence, no person may construct a wall, fence, or other barrier or obstacle in the Shared Easement Area that interferes with the use of the easements and reservation created by this Article

**5.3.2. Access Request** Except in case of an emergency or for the Lot yards maintenance and landscaping access, access to and use of the Shared Easement Area by the Owner of the Wall Lot requires a request to the Owner of the Patio Lot, in advance, for a time reasonably convenient for the Patio Lot Owner. The Patio Lot Owner may not refuse to provide access.

**5.3.3. Structural Change** The Owner of either Lot may not make any structural change to the Wall or do or fail to do any act that interferes with the purpose of the Wall to structurally support and enclose the Wall House and to simultaneously serve as a courtyard wall for the Patio.

**5.3.4. Damage to Wall** If an Owner is responsible for damage to or destruction of the Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Deed Records of Hood County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to contribution from another Owner under this Section is appurtenant to the land and passes to the Owner's successors in title.

5.3.5. **Damage to Property.** If an Owner damages the adjoining Lot, or damages or destroys any improvement or personal property on the adjoining Lot, in exercising the easements and reservation created by this Article, the Owner is obligated to restore the damaged property to its original condition (just prior to the damage), at his expense, within a reasonable period of time.

5.3.6. **Preventing Damage.** Use of the Shared Easement Area by the Owner of a Patio Lot must not damage the Wall House. Towards that end, the Owner of a Patio Lot must:

- a. Avoid planting or permitting the volunteer growth of trees with root systems that are destructive to the Wall House or its subsurface utility lines.
- b. Avoid allowing the ground to be so wet or so dry as to create a significant moisture imbalance for the foundation of the Wall House.
- c. Prevent trees on the Patio Lot from damaging the roof of the Wall House.
- d. Treat or allow the Wall Lot Owner to treat the Shared Easement Area for termites or other wood destroying pests if the Owner of the Wall Lot has reason to believe that such treatment is necessary to prevent termite damage to the Wall House.

5.3.7. **Drainage Issues.** The Owners of the paired Lots are required to cooperate to prevent or reduce drainage problems on either Lot. If the Owners fail or refuse to cooperate in a joint solution to a drainage problem that adversely affects either Lot, the Owner of the adversely affected Lot is hereby authorized to fix the problem, even if it requires maintenance, repair, replacement, or improvement of components or grading on the other Lot.

5.4. **Cooperation.** Each Owner of a Wall Lot or Patio Lot will endeavor to exercise his rights under this Article in a manner calculated to respect the rights, privacy, and privileges of the Owner of the paired lot. Each Owner will make a diligent effort to be cooperative, responsive, and civil in communications pertaining to the purposes of this Article. No provision of this Article may be interpreted as authority for one Owner to harass, inconvenience, tyrannize, or otherwise impose himself on the other Owner or the Owner's Lot. If a dispute arises between the Owners of the paired lots on a matter pertaining to this Article, the Owners will employ the dispute resolution procedures of Article 17 of these Protective Covenants

5.5. **Applicability.** In the course of platting the Property and designing the houses, some variations exist. For that reason, this Article may not apply at all to some Lots in Fountain Village, or it may apply only in part, or it may apply with a different interpretation. For example, if the Wall Lot is next to a Common Area, the Common Area may find itself in the role of a "Patio Lot" for purposes of providing access to the Owner of the Wall Lot, even though the Common Area does not have a Patio House. Some Lots are larger than others, or somewhat pie-shaped, or shaped otherwise to conform to the curvatures of the streets and the Property, and therefore have larger

varied distances from the Shared Lot Line, thus making the applicability of this Article more subject to common sense and cooperation between neighbors. Users of this Article must apply common sense and rules of liberal construction in determining whether or how the terms of this Article apply to a particular Lot. In case of a conflict between a provision of this Article and a provision elsewhere in these Protective Covenants, this Article controls.

## **ARTICLE 6**

### **ARCHITECTURAL COVENANTS AND CONTROL**

6.1. **Purpose.** Because the Lots are part of a single, unified community, these Protective Covenants create rights to regulate the design, use, and appearance of the Lots and the Common Areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements on a Lot, including but not limited to dwellings, fences, landscaping, retaining walls, yard art, sidewalks and driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

6.2. **Architectural Control During the Development Period.** During the Development Period, neither the Association, the Board of Directors, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of new homes on vacant Lots. During the Development Period, the Architectural Reviewer for new homes on vacant Lots is the Declarant or its delegates.

6.2.1. **Declarant's Rights Reserved** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property or the ability of Builders to sell homes in the Property. Accordingly, each Owner agrees that - during the Development Period - **no improvements will be started or progressed on Owner's Lot without the prior written approval of Declarant**, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

6.2.2. **Delegation by Declarant** During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (1) an Architectural Control Committee appointed by the Board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated

responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

**BEFORE MAKING ANY IMPROVEMENT OR ANY ALTERATION  
TO A LOT OR DWELLING, A BUILDER OR OWNER  
MUST APPLY FOR WRITTEN APPROVAL.**

**6.3 Architectural Control by Association.** Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Architectural Control Committee (the "ACC"), or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the ACC will assume jurisdiction over architectural control.

**6.3.1. ACC Membership.** The ACC will consist of at least 3 but not more than 7 persons appointed by the Board, pursuant to the ByLaws. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC are construed to mean the Board. Members of the ACC need not be Owners or residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

**6.3.2. Limits on Liability.** The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the ACC, (2) supervising construction for the Owner's compliance with approved plans and specifications, or (3) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

**6.4. Prohibition of Construction, Alteration & Improvement** Without the Architectural Reviewer's prior written approval, a person may not construct a dwelling or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property, if it will be visible from a street, another Lot, or the Common Area. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

**6.5. Architectural Approval.** To request architectural approval, an Owner must make written application to the Architectural Reviewer and submit 2 identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. In support of the application, the Owner may but is not required to submit letters of support or non-opposition from Owners of Lots that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer will return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information

Required." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Architectural Reviewer's files. **Verbal approval by an Architectural Reviewer, the Declarant, an Association director or officer, a member of the ACC, or the Association's manager does not constitute architectural approval by the appropriate Architectural Reviewer, which must be in writing.**

**6.5.1. Deemed Approval** Under the following limited conditions, the applicant may presume that his request has been approved by the Architectural Reviewer:

- a. If the applicant or a person affiliated with the applicant has not received the Architectural Reviewer's written response - approving, denying, or requesting additional information - within 60 days after delivering his complete application to the Architectural Reviewer.
- b. If the proposed improvement or modification strictly conforms to requirements and construction specifications contained in this Declaration and in any design guidelines for the Property in effect at the time of application.
- c. If those conditions are satisfied, the Owner may then proceed with the improvement, provided he adheres to the plans and specifications which accompanied his application, and provided he initiates and completes the improvement in a timely manner. In exercising deemed approval, the burden is on the Owner to document the Board's actual receipt of the Owner's complete application. Under no circumstance may approval of the Architectural Reviewer be deemed, implied, or presumed for an improvement or modification that would require a variance from the requirements and construction specifications contained in these Protective Covenants and in any design guidelines for the Property in effect at the time of application.

**6.5.2. No Approval Required** No approval is required to repaint exteriors in accordance with the color scheme approved by the Architectural Reviewer, or to rebuild a dwelling in accordance with originally approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a dwelling.

**6.5.3. Building Permit** If the application is for work that requires a building permit from a governmental body, the Architectural Reviewer's approval is conditioned on the issuance of the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, governmental approval does not ensure Architectural Reviewer approval.

**6.5.4. Neighbor Input** The Architectural Reviewer may solicit comments on the application, including from Owners or residents of Lots that may be affected by the proposed change, or from which the proposed change may be visible. Whether to solicit comments, from whom to solicit comments, and whether to make



the comments available to the applicant is solely at the discretion of the Architectural Reviewer. The Architectural Reviewer is not required to respond to the commentors in ruling on the application.

6.5.5. **Declarant Approved** Notwithstanding anything to the contrary in this Declaration, any improvement to the Property made or approved by Declarant during the Development Period is deemed to have been approved by the Architectural Reviewer.

6.6. **Architectural Guidelines** Declarant, during the Development Period, and the Association thereafter, may publish architectural restrictions, guidelines, and standards, which may be revised from time to time to reflect changes in technology, style, and taste.

## **ARTICLE 7**

### **CONSTRUCTION AND USE RESTRICTIONS**

7.1. **Variance** The use of the Property is subject to the restrictions contained in this Article, and subject to rules adopted pursuant to this Article. The Board or the Architectural Reviewer, as the case may be, may grant a variance or waiver of a restriction or rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not effect a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance.

7.2. **Construction Restrictions** Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every Lot must have the characteristics described in Appendix B, which may be treated as the minimum requirements for improving and using a Lot. The Architectural Reviewer and the Board may promulgate additional rules and restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article. An Owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his Lot and dwelling

7.3. **Association's Right to Promulgate Rules** The Association, acting through its Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. In addition to the restrictions contained in this Article, each Lot is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing

- a. Use of Common Areas.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association
- d. The consumption of utilities billed to the Association.
- e. The use and consumption of propane whether billed to Owners or the

Association.

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- f. The use, maintenance, and appearance of exteriors of dwellings and Lots.
- g. Landscaping and maintenance of yards.
- h. The occupancy and leasing of dwellings.
- i. Animals.
- j. Vehicles.
- k. Disposition of trash and control of vermin, termites, and pests.
- l. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for residents

7.4. **Accessory Sheds** Without the prior written approval of the Architectural Reviewer, accessory structures - such as dog houses, gazebos, storage sheds, playhouses, and greenhouses - are prohibited (not allowed). Accessory structures may not be located in front yards or in unfenced portions of side yards facing streets. If an accessory structure that is visible from a street or another Lot is installed on a Lot without the prior written approval of the Architectural Reviewer, the Architectural Reviewer reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the Owner to screen it or to remove it.

7.5. **Animal Restrictions** No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose or for food. Customary domesticated household pets may be kept for personal companionship subject to rules adopted by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than 4 dogs and/or cats may be maintained on each Lot. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other Lots. Pets must be maintained inside the dwelling, or may be kept in a fenced yard only if they do not disturb residents of other Lots. Any pets permitted by a resident to be outdoors in the Fountain Village community must be strictly controlled by such resident, either on a leash, physically held by the resident or otherwise physically contained and controlled. Resident is responsible for the removal of his pet's wastes from the Property. Unless the Rules provide otherwise, a resident must prevent his pet from relieving itself on the Common Area or the Lot of another Owner.

7.6. **Annoyance** No Lot or Common Area may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of residents of other Lots, (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The Board has the sole authority to determine what constitutes an annoyance.

7.7. **Appearance** Both the Lot and the dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring Lots. The Architectural Reviewer is the arbitrator of acceptable appearance standards.

7.8. **Color Changes** The colors of buildings, fences, exterior decorative items, window treatments, and all other improvements on a Lot are subject to regulation by the Architectural Reviewer. Because the relative merits of any color are subjective matters of taste and preference, the Architectural Reviewer determines the colors that are acceptable to the Association. Do not change or add colors that are visible from the street or alley, a Common Area, or another Lot without the prior written approval of the Architectural Reviewer.

7.9. **Declarant Privileges** In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and residents, as provided in Appendix C of this Declaration. Declarant's exercise of a Development Period right that appears to violate a rule or a use restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

7.10. **Drainage** No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the Board.

7.11. **Driveways** The driveway portion of a lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the Board's prior approval, a driveway may not be used. (1) for storage purposes, including storage of boats, trailers, and inoperable vehicles; or (2) for repair or restoration of vehicles.

7.12. **Fires** Except for barbecue grills, no exterior fires on the Property are permitted.

7.13. **Garages** Without the Board's prior written approval, the original garage area of a Lot may not be enclosed or used for any purpose that prohibits the parking of two standard-size operable vehicles therein. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

7.14. **Guns** - Hunting and shooting are not permitted anywhere on or from the Property.

7.15 **Landscaping and Association Maintenance** No person may perform landscaping, planting, or gardening on the Common Area without the Board's prior written authorization. During the Development Period described in Schedule C, all front and rear yard areas on every Lot in Fountain Village and all Common Area grounds shall be regularly mowed, trimmed, fertilized and otherwise maintained by Declarant or the Association (herein referred to as "Routine Yard Maintenance"). Further subject to the provisions in Schedule C, Declarant and the Association shall have a blanket "Yard Power Easement" on and over the front and rear yard areas of all Lots in the entire Fountain Village Property. If in the opinion of the Board a resident either violates the landscaping rules of these Protective Covenants, or the ByLaws, or other rules promulgated by the Board, or in the sole opinion of the Board causes or allows damage

to occur to his yard, plant beds, other landscaping, or sprinkler system, that resident shall be liable for the cost of any repair or restoration. Individual residents, at such resident's sole expense, are obligated to maintain his side fenced-in Patio Yard. Owners may separately contract with the Association's yard maintenance contract provider for Patio Yard, plant beds, sprinkler system and other landscaping maintenance.

7.16. **Leasing of Homes** An Owner may lease the dwelling on his Lot. Whether or not it is so stated in a lease, every lease is subject to the Documents. An Owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto. Failure by the tenant or his invitees to comply with the Documents, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The Owner of a leased Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

7.17. **Noise & Odor** A resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy residents of neighboring Lots. The Rules may prohibit the use of noise-producing security devices and wind chimes.

7.18. **Occupancy** Other than the completed principal dwelling, no thing or structure on a Lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage, mobile homes, campers, and storage sheds.

7.19. **Residential Use** The use of a house Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a resident from using a dwelling for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the dwelling as a residence; (2) the uses conform to applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the Lot by employees or the public in quantities that materially increase the number of vehicles parked on the Street; and (5) the uses do not interfere with residents' use and enjoyment of neighboring Lots.

7.20. **Screening** The Architectural Reviewer may require that the following items must be screened from the view of the public and neighboring Lots and dwellings, if any of these items exists on the Lot. (1) satellite reception equipment; (2) clotheslines, drying racks, and hanging clothes, linens, rugs, or textiles of any kind; (3) yard maintenance equipment; (4) wood piles and compost piles; (5) accessory structures that do not have prior approval of Architectural Reviewer; (6) garbage cans and refuse containers; (7) anything determined by the board to be unsightly or inappropriate for a residential subdivision. Screening may be achieved with fencing or with plant material, such as trees and bushes, or any combination of these. If plant material is used, a reasonable

period of time is permitted for the plants to reach maturity as an effective screen. PAs used in this Section, "screened from view" refers to the view of a person in a passenger vehicle driving on a Street or alley, or the view of a person of average height standing in the middle of a yard of an adjoining Lot.

**7.21. Signs** An Owner may erect, per Lot, one professionally made sign, conforming to the rules of the Association, of not more than 5 square feet advertising the Lot for sale or for rent. No other sign or unsightly object may be erected, placed, or permitted to remain on the Property or to be visible from windows in the dwelling without the Board's prior written approval. The Board's approval may specify the location, nature, appearance, dimensions, number, and time period of a sign or object. The Association may effect the removal of any sign or object that violates this Section or which the Board deems inconsistent with neighborhood standards without liability for trespass or any other liability connected with the removal.

**7.22. Television, Electronic Equipment, Etc** Each resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another Lot are prohibited within the Property, except (1) reception-only antennas or satellite dishes designed to receive television broadcast signals, (2) antennas or satellite dishes that are one meter or less in diameter and designed to receive direct broadcast satellite service (DBS), or (3) antennas or satellite dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services (MDS) (collectively, the "Antenna") are permitted if located (a) inside the structure (such as in an attic or garage) so as not to be visible from outside the structure, (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a structure below the eaves. If an Owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the Owner may install the Antenna in the least conspicuous location on or near the roof where an acceptable quality signal can be obtained. The Association may adopt reasonable rules for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law.

**7.23. Temporary Structures** Except for "accessory sheds" as described above, improvements or structures of a temporary or mobile nature, such as tents, portable sheds, and mobile homes, may not be placed on a Lot if visible from a street or another Lot. However, an Owner or Owner's contractor may maintain a temporary structure (such as a portable toilet or construction trailer) on the Lot during construction of the dwelling.

**7.24. Vehicles** All vehicles on the Property, whether owned or operated by the residents or their families and guests, are subject to this Section and Rules adopted by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may effect the removal of any vehicle in violation of this Section or the Rules without liability to the Owner or operator of the vehicle.

**7.24.1. Prohibited Vehicles** Without prior written Board approval, the following types of vehicles and vehicular equipment - mobile or otherwise - may not

be kept, parked, or stored anywhere on the Property - including overnight parking on streets and driveways - if the vehicle is visible from a street or from another Lot: mobile homes, motor homes, buses, trailers, boats, aircraft, inoperable vehicles, commercial truck cabs, trucks with tonnage over one ton, vehicles which are not customary personal passenger vehicles, and any vehicle which the Board deems to be a nuisance, unsightly, or inappropriate. This restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a dwelling. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times.

7.25. **Window Treatments** All window treatments within the dwelling that are visible from the street or another dwelling must be maintained in good condition and must not detract from the appearance of the Property. The Architectural Reviewer may require an Owner to change or remove a window treatment that the ACC determines to be inappropriate or unattractive. The Architectural Reviewer may prohibit the use of certain colors or materials for window treatments.

## **ARTICLE 8**

### **ASSOCIATION AND MEMBERSHIP RIGHTS**

8.1. **Board** Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors."

8.2. **The Association** The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of the Fountain Village Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Documents. Among its duties, the Association levies and collects assessments, maintains the Common Areas, plus maintaining the Lot yards and Common Area grounds at the assessed expense of the Owners as set forth in Section 7.15 above, and pays the expenses of the Association, such as those described below. The Association shall come into operating existence on the earlier of (1) the issuance of its corporate charter and full legal formation, or (2) the initial levy of assessments against the Lots and Owners. The Association will continue to exist at least as long as these Protective Covenants are effective against the Property, regardless of whether its corporate charter lapses from time to time.

8.3. **Governance** The Association will be governed by a Board of Directors elected by the Members. Unless the Association's ByLaws or Articles of Incorporation provide otherwise, the Board will consist of at least 3 persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the ByLaws and these Protective Covenants. Unless the Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners of at least a majority of all Lots, or at a meeting by Owners of at least a majority of the Lots that are represented at the meeting.

**8 4. Membership.** Each Owner is a Member of the Association, ownership of a Lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Lot. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Lot is owned by more than one person or entity, each Co-Owner is a Member of the Association and may exercise the membership rights appurtenant to the Lot. A Member who sells his Lot under a Contract for Deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, regardless of the existence of the contract, seller remains liable for all assessments attributable to his Lot until fee title to the Lot is transferred.

**8 5. Voting.** One vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. If additional property is made subject to this Declaration, the total number of votes will be increased automatically by the number of additional Lots or tracts. Each vote is uniform and equal to the vote appurtenant to every other Lot, except during the Declarant Control Period as permitted in Appendix C. Cumulative voting is not allowed. Votes may be cast by written proxy, according to the requirements of the Association's ByLaws.

**8 6. Voting by Co-Owners.** The one vote appurtenant to a Lot is not divisible. If only one of the multiple Co-Owners of a Lot is present at a meeting of the Association, that person may cast the vote allocated to the Lot. If more than one of the Co-Owners is present, the Lot's one vote may be cast with the Co-Owners' unanimous agreement. Co-owners are in unanimous agreement if one of the Co-Owners casts the vote and no other Co-Owner makes prompt protest to the person presiding over the meeting. Any Co-Owner of a Lot may vote by ballot or proxy, and may register protest to the casting of a vote by ballot or proxy by the other Co-Owners. If the person presiding over the meeting or balloting receives evidence that the Co-Owners disagree on how the one appurtenant vote will be cast, the vote will not be counted.

**8 7. Books & Records.** The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to Article 1396-2.23 B. of the Texas Nonprofit Corporation Act.

**8 8. Indemnification.** The Association indemnifies every officer, director, committee chair, and committee member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors and officers liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

8.9. **Obligations of Owners.** Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

8.9.1. **Information.** Within 30 days after acquiring an interest in a Lot, within 30 days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (1) a copy of the recorded deed by which Owner has title to the Lot; (2) the Owner's address, phone number, and driver's license number, if any; (3) any mortgagee's name, address, and loan number; (4) the name and phone number of any resident other than the Owner; (5) the name, address, and phone number of Owner's managing agent, if any.

8.9.2. **Pay Assessments.** Each Owner will pay assessments properly levied by the Association against the Owner or his Lot, and will pay regular assessments without demand by the Association.

8.9.3. **Comply.** Each Owner will comply with the Documents as amended from time to time.

8.9.4. **Reimburse.** Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a resident of the Owner's Lot, or the Owner or resident's family, guests, employees, contractors, agents, or invitees

8.9.5. **Liability.** Each Owner is liable to the Association for violations of the Documents by the Owner, a resident of the Owner's Lot, or the Owner's or resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

8.10. **Transfer-Related Fees.** A number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (1) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (2) transfer to, from, or by the Association; (3) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-related fees.



**ARTICLE 9**  
**COVENANT FOR ASSESSMENTS**

9.1. **Purpose of Assessments**. The Association will use assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of Owners and residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of assessments is final.

9.2. **Personal Obligation**. An Owner is obligated to pay assessments levied by the Board against the Owner or his Lot. An Owner makes payment to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which these Protective Covenants pertain. No Owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

9.3. **Control for Assessment Increases**. This Section of this Protective Covenants may not be amended without the approval of Owners of at least two-thirds (2/3rds) of the Lots. In addition to other rights granted to Owners by these Protective Covenants, Owners have the following powers and controls over the Association's budget:

9.3.1. **Veto Increased Dues**. At least 30 days prior to the effective date of an increase in Regular Assessments, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless Owners of at least a majority of the Lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

9.3.2. **Veto Special Assessment**. At least 30 days prior to the effective date of a Special Assessment, the board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the Special Assessment. The Special Assessment will automatically become effective unless owners of at least a two-thirds ( 2/3<sup>ds</sup> ) of the Lots disapprove the Special Assessment by petition or at a meeting of the Association.

9.4. **Types of Assessments**. There are 4 types of assessments: Regular, Special, Individual, and Deficiency.

9.4.1. **Regular Assessments**. Regular assessments are based on the annual budget. Each Lot is liable for its equal share of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined. If during the course of a year the Board

determines that Regular Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular Assessments are used for Common Expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- a. Maintenance, repair, and replacement, as necessary, and as appropriate, operating expenses, of the Common Area, specifically including but not limited to all roadways and recreational common areas and common facilities and amenities.
- b. Utilities billed to the Association.
- c. Services billed to the Association and serving all Lots.
- d. Taxes on property owned by the Association and the Association's income taxes
- e. Management, legal, accounting, auditing, and professional fees for services to the Association.
- f. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- g. Premiums and deductibles on insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including any required fidelity bonds and directors' and officers' liability insurance.
- h. Contributions to the reserve funds.
- i. All costs of the Association's performance of its Property (including but not limited to all Lots) landscaping and maintenance obligations in Section 7.15 above, including without limitation all costs of the Routine Yard Maintenance as provided therein.
- i. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

**9.4.2. Road Fund Assessments.** For each calendar year, the Association shall levy Road Fund Assessments against Owners of the Lots other than Declarant. The Association shall assess a sufficient amount to maintain a separate Road Fund set aside in an interest bearing account for the specific purpose of maintaining and repairing the private streets within the Property and the entrances from county roads into the Property. The initial amount allocated to the Road Fund is \$10.00 per Share per month. Each such Owner shall be obligated to pay the Road Fund Assessments levied against and allocated to each Owner and

the Parcel of such Owner, as provided in this Declaration. The monthly Road Fund Assessments shall continue until the balance in the Road Fund account totals at least Fifteen Thousand Dollars (\$15,000.00); and, monthly Road Fund Assessments shall resume to build and continually maintain at least a Fifteen Thousand Dollars (\$15,000.00) account balance as expenditures for street maintenance and repairs occur. Such Road Fund Assessments shall be allocated among the Lots of Owners in the same manner as Regular Assessments are allocated. Written notice of any proposed change in the amount of any monthly Road Fund Assessments shall be sent to every Owner subject thereto not less than thirty (30) days prior to the effective date of such proposed change, and shall be submitted to the Members for approval at the Association's annual meeting or at a special meeting of the Members called for such purpose. In the event street maintenance or repairs are required due to water or sewer facilities repairs made by or at the direction of the Acton Municipal Utility District ("AMUD"), such Road Funds shall be utilized by the Association to repair all damages to the street. During the first thirty-six (36) months from the effective date hereof, in the event adequate funds are not available in the Road Fund if and when damage is caused to the road as a result of water or sewer facilities repairs made by or at the direction of AMUD, Declarant shall loan sufficient funds to the Association for such purpose. AMUD shall have no responsibility for such street repairs or for the expense of such repairs. This Section 9.4.2 of the Protective Covenants may not be amended by the Association or its Members without the written approval of AMUD

**9.4.3. Special Assessments.** In addition to Regular Assessments, and subject to the Owners' control for assessment increases, the Board may levy one or more Special Assessments against all Lots for the purposes of (1) defraying, in whole or in part, Acton Associates II, L.P.'s allocated cost of improvements to Lots and Common Areas (which costs are not included in the price of the Lot and Patio Home at the time of purchase by an Owner), or (2) funding Common Expenses not anticipated by the annual budget or reserve funds. Special Assessments shall be prorated equally among all Lots, and do not require the approval of the Owners. All Special Assessments will automatically become effective unless Owners of at least two-thirds (  $2/3^{\text{rds}}$  ) of the Lots disapprove the Special Assessment by petition or at a meeting of the Association as provided in Section 9.3.2 above. However, the above provisions in this Section 9.4.2 notwithstanding, Special Assessments for the following purposes must be approved by Owners of at least a majority of the Lots:

- a. Acquisition of real property, other than the purchase of a Lot at the sale foreclosing the Association's lien against the Lot
- b. Construction of additional improvements within the Property, but not replacement of original improvements.
- c. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

**9.4.4. Individual Assessments.** In addition to Regular and Special and Road Fund Assessments, the Board may levy an Individual Assessment against a

Lot and its Owner. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an Owner or his Lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; transfer-related fees and resale certificate fees, fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefits received.

9.4.5. **Deficiency Assessments**. The Board may levy a Deficiency Assessment against all Lots for the purpose of defraying, in whole or in part, the cost of repair or restoration of the Property if insurance proceeds or condemnation awards prove insufficient.

9.5. **Basis & Rate of Assessments**. The share of liability for Common Expenses allocated to each Lot is uniform for all Lots, regardless of a Lot's location or the value and size of the Lot or dwelling; subject, however, to the exemption for Declarant provided below and in Appendix C

9.6. **Declarant Obligation**. Declarant's obligation for and exemption from assessments is described in Appendix C. Unless Appendix C creates an affirmative assessment obligation for Declarant, a Lot that is owned by Declarant during the Development Period is exempt from mandatory assessment by the Association. Declarant has a right to reimbursement for any assessment paid to the Association by Declarant during the Development Period. This provision may not be construed to prevent Declarant from making a loan or voluntary monetary donation to the Association, provided it is so characterized.

9.7. **Annual Budget**. The Board will prepare and approve an estimated Annual Budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

9.8. **Due Date**. The Board may levy regular assessments on any periodic basis, such as annually, semi-annually, quarterly, or monthly. Regular Assessments are due on the first day of the period for which levied. Special and Individual and Road Fund Assessments are due on the date stated in the Notice of Assessment or, if no date is stated, within 10 days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

9.9. **Reserve Funds**. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association must budget for reserves and may fund reserves out of Regular Assessments.

9.9.1. **Operations Reserves**. The Association will endeavor to maintain

Operations Reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, such as the full amount of deductibles on insurance policies maintained by the Association.

9.9.2. **Replacement & Repair Reserves**. The Association will endeavor to maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Areas.

9.10. **Association's Right to Borrow Money**. The Association is granted the right to borrow money, subject to the consent of Owners of at least a majority of lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

9.11. **Limitations of Interest**. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Special and Regular Assessments, or reimbursed to the Owner if those assessments are paid in full.

## **ARTICLE 10**

### **ASSESSMENT LIEN**

10.1. **Assessment Lien**. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his Lot.

10.2. **Superiority of Assessment Lien**. The Assessment Lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before these Protective Covenants, (3) a recorded deed of trust lien securing a loan for construction of the original dwelling, and (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the Delinquent Assessment became due. The Assessment Lien is subordinate and inferior to a recorded deed of trust lien that secures a first or senior purchase money mortgage, an FHA-insured mortgage, or a VA-guaranteed mortgage.

10.3. **Effect of Mortgage's Foreclosure**. Foreclosure of a superior lien extinguishes the Association's claim against the Lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the

former Owner. The purchaser at the foreclosure sale of a superior lien is liable for assessments coming due from and after the date of the sale, and for the Owner's prorata share of the pre-foreclosure deficiency as an Association expense.

**10.4. Notice and Release of Notice.** The Association's lien for assessments is created by recordation of these Protective Covenants, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Hood County's Deed Records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner.

**10.5. Power of Sale.** By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of nonjudicial sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

**10.6 Foreclosure of Lien.** The Assessment Lien may be enforced by judicial or nonjudicial foreclosure. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the ByLaws and applicable law, such as Chapter 209 of the Texas Property Code. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association may not foreclose the Assessment Lien if the debt consists solely of fines and/or a claim for reimbursement of attorney's fees incurred by the Association.

## **ARTICLE 11**

### **EFFECT OF NONPAYMENT OF ASSESSMENTS**

An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent assessments. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the ByLaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

**11.1. Interest** Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of 18 percent or the maximum permitted by law. If the Board fails to establish a rate, the rate is 10 percent per annum, compounded annually.

11.2. **Late Fees** Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

11.3. **Costs of Collection** The Owner of a Lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorneys fees and processing fees charged by the manager.

11.4. **Acceleration** If an Owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments on 10 days' written notice to the defaulting Owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

11.5. **Suspension of Use and Vote** If an Owner's account has been delinquent for at least 30 days, the Association may suspend the right of Owners and residents to use Common Areas and Common Services during the period of delinquency. The Association may also suspend the right to vote appurtenant to the Lot. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay assessments

11.6. **Money Judgment** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of assessments, without foreclosing or waiving the Association's lien for assessments.

11.7. **Notice to Mortgagee** The Association may notify and communicate with the holder of any lien against a lot regarding the owner's default in payment of assessments.

11.8. **Foreclosure of Assessment Lien** As provided by these Protective Covenants, the Association may foreclose its lien against the Lot by judicial or nonjudicial means.

11.9. **Application of Payments** The Board may adopt and amend policies regarding the application of payments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Lot's account.

## **ARTICLE 12**

### **ENFORCING THE DOCUMENTS**

12.1. **Notice and Hearing** Before the Association may exercise any of its remedies for a violation of the Documents or damage to the Property, the Association must give an Owner written notice and an opportunity for a hearing, according to the requirements and procedures in the ByLaws and in applicable law, such as Chapter 209 of the Texas Property Code. Notices are also required before an Owner is liable to the Association for certain charges, including reimbursement of attorneys fees incurred by the Association.

12.2. **Remedies.** The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following right to enforce the Documents, subject to applicable notice and hearing requirements:

12.2.1. **Nuisance.** The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

12.2.2. **Violations** The Association may levy reasonable charges, as an individual assessment, against an Owner and his Lot if the Owner or resident, or the Owner or resident's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

12.2.3. **Suspension** The Association may suspend the right of Owners and residents to use Common Areas for any period during which the Owner or resident, or the Owner's or resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

12.2.4. **Self-Help.** The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner 15 days' notice of its intent to exercise self-help.

12.2.5. **Legal Proceedings.** Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

12.3. **Board Discretion.** The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action, (2) the provision being enforced is or may be construed as inconsistent with applicable law, (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

12.4. **No Waiver.** The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the



Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Documents at any future time. No officer, director, or Member of the Association is liable to any Owner for the failure to enforce any other Documents at any time.

12.5. **Recovery of Costs**. The costs of curing or abating a violation are at the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

### **ARTICLE 13** **MAINTENANCE AND REPAIR OBLIGATIONS**

13.1. **Association Maintains**. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs, and replaces, as a Common Expense, the portions of the Property listed below, regardless of whether the portions are on Lots or Common Areas.

- a The Common Areas and all common facilities or amenities thereon.
- b Any real and personal property owned by the Association but which is not a Common Area, such as a Lot owned by Declarant or the Association.
- c All front and rear yards of every Lot in Fountain Village and all Common Area grounds shall be regularly mowed, fertilized, trimmed, and otherwise maintained by Declarant or the Association (herein referred to as "Routine Yard Maintenance," subject to the Association's and the Lot Owners' obligations and limitations set out in Section 7.15 above and in Section 13.2.2 below.
- d Any property adjacent to the Fountain Village Property, if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property.
- e Any area, item, easement, or service, the maintenance of which is assigned to the Association by these Protective Covenants or by the Plat.

13.2. **Owner Responsibility**. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the Patio Home provisions of Article 5, the architectural control requirements of Article 6, and the use restrictions of Article 7:

13.2.1. **House Maintenance**. Except as provided otherwise herein, each Owner, at the Owner's expense, must maintain all improvements on the Lot, including but not limited to the dwelling, fences, sidewalks, and driveways. Maintenance includes preventative maintenance, repair as needed, and

replacement as needed. Each Owner is expected to maintain his Lot's improvements at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each Owner must repair and replace, or cooperate with the Association at Owner's expense to repair and replace, all worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

**13.2.2. Yard Maintenance.** The Association will perform the "Routine Yard Maintenance" on all the Common Area yards as well as on all the front and back yards on every Lot in Fountain Village as set forth in Section 7.15 above at the Association's expense. Each Owner must maintain his Patio Yard on his Lot and all trees, plant beds and yard sprinkler systems on his Lot at such Owner's cost at a level, to a standard, and with an appearance that is commensurate with the neighborhood. "Yards" means all parts of the Lot other than the dwelling, including fenced and unfenced portions of the Lot. The area between the alley pavement and the back yard fence, if any, is a yard area. Each Owner must:

- a. Support the Association's maintenance of an attractive ground cover or lawn on all Common Area and Lot yards visible from a street or alley. Owners are encouraged to take pride in the Fountain Village community by avoiding littering at all times, and assisting in the removal of litter and trash in all these areas.
- b. Support the Association's edging and trimming throughout the Common Areas and on all the Lots along the street curbs, alley edges and front and back yard perimeter edges at regular intervals.
- c. Support the Association's mowing of the Common Areas and on all the front and back yard lawns on all the Lots at regular intervals.
- d. Prevent weeds from exceeding 6 inches in height in the plant beds.
- e. Screen plant vegetable gardens from being visible from a street or alley.
- f. Maintain an attractive appearance for trees, shrubs, flowers, other plant material, and all landscaping features and artifacts that are visible from a street or alley.
- g. Replace plant material, as needed, to maintain the minimum landscaping requirements of Appendix B.

**13.2.3. Avoid Damage.** An Owner may not do any work or fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

**13.2.4. Responsible for Damage** An Owner is responsible for his own willful or negligent acts and those of his or the resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or

replacement to the Common Areas or the property of another Owner.

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**13.3. Owner's Default in Maintenance** If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and his Lot. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

**13.4. Party Wall Fences** A fence located on or near the dividing line between 2 Lots and intended to benefit both Lots constitutes a Party Wall Fence and, to the extent not inconsistent with the provisions of this Section, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

**13.4.1. Encroachments & Easement** If the Party Wall Fence is on one Lot or another due to an error in construction, the fence is nevertheless deemed to be on the dividing line for purposes of this Section. Each Lot sharing a Party Wall Fence is subject to an easement for the existence and continuance of any encroachment by the fence as a result of construction, repair, shifting, settlement, or movement in any portion of the fence, so that the encroachment may remain undisturbed as long as the fence stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall Fence.

**13.4.2. Right to Repair** If the Party Wall Fence is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the fence to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt fence.

**13.4.3. Shared Costs** The Owners of adjoining Lots shall share equally the costs of repair, reconstruction, or replacement of the Party Wall Fence, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the fence, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall Fence, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Hood County's Deed Records, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to contribution from another Owner under this Section is appurtenant to the land and passes to the Owner's successors in title.

**13.4.4. Alterations** The Owner of a Lot sharing a Party Wall Fence may not cut openings in the fence or alter or change the fence in any manner that affects the use, condition, or appearance of the fence to the adjoining Lot. Unless

both Owners reach a mutual decision to the contrary, the Party Wall Fence will always remain in the same location as where initially erected.

## **ARTICLE 14 INSURANCE**

**14.1. General Provisions.** All insurance affecting the Property is governed by the provisions of this Article, with which the Board will make every reasonable effort to comply. The cost of insurance coverages and bonds maintained by the Association is an expense of the Association. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally:

**14.1.1. Notice of Cancellation or Modification.** Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least 10 days' prior written notice to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

**14.1.2. Deductibles.** An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an Owner or resident or their invitees, the Owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

**14.2. Property.** To the extent it is reasonably available, the Association will obtain blanket all-risk insurance for insurable common area improvements. If blanket all-risk insurance is not reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any Lot owned by the Association.

**14.3. General Liability.** The Association will maintain a commercial general liability insurance policy over the common areas, expressly excluding the liability of each Owner and resident within his lot, for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

**14.4. Directors & Officers Liability.** To the extent it is reasonably available, the Association will maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

**14.5. Other Coverages.** The Association may maintain any insurance policies

and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by an Underwriting Lender for planned unit developments as long as an Underwriting Lender is a mortgagee or an Owner.

14.6. **Owner's Responsibility for Insurance**. Each Owner will obtain and maintain fire and extended coverage on all the improvements on his Lot, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each Owner will obtain and maintain general liability insurance on his Lot. Each Owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an Owner fails to maintain required insurance, or to provide the Association with proof of same, the Board may obtain insurance on behalf of the Owner who will be obligated for the cost as an individual assessment. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. Each Owner and resident is solely responsible for insuring his personal property in his dwelling and on the Lot, including furnishings, vehicles, and stored items. This Section may not be construed to require the Association to continually monitor the Owners' insurance coverages

## **ARTICLE 15** **MORTGAGEE PROTECTION**

15.1. **Introduction** This Article establishes certain standards for the benefit of Mortgagees, as defined below. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the Board, without approval of Owners or mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. As used in this Article, a "Mortgagee" is a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a Lot. Some Sections of this Article apply to all "Known Mortgagees." Other Sections apply to "Eligible Mortgagees," as defined below.

15.1.1. **Known Mortgagees** An Owner who mortgages his Lot will notify the Association, giving the complete name and address of his mortgagee and the loan number. An Owner will also provide that information on request by the Association from time to time. The Association's obligations to mortgagees under the Documents extend only to those mortgagees known to the Association. All actions and approvals required by mortgagees will be conclusively satisfied by the mortgagees known to the Association, without regard to other holders of liens on Lots. The Association may rely on the information provided by Owners and mortgagees

15.1.2. **Eligible Mortgagees**. "Eligible Mortgagee" means a mortgagee that submits to the Association a written notice containing its name and address, the loan number, the identifying number and street address of the mortgaged lot, and the types of actions for which the Eligible Mortgagee requests timely notice. A

single notice per Lot will be valid so long as the Eligible Mortgagee holds a mortgage on the Lot. The Board will maintain this information. A representative of an Eligible Mortgagee may attend and address any meeting which an Owner may attend

## 15.2. Mortgagee Rights.

15.2.1. Termination. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least fifty-one percent (51%) of Eligible Mortgagees, in addition to the required consents of Owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least two-thirds (2/3rds) of the Owners and the Eligible Mortgagees. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within 30 days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

15.2.2. Inspection of Books Mortgagees may inspect the Association's books and records, including the Documents, by appointment, during normal business hours.

15.2.3. Financial Statements. If a Mortgagee so requests, the Association will give the Mortgagee an audited statement for the preceding fiscal year within 120 days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

15.2.4. Right of First Refusal Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Lot does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

15.3. Insurance Policies. If an Underwriting Lender is a Mortgagee, or if an Owner, at the request of the Underwriting Lender requests, the Association will comply with the Underwriting Lender's insurance requirements to the extent the requirements are reasonable and available, and do not conflict with other insurance requirements of these Protective Covenants.

## **ARTICLE 16** **AMENDMENTS**

16.1. Consents Required As permitted by these Protective Covenants, certain amendments of these Protective Covenants may be executed by Declarant alone, or by the Board alone. Otherwise, amendments to these Protective Covenants must be approved by Owners of at least two-thirds (2/3rds) of the Lots

16.2. Method of Amendment For an amendment that requires the approval of Owners, these Protective Covenants may be amended by any method selected by the Board from time to time, pursuant to the ByLaws, provided the method gives an Owner of each Lot the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or

against the proposed amendment

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16.3. **Effective** To be effective, an amendment approved by the Owners or by the Board must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners or directors and, if required, Eligible Mortgagees; and (3) recorded in the Deed Records of Hood County, except as modified by the following Section.

16.4. **Declarant Provisions** Declarant has an exclusive right to unilaterally amend these Protective Covenants for the purposes stated in Appendix C. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under these Protective Covenants without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

16.5. **Ordinance Compliance** When amending the Documents, the Association must consider the validity and enforceability of the amendment in light of current public law, including without limitation any City of De Cordova Subdivision Ordinance promulgated and in effect for the City's ETJ.

16.6. **Merger** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by at least two-thirds (  $2/3^{\text{rds}}$  ) of the Owners of the Lots. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established upon any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by these Protective Covenants within the Property.

16.7. **Termination** Termination of the terms of these Protective Covenants and the status of the Property as a planned unit development are according to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by owners of at least two-thirds of the lots. In the event of public condemnation of the entire Property, an amendment to terminate may be executed by the Board without a vote of Owners. In all other circumstances, an amendment to terminate must be approved by Owners of at least eighty percent (80%) of the Lots.

16.8. **Condemnation** In any proceeding, negotiation, settlement, or agreement concerning condemnation of the Common Area, the Association will be the exclusive representative of the Owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the Common Area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve

funds.

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## **ARTICLE 17**

### **DISPUTE RESOLUTION**

**17.1 Introduction & Definitions** The Association, the Owners, Declarant, all persons subject to these Protective Covenants, and any person not otherwise subject to these Protective Covenants who agrees to submit to this Article (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

**17.1.1. "Claim"** means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- a. Claims arising out of or relating to the interpretation, application, or enforcement of the Documents.
- b. Claims relating to the rights and/or duties of Declarant as Declarant under the Documents.
- c. Claims relating to the design, construction, or maintenance of the Property.

**17.1.2. "Claimant"** means any Party having a Claim against any other Party.

**17.1.3. "Exempt Claims"** means the following claims or actions, which are exempt from this Article.

- a. The Association's claim for assessments, and any action by the Association to collect assessments.
- b. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the Court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of these Protective Covenants.
- c. Enforcement of the easements, architectural control, maintenance, and use restrictions of these Protective Covenants.
- d. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.



17.1.4. **"Respondent"** means the Party against whom the Claimant has a Claim.

17.2. **Mandatory Procedures**. Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

17.3. **Notice**. Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

17.4. **Negotiation**. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

17.5. **Mediation**. If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

17.6. **Termination of Mediation**. If the parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

17.7. **Allocation of Costs**. Except as otherwise provided in this Section, each party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

17.8. **Enforcement of Resolution**. Settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of the agreement, then the other party may file suit

or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the party taking action to enforce the agreement is entitled to recover from the non-complying party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

17.9. **Release Exemptions**. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A party having an Exempt Claim may submit it to the procedures of this Article.

17.10. **Litigation Approval & Settlement**. In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial or administrative proceeding without the prior approval of Owners of at least a majority of the lots, except that no such approval is required (1) to enforce provisions of these Protective Covenants, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association, or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims. This Section may not be amended without the approval of Owners of at least 75 percent of the Lots.

## **ARTICLE 18**

### **GENERAL PROVISIONS**

18.1. **Compliance**. The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

18.2. **Higher Authority**. The Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

18.3. **Notice**. All demands or other notices required to be sent to an Owner or resident by the terms of this Declaration may be sent by ordinary or certified mail, postage prepaid, to the party's last known address as it appears on the records of the Association at the time of mailing. If an Owner fails to give the Association an address for mailing notices, all notices may be sent to the Owner's lot, and the Owner is deemed to have been given notice whether or not he actually receives it.

18.4. **Liberal Construction**. The terms and provision of each Document are to be liberally construed to give effect to the purposes and intent of the Document. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved in favor of the operation of the Association and its enforcement of the

Documents, regardless which party seeks enforcement.

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18.5. **Severability**. Invalidation of any provision of these Protective Covenants by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

18.6. **Captions**. In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Some boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

18.7. **Appendices**. The Following appendices are attached to these Protective Covenants and incorporated herein by reference:

- A - Description of Subject Land
- B - Construction Specifications
- C - Declarant Representations & Reservations

18.8. **Interpretation**. Whenever used in the Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

18.9. **Run with the Property**. Unless terminated or amended by Owners as permitted herein, the provisions of these Protective Covenants run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

18.10. **Preparer**. These Protective Covenants were prepared by Acton Associates II, L.P., 2351 W. Northwest Hwy., Suite 1120, Dallas, Texas 75220.

#### **SIGNED AND ACKNOWLEDGED**

SIGNED on this 2nd day of August, 2006.

ACTON ASSOCIATES, II, L.P.,  
A Texas Limited Partnership



By: John Hall, President  
Country Homesteads, Inc.,  
a Texas corporation, its authorized agent

THE STATE OF TEXAS

COUNTY OF HOOD

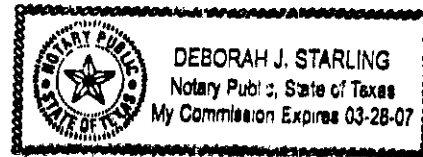
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This instrument was acknowledged before me on this 2 day of August, 2006 by John Hall, President of Country Homesteads, Inc., a Texas corporation, on behalf of said corporation in its capacity as authorized agent for Acton Associates II, L.P., a Texas limited partnership, on behalf of the limited partnership.

Deborah J. Starling  
Notary Signature

**APPENDIX A**  
**DESCRIPTION OF FOUNTAIN VILLAGE PROPERTY**

Metes and Bounds Description of the Property

A tract of land situated in the William Blair Survey, Abstract No. 45, Hood County, Texas and being a portion of a called 16.90 acre tract of land described in a deed to Danny Keith Thomas and wife, Carolyn Thomas recorded in Volume 1813, Page 474 of the Real Records of Hood County, Texas and being more particularly described as follows.

All that certain tract or parcel of land, being a portion of a 16.90 acre tract described in a deed to Danny Keith Thomas and wife, Carolyn Thomas, recorded in Volume 1813, Page 474 of the Real Records of Hood County, Texas and being more completely described as follows:

Beginning at a ½" iron rod set in the East line James Road, a 60' right-of-way, said point also being in the West line of said Thomas Tract and the Northwest corner of this tract being described herein;

Thence North 61°20'59" East, across said Thomas Tract, a distance of 300.06 feet to a ½" iron rod set in the East line of said Thomas Tract, said point also being in the West line of a 4.93 acre tract of land described in a deed to L.T. Solomon and wife, Betty K. Solomon, recorded in Volume 1095, Page 943 of said Deed Records, and being the Northeast corner of this tract;

Thence, 31°51'49" East, along the West line of said Solomon Tract, a distance of 852.45 feet to a 3" Steel Fence Corner Post found in the North line of North Gate Road, a 60' right-of-way, and being the Southwest corner of said Solomon Tract and the Southeast corner of this tract,

Thence South 61°20'59" West, along the North line of North Gate Road, a distance of 1008.55 feet to a ½" iron rod set at the intersection of James Road and North Gate Road, said point also being the Southwest corner of this tract;

Thence North 30°23'09" West, along the East line of said James Road, a distance of 26.49 feet to a ½" iron rod set for the beginning of a curve to the right;

Thence continuing along said Road and along said curve to the right having a radius of 630.00 feet, a Chord Bearing of North 03°48'54" East, 708.24 feet, and an arc distance of 752.12 feet to ½" iron rod set for the beginning of a curve to the left;

Thence along said curve to the left, having a radius of 705.71 feet, a Chord Bearing of North 22°25'40" East, 361.60 feet and an arc distance of 365.67 feet to the Point of Beginning, containing 15.000 acres of land.

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**APPENDIX B**  
**CONSTRUCTION SPECIFICATIONS** VOL. PG.

All improvements on a lot must (1) comply with any applicable city ordinances and codes, (2) have a building permit issued by the City of De Cordova or Hood County, if and as applicable and if the type of improvement requires a permit, and (3) have the Architectural Reviewer's prior written approval. These 3 requirements are independent, that is one does not ensure or eliminate the need for another. The Lot Owner and/or Owner's contractor must comply with all 3 requirements. Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every Lot must have the following characteristics:

B 1. **Lots**. The size of each Lot and the density of the Lots in the Fountain Village Subdivision must comply with the requirements of applicable ordinances.

B 2. **Houses**. The principal improvement on a Lot must be one detached single family dwelling, as further defined by Hood County as a "Patio Home." The dwelling size, setbacks, and exterior materials must comply with the applicable ordinances and with any higher standards established by Declarant or by the Architectural Reviewer.

B.3. **New Construction**. The dwelling must be constructed on the Lot. A dwelling or addition constructed elsewhere may not be moved onto a Lot. Factory-built homes are not permitted, even though assembled or finished on the Lot. The construction of a dwelling must be started promptly after the Architectural Reviewer approves the dwelling's plans and specification. At the start of construction, but not before, building material to be used in the construction may be stored on the Lot or with the Declarant's approval, on a nearby Lot. Once started, the dwelling and all improvements on the Lot must be completed with due diligence.

B.4. **Exterior Wall Materials**. The type, quality, and color of exterior wall materials must be approved by the Architectural Reviewer.

B.5. **Roofs**. Roofs must be covered with material having a manufacturer's warranty of at least 20 years, such as GAF Sentinal or its equivalent. The use of fiberglass shingles is permitted. The color of roofing material must be weatherwood or an equivalent earth tone color. The Architectural Reviewer may permit or require other weights, materials, and colors.

B.6. **Garage & Driveway**. Each dwelling must have an attached garage for at least two standard-size cars. If the Lot has alley access, the garage must be a rear or side entry using the alley for access. The driveway must be surfaced with concrete.

B 7. **Carports**. No carport may be installed, constructed, or maintained on the front of any Lot or dwelling, with or without approval of the Architectural Reviewer. No carport may be installed, constructed, or maintained on any other portion of a Lot without the Architectural Reviewer's prior written consent. In other words, all carports require the written approval of the Architectural Reviewer, and carports on the front sides or front yards of dwellings are expressly prohibited and may not be authorized.

B.8. **Accessories**. Installation of all exterior items and surfaces, including address numbers, decorative hardware, external ornamentation, lights fixtures, and

exterior paint and stain, is subject to the Architectural Reviewer's prior approval, including approval of design, color, materials, and location.

B 9. **Mailboxes**. If curbside boxes are permitted by postal authorities, the Architectural Reviewer may require a uniform size and style of mailbox and pedestal, which shall serve two dwellings unless otherwise approved by the Architectural Reviewer.

B 10. **Fences & Walls**. This Section is subject to the Architectural Reviewer's right to adopt additional or different specifications for construction or reconstruction of fences. The height of fences must be between 4 feet and 8 feet. Fences must be made of masonry, wood, or other Architectural Reviewer-approved material. Retaining walls must be constructed entirely with Architectural Reviewer-approved materials, however railroad ties may not be used for a retaining wall visible from a street. Fences may not be constructed between a dwelling's front building line and the Street. The use of chain link fencing is prohibited.

B 11. **Fence Stain**. Wood fences may be left in a natural state. If stained, wood fences must be stained with a color approved by the Architectural Reviewer, which may require a uniform color of stain. Wood fences may not be painted.

B 12. **Utilities**. All utility lines and equipment must be located underground, except for: (1) elevated or surface lines or equipment required by a public utility or the city; (2) elevated or surface lines or equipment installed by Declarant as part of the development plan; and (3) surface equipment necessary to maintain, operate, or read underground facilities, such as meters, risers, service pedestals, and transformers. The Architectural Reviewer may require that utility meters, risers, pedestals, and transformers be visually screened from the street and neighboring lots. Except for temporary water and sewage facilities and systems which may be installed and used by Declarant or by Builders (and which must comply with the requirements of applicable ordinances) prior to having access to city water and sewage systems, each Lot will use city water and sewage systems as they are available and functional for use by dwellings in Fountain Village. All temporary water and sewage systems must be removed within 60 days of individual water supply and sewage disposal systems are not otherwise permitted.

B 13. **Air Conditioners**. Air conditioning equipment may not be installed in the front yard of a dwelling. Window units are prohibited.

B 14. **No Lot Subdivision**. No Lot may be subdivided. One or more Lots may be replatted with the approval of all Owners of the Lots directly affected by the replatting. The parties executing the replat will provide a copy of the recorded replat to the Association. Replatting of Lots may not alter the number of votes and assessments allocated to the Lots as originally platted. If replatting reduces the number of Lots by combining Lots, the joined Lot will have the votes and assessments allocated to the Lots as originally platted.

B 15. **Debris**. No Lot or other part of the Property may be used a dumping ground. Waste materials incident to construction or repair of improvements on a Lot may be stored temporarily on the Lot during construction while work progresses and must be removed when construction or repair is complete.

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**APPENDIX C**  
**DECLARANT REPRESENTATIONS & RESERVATIONS**

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**Cl. General Provisions**

**C.1.1. Introduction.** Declarant intends these Protective Covenants to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of these Protective Covenants, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Appendix.

**C.1.2 General Reservation & Construction** Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix C, which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Appendix and any other Document, this Appendix controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

**C.1.3. Purpose of Development and Declarant Control Periods** This Appendix C gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of the Property, which is ultimately for the benefit and protection of owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with 90 days' notice

**C.1.4. Definitions** As used in this Appendix and elsewhere in the Documents, the following words and phrases, when capitalized, have the following specified meanings:

a. **"Builder"** means a person or entity which purchases, or contracts to purchase, a Lot from Declarant or from a Builder for the purpose of constructing a dwelling for resale or under contract to an Owner other than Declarant. As used in this Declaration, Builder does not refer to Declarant or to any home building or home marketing company that is an affiliate of Declarant.

b. **"Declarant Control Period"** means that period of time during which Declarant controls the operation of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of:

(1) Seven years from the date this Declaration is recorded.

(2) Four months after title to 85 percent of the Lots that may be created in the Property and on the Additional Land has been conveyed to Owners other than Builders.



C.1.5. **Builders**. Declarant, in its own name or through its affiliates, <sup>B.G.</sup> intends to construct dwellings on the Lots in connection with the sale of the Lots. However, Declarant may, without notice, sell some or all of the Lots to one or more Builders to improve the Lots with dwellings to be sold and occupied.

C.2. **Declarant Control Period Reservations**. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

C.2.1. **Officers & Directors**. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, including the Architectural Control Committee, none of whom need be Members or Owners, and each of whom is indemnified by the Association as a "Leader."

C.2.2. **Weighted Votes**. During the Declarant Control Period, the vote appurtenant to each Lot owned by Declarant is weighted 3 times that of the vote appurtenant to a Lot owned by another Owner. In other words, during the Declarant Control Period, Declarant may cast the equivalent of 3 votes for each Lot owned by Declarant on any issue before the Association. On termination of the Declarant Control Period and thereafter, the vote appurtenant to Declarant's Lots is weighted uniformly with all other votes.

C.2.3. **Budget Funding**. During the Declarant Control Period only, Declarant is responsible for the difference between the Association's operating expenses and the Regular Assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant will cease being responsible for the difference between the Association's operating expenses and the assessments received from Owners other than Declarant.

C.2.4. **Funding of Lots and Common Area Improvements**. Acton Associates II, L.P.'s allocated cost of improvements to Lots and Common Areas (which costs are not included in the price of the Lot and Patio Home at the time of purchase by an Owner) shall be assessed to the Owners as a Special Assessment under Section 9.4.2 in the Fountain Village Protective Covenants

C.2.5. **Declarant Assessments**. During the Declarant Control Period, any real property owned by Declarant is not subject to assessment by the Association.

C.2.6. **Builder Obligations**. During the Declarant Control Period only, Declarant has the right but not the duty (1) to reduce or waive the assessment obligation of a Builder, and (2) to exempt a Builder from any or all liabilities for transfer-related fees charged by the Association or its manager, provided the agreement is in writing. Absent such an exemption, any Builder who owns a Lot is liable for all assessments and other fees charged by the Association in the same manner as any Owner.

C.2.7. **Commencement of Assessments**. During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of

Regular Assessments until a certain number of Lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies Regular Assessments against the Lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association.

**C.2.8. Expenses of Declarant.** Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association except as provided in Section C.2.4 above.

**C.2.9. Budget Control.** During the Declarant Control Period, the right of Owners to veto assessment increases or special assessments is not effective and may not be exercised.

**C.2.10. Organizational Meeting** Within 60 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call an organizational meeting of the Members of the Association for the purpose of electing, by vote of the Owners, directors to the Board. Written notice of the organizational meeting must be given to an Owner of each Lot at least 10 days before the meeting. For the organizational meeting, Owners of 10 percent of the Lots constitute a quorum. The directors elected at the organizational meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin.

**C 3. Development Period Reservations** Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

**C.3.1. Platting.** If the Property includes unplatted parcels, they may be platted in whole or in part, and in phases. The right to plat belongs to the owner of the unplatted parcel, provided, however, that a plat that creates Common Areas or obligations for the Association must also be approved by Declarant. Declarant's right to have the Property platted, or to approve such plats, is for a term of years and does not require that Declarant own land described in Appendix A at the time or times Declarant exercises its right of platting. Any unplatted parcel in the Property constitutes a "Lot" as defined in Article 1 of these Protective Covenants. For any act or decision that requires a count of Lots or a vote of Lot Owners, each unplatted parcel is counted as one Lot per one-fifth acre of gross area, rounding down to the nearest one-fifth acre. The Owner of an unplatted parcel has one vote for the first one-fifth acre of gross area and an additional vote for each additional full one-fifth acre of gross area (the equivalent of 5 votes per acre of gross area), which must be cast as a block and may not be divided for purposes of voting.

**C.3.2. Expansion.** The Property is subject to expansion. During the Development Period, Declarant may, but is not required to, annex any real property: (1) any portion of which is contiguous with, adjacent to, or within 1,000 feet of any real property that is subject to these Protective Covenants, (2) in any addition or subdivision platted by the City of De Cordova as a phase or section of Fountain Village, or (3) located in a planned development district created by the City of De Cordova for the property subject to these Protective Covenants. Declarant annexes real property by subjecting it to these Protective Covenants and

the jurisdiction of the Association by recording a supplement or an amendment of these Protective Covenants, executed by Declarant, in Hood County's Real Property Records. The supplement or amendment of annexation must include a description of the additional real property or a reference to the recorded plat that describes the additional real property. Declarant's right to annex land is for a term of years and does not require that Declarant own land described in Appendix A at the time or times Declarant exercises its right of annexation.

**C.3.3. Withdrawal** During the Development Period, Declarant may withdraw from the Property any portion of the real property (1) that is not platted with house Lots or (2) that is platted as a phase of Fountain Village, provided that no Lot in the phase to be withdrawn has been conveyed to an Owner other than Declarant or a Builder.

**C.3.4. Changes in Development Plan** Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the owner of the land or Lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of Lots and streets; (b) change the minimum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

**C.3.5. Builder Limitations** Declarant may require its approval (which may not be unreasonably withheld) of all documents and materials used by a Builder in connection with the development and sale of Lots, including without limitation promotional materials; deed restrictions; forms for deeds, Lot sales, and Lot closings. Without Declarant's prior written approval, a Builder may not use a sales office or model in the Property to market houses, Lots, or other products located outside the Property.

**C.3.6. Architectural Control** During the Development Period, Declarant has the absolute right to serve as the Architectural Reviewer pursuant to Article 6 of these Protective Covenants. Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under Article 6 and this Appendix to (1) an Architectural Control Committee appointed by the Board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Declarant also has the unilateral right to exercise architectural control over vacant Lots in the Property. Neither the Association, the Board of Directors, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of new homes and related improvements on vacant Lots.

**C.3.7. Amendment** During the Development Period, Declarant may amend these Protective Covenants and the other Documents, without consent of other Owners or any mortgagee, for the following limited purposes:

- a. To add real property and improvements to the Property.
- b. To withdraw real property from the Property.
- c. To create Lots, Easements, and Common Areas, Common Facilities and Common Amenities within the Property.
- d. To subdivide, combine, or reconfigure Lots.
- e. To convert Lots into Common Areas.
- f. To convey or dedicate portions of the Property to the Association or to Hood County.
- g. To modify the construction and use restrictions of Article 7 of these Protective Covenants.
- h. To modify the construction specifications of Appendix B of this Declaration.
- i. To merge the Association with another property owners association.
- j. To comply with requirements of an underwriting lender.
- k. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- l. To enable any reputable title insurance company to issue title insurance coverage on the Lots.
- m. To enable an institutional or governmental lender to make or purchase mortgage loans on the Lots.
- n. To change the name or entity of Declarant.
- o. To change the name of the addition in which the Property is located.
- p. To change the name of the Association.
- q. For any other purpose, provided the amendment has no material adverse effect on any right of any Owner.

**C 3.8. Completion.** During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the Plat; (2) the right to sell or lease any Lot owned by Declarant; and (3) an Easement and right to erect, construct, and maintain on and in the Common Area and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

**C.3.9. Easement to Inspect & Right to Correct** During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a Screening Wall located on a Lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.

**C.3.10 Promotion** During the Development Period, Declarant reserves for itself an Easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and residents, for purposes of promoting, identifying, and marketing the Property and/or Declarant's houses, Lots, developments, or other products located outside the Property. Declarant reserves an Easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events, such as open houses, MLS tours, and brokers parties, at the Property to promote the sale of Lots. During the Development Period, Declarant also reserves (1) the right to permit Builders to place signs and promotional materials on the Property and (2) the right to exempt Builders from the sign restriction in this Declaration.

**C.3.11. Offices** During the Development Period, Declarant reserves for itself the right to use dwellings owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to Lots and dwellings used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

**C.3.12. Access** During the Development Period, Declarant has an Easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property and the Additional Land, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the home-buying public through any existing or future gate that restricts vehicular access to the Property or to the Additional Land in connection with the active marketing of Lots and homes by Declarant or Builders, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property

**C.3.13. Utility Easements** During the Development Period, Declarant may grant permits, licenses, and Easements over, in, on, under, and through the Property for drainage, utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make

changes in and additions to the Easements on any Lot, as shown on the Plat, to more efficiently or economically install drainage features, utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, propane, telephone, television, cable, internet service, and security. To exercise this right as to land that is not a Common Area of the Property or not owned by Declarant, Declarant must have the prior written consent of the land owner.

**C.3.14. Assessments.** For the duration of the Development Period, any Lot owned by Declarant is not subject to mandatory assessment by the Association until the date Declarant transfers title to an Owner other than Declarant. If Declarant owns a Lot on the expiration or termination of the Development Period, from that day forward Declarant is liable for assessments on each Lot owned by Declarant in the same manner as any Owner.

**C.3.15. Land Transfers.** During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Documents, including without limitation an obligation for transfer or resale certificate fees, and the transfer-related provisions of Article 8 of these Protective Covenants. The application of this provision includes without limitation Declarant's Lot take-downs, Declarant's sale of Lots to Builders, and Declarant's sale of Lots to homebuyers.

**C.4. Common Areas.** Declarant will convey title to the Common Areas to the Association by one or more deeds, with or without warranty. Any initial Common Area improvements will be installed, constructed, or authorized by Declarant. At the time of conveyance to the Association, the Common Areas will be free of encumbrance except for the property taxes accruing for the year of conveyance. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of Common Areas requiring inspection, evaluation, acceptance, or approval of Common Area improvements by the Owners.

**C.5 Declarant's and/or the Association's Yard Power.** Although the Association is interested in the condition and appearance of all Lots in the Property, Declarant may be particularly concerned, from time to time, about the appearance of the unfenced front and side yards because of their heightened visibility to potential purchasers of the Property. Therefore, on recording this Declaration, Declarant creates the Yard Power Easement defined below, which attaches to and burdens all of the Lots in the Property for the duration of the Development Period. The purpose of this easement is to permit, but not require, the Association, following the Development Period, to control the condition and attractiveness of yards that are visible to the home buying public.

**C.5.1. Definitions** As used in this Section, the following terms have specified meanings:

- a. **"Yard Area"** means that portion of the Lot surface that is (1) exterior to the dwelling, (2) not within a fenced yard, and (3) visible from a Street.

- b. **"Yard Improvements"** means all items, materials, and plants in the Yard Area, including but not limited to fences, retaining walls, planter boxes, plant beds, mailboxes, yard lamps, decorative yard items, trees, shrubs, flowers, ground covers, lawns, other plant material, and yard irrigation systems. All Yard Improvements are owned by the Lot Owner.
- c. **"Yard Power Easement"** means an easement of maintenance, access, and entry over the Yard Areas of all Lots in the Property to ensure the attractiveness of the Yard Areas from streets in and around the Property. Declarant hereby reserves a right and easement of access and entry to the front and back Yard Areas of each Lot to exercise the discretionary rights created by this easement. Nothing in this Section may be construed to obligate Declarant to install any improvement on any Lot in the Property.

**C.5.2. Owner's Duties.** Following the Development Period, the Association may elect by a majority of the Lot Owners to rescind the obligation of the Association to maintain the front and back Yard Areas as provided in these Protective Covenants. In the event such obligation of the Association is rescinded, the Owner of each Lot, at the Owner's expense, must continually maintain all the Yard Area and Yard Improvements on his Lot in a neat, groomed, healthy, and attractive condition, and to a standard that is commensurate with the neighborhood as determined by the Association. The Owner must regularly water lawns and plant material, and trim and maintain shrubs, flowers and other plant material, and remove litter. As needed, the Owner will treat plant diseases and infestations, and replace dead plant material. An Owner may not install or construct substantial Yard Improvements without the prior written consent of the Architectural Reviewer.

**C.5.3. Neighborhood Standards.** For purposes of this Section, the Architectural Reviewer shall be the arbiter of the standards of maintenance and appearance for the Yard Areas. The Architectural Reviewer may have higher standards for Yard Areas in certain parts of the Property at different times during the marketing of homes.

**C.5.4. Duration of Easement.** This easement for Declarant terminates automatically at the end of the Development Period, but may continue in effect if adopted by the Association. Declarant may terminate this easement earlier by recording a notice of termination in the Real Property Records of Hood County, Texas.

**C.6 Working Capital Fund.** Declarant may (but is not required to) establish a working capital fund for the Association by requiring purchasers of Lots to make a one-time contribution to this fund, subject to the following conditions:

- a. The amount of the contribution will be not less than one-sixth of the Lot's annual assessment nor more than \$250.00 and will be collected on the closing of the sale of the Lot to an Owner other than Declarant, a Successor Declarant, or a Declarant-affiliate
- b. A Builder who buys Lots from Declarant is not exempt from the purchaser's

obligation. If the Builder's contribution is not collected at time of closing on the Lot purchased from Declarant, for any reason or no reason, the Builder guarantees that the contribution will be paid when Builder closes the sale of the Lot to another Owner.

- c. Subject to the foregoing Builder provision, if a Lot's contribution is not collected from the Owner at closing either by payment in cash or by Owner's execution of a Regular Assessment or Special Assessment Promissory Note payable to the Declarant or to the Association, neither Declarant nor the Owner of the Lot is thereafter liable for the contribution. Declarant acknowledges that this condition may create an inequity among the Owners, but deems it a necessary response to the diversification of marketing and closing Lot sales.
- d. Contributions to the fund are not advance payments of regular assessments and are not refundable to the contributor by the Association or by Declarant. This may not be construed to prevent a selling Owner from negotiating reimbursement of the contribution from a purchaser.
- e. Declarant will transfer the balance of the working capital fund to the Association on or before termination of the Declarant Control Period. Declarant may not use the fund to defray Declarant's expenses or construction costs.

**C.10. Successor Declarant** Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Real Property Records of Hood County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

#### **CERTIFICATION & ACKNOWLEDGMENT**

As the Declarant of Fountain Village and the initial and sole Member of the Fountain Village Homeowners Association, Inc., I certify that the foregoing Protective Covenants of Fountain Village Homeowners Association, Inc. were adopted by the Board of Directors of Fountain Village Homeowners Association, Inc. for the benefit of the Association and its Members.

**[END OF TEXT, SIGNATURE PAGE FOLLOWS]**



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0532

[NO TEXT ON THIS PAGE, SIGNATURE PAGE ONLY]

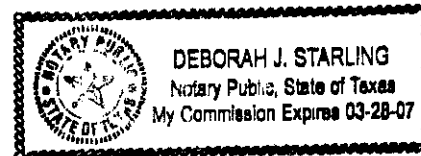
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**SIGNED AND ACKNOWLEDGED**SIGNED on this 2nd day of August, 2006.**DECLARANT:**ACTON ASSOCIATES, II, L.P.,  
A Texas Limited PartnershipJohn A. HallBy: John Hall, President  
Country Homesteads, Inc.,  
a Texas corporation, its authorized agent

THE STATE OF TEXAS

§  
§  
§

COUNTY OF HOOD



This instrument was acknowledged before me on this 2 day of August, 2006 by John Hall, President of Country Homesteads, Inc., a Texas corporation, on behalf of said corporation in its capacity as authorized agent for Acton Associates II, L.P., a Texas limited partnership, on behalf of the limited partnership.

Deborah J. Starling  
Notary Signature

After recording, please return to:

John A. Hall, President  
Country Homesteads, Inc.,  
a Texas corporation, authorized agent of  
ACTON ASSOCIATES, II, L.P.,  
A Texas Limited Partnership  
3402 Fountain Way  
Granbury, Texas 76049

FILED FOR RECORD  
AT 2:40p M.

AUG 02 2006

Sally Oubre  
County Clerk, Hood County, TX

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under Federal Law  
STATE OF TEXAS  
I hereby certify that this instrument was filed on the date and at the time stamped hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS OF HOOD COUNTY TEXAS, in the Volume and Page as shown hereon



Sally Oubre  
SALLY OUBRE, County Clerk  
Hood County, Texas  
Page 59 of 59 Pages

03704

GF#0740016

RATIFICATION OF RESTRICTIVE COVENANTS<sup>2.279</sup>  
APPLICABLE TO FOUNTAIN VILLAGE,  
A SUBDIVISION IN HOOD COUNTY, TEXAS VOL. PG.

0524

PG.

STATE OF TEXAS  
COUNTY OF HOOD

ACTON ASSOCIATES II, LP and SANDON EQUITIES, L.P. do hereby adopt, ratify and approve the "First Amended Protective Covenants" of Fountain Village Homeowners Association, Inc. applicable to FOUNTAIN VILLAGE, a subdivision in Hood County, Texas as recorded in Volume 2275, Page 894, Real Records of Hood County, Texas

EXECUTED this 23 day of Feb, 2007.

ACTON ASSOCIATES II LP

BY: MAVERICK ENDEAVORS, INC., General Partner

BY: [Signature]  
Donald A. Bailey, President

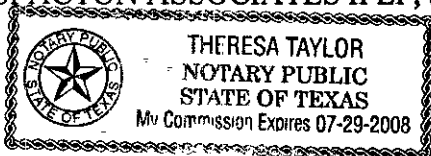
SANDON EQUITIES LP

BY: MAVERICK ENDEAVORS, INC., General Partner

BY: [Signature]  
Donald A. Bailey, President

THE STATE OF TEXAS  
COUNTY OF HOOD

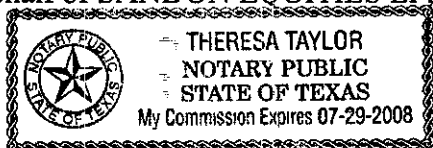
This instrument was acknowledged before me on 23 Feb, 2007, by Donald A. Bailey, President on behalf of Maverick Endeavors, Inc., a Nevada corporation, as General Partner on behalf of ACTON ASSOCIATES II LP, a Delaware limited partnership



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS  
COUNTY OF HOOD

This instrument was acknowledged before me on 23 Feb, 2007, by Donald A. Bailey, President on behalf of Maverick Endeavors, Inc., a Nevada corporation, as General Partner on behalf of SANDON EQUITIES LP, a Delaware limited partnership



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

After recording, return to:

FV Homes LP  
2351 West Northwest Hwy Ste 1120  
DALLAS, TX 75220

FILED FOR RECORD  
AT 3:45 P.M.

FEB 27 2007

[Signature]  
County Clerk, Hood County, TX

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under Federal Law  
STATE OF TEXAS  
I hereby certify that this instrument was filed on the date and at the time stamped hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS OF HOOD COUNTY TEXAS, in the Volume and Page as shown hereon



[Signature]  
SALLY LILLARD, County Clerk  
Hood County, Texas

**Hood County County Clerk  
201 W Bridge Street  
PO BOX 339  
Granbury Texas, 76048  
Phone: 817-579-3222**

Document Number: 2014-0008792 -  
Filed and Recorded - Real Records

RESTRICTION

Grantor: FOUNTAIN VILLAGE HOA INC

Pages: 61

Recorded On: 09/09/2014 01:27 PM

**This page is a permanent part of the document.  
Do Not Destroy**

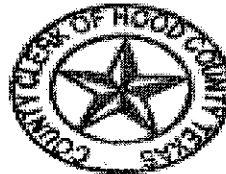
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<b>Document Number:</b>	2014-0008792	
<b>Receipt Number:</b>	R1410166	
<b>Amount:</b>	\$257.00	
<b>Recorded By:</b>	Virginia Chavero	

Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**I hereby certify that this instrument was filed and duly  
recorded in the Official Records of Hood County County,**



Mary Burnett  
County Clerk  
Hood County County, Texas



**Return To: In Office**

FOUNTAIN VILLAGE HOA INC  
1914 ACTON HIGHWAY  
GRANBURY, TX 76049



**DECLARATION OF TERMS, CONDITIONS,  
RESTRICTIONS AND PROTECTIVE COVENANTS FOR  
FOUNTAIN VILLAGE**

herein the

**“SECOND AMENDED  
PROTECTIVE COVENANTS”**

**OF**

**FOUNTAIN VILLAGE**

**HOMEOWNERS ASSOCIATION, INC.**

(A Texas Property Owners Association)

**PROPERTY**

Fountain Village is an addition to the ETJ of the City of De Cordova, Hood County, Texas, the Final Plat having been recorded on June 27, 2006, as Slide No. C-66, and this First Amended Final Plat having been recorded on February 15, 2007, as Slide No. C-124, and Replat recorded September 6, 2012 as Slide P-417, and Replat recorded April 4, 2014 as Slide P-478 of the Plat Records, Hood County, Texas.

STATE OF TEXAS           )  
                                      )  
COUNTY OF HOOD         )

**SECOND AMENDED  
DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND  
PROTECTIVE COVENANTS FOR FOUNTAIN VILLAGE**

(herein the "**PROTECTIVE COVENANTS**")

**THIS SECOND AMENDED DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND PROTECTIVE COVENANTS FOR FOUNTAIN VILLAGE**, (hereinafter referred to as the "**Protective Covenants**") made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2014 by and between **FV Investments, LLC**, a Texas Limited Partnership (herein "**Declarant**") and all present and Future Lot Owners in the **FOUNTAIN VILLAGE SUBDIVISION** (herein "**Subdivision**") as hereinafter described, and as may be redefined and amended in the future.

**WITNESSETH:**

**THAT WHEREAS**, Declarant is the owner and developer of certain real property in the County of Hood, State of Texas, described in Exhibit "A" attached hereto (the "Property"), being 75 platted Patio Home Lots contained in the Fountain Village Subdivision, being more particularly described and shown on that First Amended Final Plat recorded on February 15, 2007, as Slide No. C-124 in the Plat Records of the Hood County, Texas, as amended by Replat recorded on September 6, 2012, as Slide P-417 and Replat recorded April 4, 2014 as Slide No. P-478, in the Plat Records of Hood County, Texas (herein "Plat"), the property shown on said Plat being and comprising the Subdivision.

**WHEREAS**, the Declarant recorded that certain First Amended Declaration of Terms, Conditions, Restrictions and Protective Covenants for Fountain Village on February 15, 2007, in Volume 2275, Page 0994 of the Deed Records of Hood County (the "First Amended Protective Covenants"); and

**WHEREAS**, the Declarant desires, for the protection and benefit of all persons who are owners of Lots or who may hereafter become owners of Lots located within the Subdivision, that the First Amended Protective Covenants be replaced by this Declaration (herein the "Protective Covenants") and that the Property continue to be developed with limitations, restrictions and uses. This Declaration (herein the "Protective Covenants") shall run with the land and be binding upon all parties who have acquired title to Lots and who may hereafter acquire title to Lots within the Property and all persons claiming by, through or under Declarant or such owners until July 31, 2050, at which time said Protective Covenants shall be automatically extended for successive periods of (10) years, unless by vote of two-thirds ( 2/3<sup>rd</sup>s ) majority of persons then owning Lots within the Subdivision (which Lots are subject to the terms, conditions and provisions of these Protective Covenants) it is agreed to change these Protective Covenants in whole or in part.

**AGREEMENT:**

**NOW THEREFORE**, Declarant does hereby make the following declaration as to terms, conditions, restrictions, protective covenants and uses (herein "Protective Covenants") to which the above-described Property and all additional parcels of real property (herein "Subdivision") hereinafter shall be and are hereby subjected:

Declarant has heretofore established a general plan of development for the planned community known as Fountain Village. Declarant has provided a reasonable and flexible procedure by which Declarant may expand the Property to include additional real property, and has maintained certain development rights that are essential for the successful completion and marketing of the Property.

Declarant has provided for the preservation, administration, and maintenance of portions of Fountain Village, and has protected the value, desirability, and attractiveness of Fountain Village through the Protective Covenants. As an integral part of the development plan, Declarant created a property Homeowners Association to perform these functions and activities more fully described in the Documents described below.

Declarant declares that the Property described in Appendix A, and any additional property made subject to these Protective Covenants by recording one or more amendments of or supplements to these Protective Covenants, will continue to be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of these Protective Covenants, including Declarant's representations and reservations in the attached Appendix C, which run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of any part of the Property.

**ARTICLE 1**  
**DEFINITIONS**

The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. **"Additional Land"** means real property which may be added to the Property and subjected to these Protective Covenants by Declarant and the owner of such Property, as described in Section C.3.2 of this Declaration.

1.2. **"Applicable Law"** means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of any provision in any Document. Statutes and ordinances specifically referenced in the Documents are "Applicable Law" on the date of the Document, and are not intended to apply to the Property or to the Subdivision if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.3. **"Architectural Reviewer"** means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural Reviewer is Declarant, Declarant's designee, or Declarant's delegatee.

Thereafter, the board-appointed Architectural Control Committee is the Architectural Reviewer.

1.4. **"Assessment"** means any charge levied against a Lot or Owner by the Association, pursuant to the Documents or State law, including but not limited to Annual Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article 9 of these Protective Covenants.

1.5. **"Association"** means the association of Owners of all Lots in the Property, initially organized as "Fountain Village Homeowners Association, Inc." a Texas nonprofit corporation, and serving as the "Property Owners' Association" defined in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from these Protective Covenants and the ByLaws.

1.6. **"Board"** means the Board of Directors of the Association.

1.7. **"City ETJ"** means the Extra Territorial Jurisdiction of the City of De Cordova, Texas, in which the Property is located.

1.8. **"Common Area"** (inclusive, but not limited to the designation of real property as **"Recreational Area"**) means portions of real property and improvements thereon that are owned and/or maintained by the Association, as described in Article 4 below and as referenced in Appendix C of these Protective Covenants.

1.9. **"Declarant"** means FV Investments, LLC, a Texas limited liability company, which is developing the Property, or the successors and assigns of FV Investments, LLC, which acquire any portion of the Property for the purpose of development and which are designated a Successor Declarant by FV Investments, LLC, or by any such successor and assign, in a recorded document.

1.10. **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix C of these Protective Covenants.

1.11. **"Development Period"** means the period of time beginning the date these Second Amended Protective Covenants are recorded and continuing for a duration as defined in Appendix C Section C.1.4.b, during which Declarant has certain rights pursuant to Appendix C hereto, including rights relating to development, construction, expansion, and marketing of the Property and the Additional Land. The Development Period is for a term of years and does not require that Declarant own land described in Appendix A. Declarant may terminate the Development Period at any time by recording a notice of termination. **DURING THE DEVELOPMENT PERIOD, APPENDIX C HAS PRIORITY OVER THE MAIN BODY OF THESE PROTECTIVE COVENANTS.**

1.12. **"Documents"** means, singly or collectively as the case may be, these Protective Covenants, the Plat, the ByLaws, the Association's Articles of Incorporation, and the Rules & Regulations of the Association, as any of these may be amended from time to time. An Appendix, Exhibit, Schedule, or Certification accompanying a Document is a part of that Document.

1.13. "**Lot**" means a portion of the Property intended for independent ownership, on which there is or will be constructed a Patio Home (aka "Garden Home") residential dwelling, as shown on the Plat. As a defined term, "Lot" does not refer to Common Areas, even if platted and numbered as a Lot. Where the context indicates or requires, "Lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the Lot. Unplatted tracts may be included in the meaning of "Lot" pursuant to Section C.3.1 of Appendix C of these Protective Covenants.

1.14. "**Majority**" means more than half. A reference to "a majority of Owners" in any Document or applicable law means "Owners of at least a majority of the Lots," unless a different meaning is specified. A reference to a 2/3<sup>ds</sup> Majority of Owners" in any Document or applicable law means "Owners of at least a two-thirds (2/3<sup>ds</sup>) majority of the Lots," unless a different meaning is specified.

1.15. "**Member**" means a Member of the Association, each Member being an Owner of a Lot, unless the context indicates that member means a member of the Board or a member of a committee of the Association. In the context of votes and decision-making, each Lot has only one Membership, although it may be shared by Co-Owners of a Lot.

1.16. "**Owner**" means a holder of recorded fee simple title to a Lot. Declarant is the initial Owner of all Lots. Contract sellers and mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association. A reference in any Document or applicable law to a percentage or share of Owners or Members means Owners of at least that percentage or share of the Lots, unless a different meaning is specified. For example, "a Majority of Owners" means Owners of at least a majority of the Lots.

1.17. "**Plat**" means all plats, singly and collectively, recorded in the Real Property Records of Hood County, Texas, and pertaining to the real property described in Appendix A of these Protective Covenants, including all dedications, limitations, restrictions, easements, notes, and reservations shown on the First Amended Final Plat, as it may be amended from time to time. The First Amended Final Plat of Fountain Village was recorded on February 15, 2007, as Slide No. C-124, in the Plat Records, Hood County, Texas; and including the Replat of Lots 3R-4R, 9R-13R, 17R-26R, 44R-52R, 65R-68R, 74R-78R recorded in slide C-124 and lots 74R-78R of Fountain Village, recorded in Slide C-228 of said Plat Records; and including the Replat filed September 6, 2012 as Slide P-417, and the Replat recorded April 4, 2014 as Slide No. P-478.

1.18. "**Property**" means all the land subject to these Protective Covenants and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Fountain Village. The Property is located on land described in Appendix A to these Protective Covenants, and includes every Lot and any Common Area thereon.

1.19. "**Protective Covenants**" means this Document, as it may be amended from time to time.



1.20. "**Resident**" means an occupant of a Patio Home residential dwelling, regardless of whether the person owns the Lot.

1.21. "**Rules**" means rules and regulations of the Association adopted in accordance with the Documents or applicable law. The initial Rules have been adopted by Declarant for the benefit of the Association.

1.22. "**Underwriting Lender**" means Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or U.S. Department of Veterans Affairs (VA), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options nor as a representation that the Property is approved by any institution.

## ARTICLE 2 PROPERTY SUBJECT TO DOCUMENTS

2.1. **Property.** The real property described in Appendix A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of these Protective Covenants, including Declarant's representations and reservations in the attached Appendix C, which run with the Property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. **Additional Property.** Additional real property may be annexed to the Property and subjected to these Protective Covenants and the jurisdiction of the Association on approval of Owners representing at least two-thirds of the Lots in the Property, or, during the Development Period, by Declarant as permitted in Appendix C. Annexation of Additional Property is accomplished by recording a Declaration of Annexation, including an Amendment of Appendix A, in Hood County's Real Property Records.

2.3. **De Cordova's Ordinance - General.** The City of De Cordova, Hood County, Texas may from time to time have an ordinance pertaining to planned developments with property owners associations in the City ETJ. No amendment of the Documents, nor any act or decision of the Association after the passage of an ordinance or an amendment to an ordinance, which is not in compliance with the ordinance during its period of effectiveness, may violate the requirements of the ordinance. The Association should stay informed about the city's requirements.

2.4. **Hood County Regulations.** Notwithstanding the fact that the development of property within the City ETJ is not regulated by Hood County, Declarant has and will continue to use its "best efforts" to comply with Hood County Regulations. Specifically, Declarant has obtained written verification from Hood County (a) that the planned construction of Patio Homes does meet the density requirements for a development served by a public water and wastewater system within the Water Quality District; that (b) the planned emergency accessibility, as well as the placement of fire hydrants, as shall be approved by the Acton Municipal Utility District ("AMUD") meets the requirements of Hood County; and (c) that Declarant will provide an engineered drainage plan, along with density reports during roadway construction, for comment by

Hood County. Notwithstanding the fact that the development of property within the City ETJ is not regulated by Hood County, Declarant and the Association shall continue to use their respective "best efforts" to remain in compliance with the Hood County Regulations, specifically as they pertain to Patio Home density, emergency accessibility and fire hydrant placement, property drainage, and the paving density of the road construction.

2.5. **Adjacent Land Use.** Declarant makes no representations of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property.

2.6. **Plat Dedications, Easements & Restrictions.** In addition to the easements and restrictions contained in these Protective Covenants, the Property is subject to the dedications, limitations, notes, easements, restrictions, and reservations shown or cited on the Plat, which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by the Plat, and further agrees to maintain any easement that crosses his Lot and for which the Association does not have express responsibility.

2.7. **Streets Within Property.** Because streets, alleys, and cul-de-sacs within the Property (herein "**streets**") are capable of being converted from privately owned to publicly dedicated, and vice versa, this Section addresses both conditions. Private streets are part of the Common Area, which is governed by the Association. Public streets are part of the Common Area only to the extent they are not maintained or regulated by the city or county. To the extent not prohibited by public law, the Association, acting through the Board of Directors (herein "**Board**"), is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of the streets - whether private or public - including but not limited to:

- a. Identification of vehicles used by Owners and residents and their guests.
- b. Designation of speed limits and parking or no-parking areas.
- c. Limitations or prohibitions on curbside parking.
- d. Designation of one or more of the rear alleys for one-way traffic.
- e. Removal or prohibition of vehicles that violate the Association's applicable rules and regulations.
- f. Fines for violations of the Association's applicable rules and regulations.

### **ARTICLE 3** **PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS**

3.1. **General.** In addition to other easements and rights established by the Documents, the Property is subject to the easements and rights contained in this Article.

3.2. **Public Access Easement.** As noted and shown on the Plat of Fountain Village, various Common Areas are burdened by specific public access easements that

may be used by emergency personnel.

3.3. **Drainage Easement.** Certain Common Areas are burdened by a "Drainage Easement." The Drainage Easement, including drainage maintenance and related matters thereon, shall be maintained by the Association as a Common Expense.

3.4. **Easement for Screening Wall.** The Association is hereby granted a perpetual easement (the "**Screening Wall Easement**") over each Lot (1) on or along North Gate Road and James Road, and (2) that abuts or contains a portion of the Property's main entry and emergency entry features or screening walls, fences, or berms, or other landscaping for the purposes stated in this Section, regardless of whether or how the Plat shows the easement or the entry feature, screening wall, fence, berm, or other landscaping. The purpose of the Screening Wall Easement is to provide for the existence, repair, improvement, and replacement of the Property's entry features, screening walls, fences, berms, and landscaping to be maintained by the Association as a Common Area. In exercising this Screening Wall Easement, the Association may construct, repair, maintain, improve, and replace improvements reasonably related to the entrances and screening of the residential subdivision, including: screening walls, fences, community gates, the Walking **Trail Easement** from Fountain Village to Acton School Road, recorded as Document #6558, Volume 2191, Page 454 in the Official Records of Hood County, Texas, the Fencing And Drainage Easement recorded as Document #22434, Volume 2259, Page 0887 in the Official Records of Hood County, Texas, berms, planter beds, landscaping, plant material, electrical and water meters, fountains, water falls, and all related equipment, street lamps and fixtures, light fixtures and sprinkler systems, all Recreational Area facilities and equipment, all other Common Area equipment, and all signage relating to the Property. The Owners of the Lots burdened with the Screening Wall Easement will have the continual use and enjoyment of their Lots for any purpose that does not interfere with and prevent the Association's use of the Screening Wall Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of any potentially burdened Lot as may be reasonably necessary for the Association to perform its contemplated work on the Screening Wall Easement. This easement is perpetual. The Screening Wall Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may assign this easement, or any portion thereof, to a third party agreeing to accept such assignment. This Screening Wall Easement does not apply or pertain to fences installed on individual Lots, even though the Lot abuts a public or private roadway.

3.5. **Owner's Easement of Enjoyment.** Every Owner is granted a right and easement of enjoyment over the Common Areas and to use of all improvements therein, subject to other rights and easements contained in the Documents. An Owner who does not occupy a Lot delegates this right of enjoyment to the residents of his Lot. Notwithstanding the foregoing, if a portion of a Common Area, such as a Recreational Area, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes.

3.6. **Owner's Ingress/Egress Easements.** Every Owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his Lot. Similarly, every Owner is granted a perpetual easement over the Property's sidewalks and all Recreational Areas and Common Areas,

subject to abiding by the rules of the Association.

3.7. **Rights of City and County.** The City of De Cordova and the County of Hood, including their agents and employees, have the right of immediate access to the Common Areas at all times as necessary for the welfare and protection of the public, to enforce city and county ordinances, or for the preservation of public property. If the Association fails to maintain the Common Areas to a standard acceptable to the City, the City may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the City's written demand (at least 90 days), the City may maintain the Common Areas at the expense of the Association after giving written notice of its intent to do so to the Association. To fund or reimburse the City's cost of maintaining the Common Areas, the City may levy an assessment against the Association's Common Area property in the same manner as if the Association levied a special assessment against the Lots. The City may give its notices and demands to any officer, director, or agent of the Association. The rights of the City under this Section are in addition to other rights and remedies provided by law.

3.8. **Association's Access Easement.** The Association is granted an easement of access and entry to every Lot and Common Area to perform maintenance, to enforce architectural and use restrictions, to respond to emergencies, and to perform any other duties required by the Documents, specifically including but not limited to "Routine Yard Maintenance" and the Association's blanket "Lot Yards & Grounds Maintenance Easement" on and over the entire Property, including all Lots, as set out in Section 7.15 below.

3.9. **Utility Easements.** The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of the Property and the Fountain Village community. Any company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television and/or internet, and security.

3.10. **Prohibition Against Water Wells.** The drilling of water wells on any Association Properties or Member Properties without the written consent of both the Association and the Acton Municipal Utility District ("AMUD") is prohibited. This Section 3.10 may not be amended by the Association or the Members without the written approval of AMUD.

3.11. **Mineral Rights.** Some or all of the Property may be subject to a previous owner's acquisition, reservation, or conveyance of oil, gas, or mineral rights pursuant to one or more deeds recorded in the Real Property Records of Hood County, Texas, including but not limited to rights to all oil, gas, or other minerals lying on, in, or under the Property and surface rights of ingress and egress. Because any deed reserving a mineral interest may have been recorded prior to these Protective Covenants, it would be a superior interest in the Property and is not affected by any provision to the contrary in these Protective Covenants. By accepting title to or interest in a Lot, every Owner

acknowledges the existence of the mineral right or reservation referenced in this Section and its attendant rights in favor of the owner of the mineral interest.

3.12. **Notice of Limitation on Liability.** The development of the Property occurs during a period when many local governments are trying to be absolved of liability for flood damage to private property. As a condition of Plat approval, a governmental entity may require a Plat note that not only disavows the entity's liability for flood damage, but affirmatively assigns the liability to the Association. Declarant does not intend or desire to impose such absolute liability on the nonprofit association of Lot Owners. Notwithstanding Plat notes or public codes or ordinances now in existence or hereafter created, the Association cannot and should not be liable for acts of God or for property damage that is not the result of the Association's negligence or willful misconduct. On behalf of the Association, Declarant hereby gives notice that the Association does not accept liabilities imposed by any governmental entity for which the Association cannot obtain insurance at a reasonable cost, or for which its Members refuse to fund reserve accounts at levels sufficiently high to pay the damages for which the governmental entity may seek to make the Association liable. This notice is not intended to create a liability for any governmental entity. Further, this notice may not be construed to create a duty for the Association to obtain insurance or to fund reserve accounts for damage from rising or flooding waters.

3.13. **Security.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

3.14. **Risk.** Each resident uses all Recreational Areas and Common Areas at his own risk. All Recreational Areas and Common Areas are unattended and unsupervised. Each resident is solely responsible for his own safety and that of his guests. The Association disclaims any and all liability or responsibility for injury or death occurring from use of the Common Areas.

#### **ARTICLE 4 COMMON AREA**

4.1. **Ownership.** The designation of real property as a Common Area (inclusive, but not limited to the designation of real property as "Recreational Area") is determined by the Plat and these Protective Covenants, and not by the ownership of the Fountain Village Protective Covenants

Property. These Protective Covenants contemplate that the Association will eventually hold title to every Common Area capable of independent ownership by the Association. The Declarant may install, construct, or authorize certain improvements on Common Areas in connection with the initial development of the Property, and the cost thereof may or may not be a common expense of the Association, at the discretion of the Declarant. Thereafter, all costs attributable to Common Areas, including general maintenance, road and alley maintenance and repair, sidewalk maintenance and repair, landscaping and all landscaping features (including water fountains and related facilities and equipment) maintenance and repair, the maintenance of Common Area structures and improvements, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the Common Areas, unless these Protective Covenants elsewhere provide for a different allocation for a specific Common Area.

4.2 **Acceptance.** By accepting an interest in or title to a Lot, each Owner is deemed (1) to accept the Common Area of the Property, and any improvement thereon, in its then-existing "as is" condition; (2) to acknowledge the authority of the Association, acting through its Board of Directors, for all decisions pertaining to the Common Area; (3) to acknowledge that transfer of a Common Area's title to the Association by or through the Declarant is a ministerial task that does not require acceptance by the Association; and (4) to acknowledge the continuity of maintenance of the Common Area, regardless of changes in the Association's Board of Directors or management.

4.3. **Components.** The Common Area of the Property consists of the following components on or adjacent to the Property, even if located on a Lot or a public right-of-way:

- a. All of the Property, save and except the Patio Home Lots, specifically including but not limited to all community roadways, alleys, sidewalks, courtyards, and the Community Center lot, building and pool, community park, garden, or recreational areas which exist and/or are depicted on the Plat.
- b. The land described in Appendix A as Common Area and all improvements thereon.
- c. Any area shown on the Plat as Common Area or an area to be maintained by the Association.
- d. The main James Road entrance and the emergency North Gate Road entrance to the Property, in addition to the entrance or entrances to the Walking Trail Easement from the Property to Acton School Road, the Fencing And Drainage Easement, including (if any) the signage, landscaping, berms, fountains, water falls, electrical, security, lighting and water installations and related equipment, planter boxes, gates and related equipment, and fencing.
- e. The screening walls, fences, berms, or landscaping along the James Road and North Gate Road sides of the Property.
- f. Landscaping in Common Areas, including but not limited to on street

islands, if any.

- g. The grounds between the perimeter streets and the screening walls, fences, berms or landscaping, to the extent that the Association has a right or duty to maintain or regulate that portion of the right-of-way.
- h. Any property adjacent to Fountain Village if the maintenance of same is deemed to be in the best interests of the Association, and is not prohibited by the Owner or operator of said property.
- i. Any modification, replacement, or addition to any of the above-described areas and improvements.
- j. Personal property owned by the Association, such as books and records, office equipment, and supplies.

## **ARTICLE 5**

### **PATIO HOME LOTS**

5.1. **General.** As shown on the Plat, most of the Lots in Fountain Village are designed for rows of patio homes that are similar in design to Zero-Lot-Line developments. Typically, the sidewall of one Patio Home serves as the courtyard wall of the neighboring patio home. The below-defined Wall Lot and Patio Lot are paired for purposes of this Article. An interior Lot may be paired on both sides – being a Wall Lot in relation to the neighboring Lot on one side, and a Patio Lot in relation to the neighboring Lot on the other side.

5.1.1. **Definitions.** As used in this Article, the following terms are defined:

- a. **"Wall"** means the side of a house that is in most cases approximately parallel to and within 3 feet of the Shared Lot Line, as defined below. Due to the curvature of the streets and the Property, some Lots are somewhat pie-shaped or shaped otherwise to conform to the curvatures; and therefore have larger varied distances from the Shared Lot Line. **"Wall Lot"** means the Lot on which the Wall is located. **"Wall House"** means the building of which the Wall is a structural component.
- b. **"Patio Lot"** means the Lot that shares the Shared Lot Line with the Wall Lot. **"Patio Home"** means the building on the Patio Lot. **"Patio"** means the fence-enclosed side yard or courtyard that may use all or part of the Wall as a courtyard wall. **"Patio Fence"** means the sections of fencing on the Patio Lot and the Wall Easement Area that are in most cases more or less perpendicular to the Wall and which may tie to the Wall House, thereby enclosing the Patio for use by the Owner of the Patio Home.
- c. **"Shared Lot Line"** means the actual platted boundary between the Wall Lot and the Patio Lot, although the boundary may not be apparent on the site.

- d. **"Wall Easement Area"** means the strip of land entirely on the Wall Lot along the full length of the Shared Lot Line, and being as wide as the distance between the Wall and the Shared Lot Line (a minimum typical on many Lots is 3 feet wide). The Wall Easement Area adjoins the Patio Easement Area.
- e. **"Patio Easement Area"** means the strip of land entirely on the Patio Lot along the full length of the Shared Lot Line, and in most cases being at least 7 feet wide. The Patio Easement Area adjoins the Wall Easement Area.
- f. **"Shared Easement Area"** means the combination of the Wall Easement Area and the Patio Easement Area.

5.1.2. **City Ordinances.** Ordinances which may be adopted by the City of De Cordova will be provided to Owners and will be complied with if the physical nature of the Property and each Lot permit.

5.1.3. **Purposes.** As a general rule, the Owner of a Lot has the sole and exclusive use of his Lot - from boundary to boundary, and is solely responsible for the maintenance of all portions of his Lot and all of the improvements on his Lot from boundary to boundary. The Patio Home concept at Fountain Village modifies that general rule. One purpose of this Article is to address the rights and responsibilities of the Owners of the paired Lots. Another purpose is to encourage a cooperative relationship between the Owners of the paired Lots. Reasons why the general rule of private property ownership are modified at Fountain Village include, but are not limited to, the following:

- a. The Association needs access to front and rear yard areas on all Fountain Village Lots to perform regular mowing, trimming, fertilization, weed control, and other front and rear yard maintenance. Owners may separately contract with the Association's yard maintenance contract provider for Patio Yard, plant beds, sprinkler system and other landscaping maintenance.
- b. The Owner of the Wall Lot needs access to the Patio Lot to make repairs to the Wall House, which is located too close to the Shared Lot Line to provide a reasonable work area for equipment, materials, or personnel.
- c. The Owner of the Patio Lot needs use of the Wall and the Wall Easement Area as an extension of his Patio.
- d. The Owner of the Wall Lot needs use of the Wall Easement Area on the back side of the Wall Lot for maintenance, repair or replacement of utility meters or air conditioning equipment, the placement of which within the Wall Easement Area may have been approved by the Architectural Control Committee with the consent of the Owner of the Patio Lot during the construction of the home on the Wall Lot.
- e. The Owner of the Patio Lot needs use of the Wall Easement Area



on the front side of the Wall Lot for maintenance of the Patio Fence and the front yard between the Patio Fence and the street.

- f. The Owner of either the Wall Lot or the Patio Lot may need use of either the Wall Easement Area or the Patio Easement Area on the back side of the Lots for the continued existence of the parking pad, if any, appurtenant to his driveway.

5.2. **Reservations and Easements.** The following reservations and easements are created by this Declaration and are in addition to easements, if any, shown on a Plat or created by separate instrument.

5.2.1. **Wall Lot Reservation.** Regardless of any right or easement created in favor of the Patio Lot, each Owner of a Wall Lot, with the prior approval of the Architectural Control Committee, hereby reserves for himself the right to use the Wall Easement Area to maintain, use, remove, replace, or reconstruct the improvements on the Wall Lot that serve or support the Wall House, including without further limitation the utility meters and air conditioning equipment located on the alley side or Patio Home side of the Wall Lot.

5.2.2. **Wall Lot Easement.** Subject to the foregoing reservation, the Patio Lot Owner is hereby granted an exclusive and perpetual right and easement of enjoyment and use over the Wall Easement Area, as may be reasonably required, for use as part of the Patio and the front yard area of the Patio Lot, including but not limited to landscaping, irrigation, and lighting. Specifically, the Patio Lot Owner is solely responsible for (1) maintenance, repair, and replacement of the Patio and Patio Fence, including any portion of the Patio and Patio Fence that is in the Wall Easement Area, and (2) the portion of the Wall Easement Area that is adjacent to the front yard of the Patio Home. The Patio Lot Owner is further hereby granted a non-exclusive and perpetual right and easement of enjoyment and use over the exterior surface of the Wall.

5.2.3. **Easement on Patio Lot.** The Wall Lot Owner is hereby granted a non-exclusive and perpetual right and easement of access across the Patio Lot to use the Patio Easement Area for purposes of maintaining, repairing, replacing, or reconstructing the Wall House.

5.2.4. **Driveway & Parking Pad Encroachments.** The concrete driveways and additional parking pads are constructed as the initial improvements on the Property without respect for individual Lot lines. A concrete driveway or parking pad that is on a Lot other than the Lot it is intended to serve is hereby deemed to be a permitted perpetual encroachment which may remain undisturbed as long as the driveway or parking pad exists. The Owner of the Lot that is served by the driveway or parking pad has exclusive use of those improvements and is solely responsible for the maintenance, repair, replacement, and reconstruction of same as if it were constructed entirely on the Owner's Lot.

5.2.5. **Walking Trail Easement to Acton School Road.** Declarant has obtained a Walking Trail Easement permitting ingress and egress access by walking traffic for use by Fountain Village residents and guests only. This "Walking Trail Easement" is 10 feet in width and exists over, on, along and across property

owned by a third party, which property adjoins the Fountain Village Property and Acton School Road. The Walking Trail Easement is part of the Common Areas of Fountain Village, and is recorded as Document #6558, Volume 2191, Page 454 in the Real Property Records of Hood County, Texas.

5.2.6. **Fencing And Drainage Easement.** Declarant has obtained a Fencing And Drainage Easement for the construction, maintenance, repair and replacement of fencing and storm drainage facilities, which exists over, on, along and across property owned by a third party, which property adjoins the Fountain Village Property and Acton School Road within an area defined in the Fencing And Drainage Easement Deed recorded as Document #22434, Volume 2259, Page 0887 in the Official Records of Hood County, Texas,

5.3. **Limitations.** The reservations and easements created by this Article are subject to and conditioned by the following restrictions:

5.3.1. **Barriers.** Except for the Patio Fence, no person may construct a wall, fence, or other barrier or obstacle in the Shared Easement Area that interferes with the use of the easements and reservation created by this Article. In the event that a Patio Lot Owner does construct a structure, barrier or obstacle in the Shared Easement Area with or without the approval of the Architectural Control Committee that interferes with the use of the easements and reservation created by this Article, the Patio Lot Owner shall be solely responsible for the removal and any replacement of repair costs of such structure, barrier or obstacle in the Shared Easement Area to permit the use of the easements and reservation created by the Article.

5.3.2. **Access Request.** Except in case of an emergency or for the Lot yards maintenance and landscaping access, access to and use of the Shared Easement Area by the Owner of the Wall Lot requires a request to the Owner of the Patio Lot, in advance, for a time reasonably convenient for the Patio Lot Owner. The Patio Lot Owner may not refuse to provide access.

5.3.3. **Structural Change.** The Owner of either Lot may not make any structural change to the Wall or do or fail to do any act that interferes with the purpose of the Wall to structurally support and enclose the Wall House and to simultaneously serve as a courtyard wall for the Patio.

5.3.4. **Damage to Wall.** If an Owner is responsible for damage to or destruction of the Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Deed Records of Hood County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to contribution from another Owner under this Section is appurtenant to the land and passes to the Owner's successors in title.

5.3.5. **Damage to Property.** If an Owner damages the adjoining Lot, or damages or destroys any improvement or personal property on the adjoining Lot, in exercising the easements and reservation created by this Article, the Owner is obligated to restore the damaged property to its original condition (just prior to the

damage), at his expense, within a reasonable period of time.

5.3.6. **Preventing Damage.** Use of the Shared Easement Area by the Owner of a Patio Lot must not damage the Wall House. Towards that end, the Owner of a Patio Lot must:

- a. Avoid planting or permitting the volunteer growth of trees with root systems that are destructive to the Wall House or its subsurface utility lines.
- b. Avoid allowing the ground to be so wet or so dry as to create a significant moisture imbalance for the foundation of the Wall House.
- c. Prevent trees on the Patio Lot from damaging the roof of the Wall House.
- d. Treat or allow the Wall Lot Owner to treat the Shared Easement Area for termites or other wood destroying pests if the Owner of the Wall Lot has reason to believe that such treatment is necessary to prevent termite damage to the Wall House.

5.3.7. **Drainage Issues.** The Owners of the paired Lots are required to cooperate to prevent or reduce drainage problems on either Lot. If the Owners fail or refuse to cooperate in a joint solution to a drainage problem that adversely affects either Lot, the Owner of the adversely affected Lot is hereby authorized to fix the problem, even if it requires maintenance, repair, replacement, or improvement of components or grading on the other Lot.

5.4. **Cooperation.** Each Owner of a Wall Lot or Patio Lot will endeavor to exercise his rights under this Article in a manner calculated to respect the rights, privacy, and privileges of the Owner of the paired lot. Each Owner will make a diligent effort to be cooperative, responsive, and civil in communications pertaining to the purposes of this Article. No provision of this Article may be interpreted as authority for one Owner to harass, inconvenience, tyrannize, or otherwise impose himself on the other Owner or the Owner's Lot. If a dispute arises between the Owners of the paired lots on a matter pertaining to this Article, the Owners will employ the dispute resolution procedures of Article 17 of these Protective Covenants.

5.5. **Applicability.** In the course of platting the Property and designing the houses, some variations exist. For that reason, this Article may not apply at all to some Lots in Fountain Village, or it may apply only in part, or it may apply with a different interpretation. For example, if the Wall Lot is next to a Common Area, the Common Area may find itself in the role of a "Patio Lot" for purposes of providing access to the Owner of the Wall Lot, even though the Common Area does not have a Patio House. Some Lots are larger than others, or somewhat pie-shaped, or shaped otherwise to conform to the curvatures of the streets and the Property; and therefore have larger varied distances from the Shared Lot Line, thus making the applicability of this Article more subject to common sense and cooperation between neighbors. Users of this Article must apply common sense and rules of liberal construction in determining whether or how the terms of this Article apply to a particular Lot. In case of a conflict between a provision of this Article and a provision elsewhere in these Protective

Covenants, this Article controls.

## ARTICLE 6 ARCHITECTURAL COVENANTS AND CONTROL

6.1. **Purpose.** Because the Lots are part of a single, unified community, these Protective Covenants create rights to regulate the design, use, and appearance of the Lots and the Common Areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements on a Lot, including but not limited to dwellings, fences, landscaping, retaining walls, yard art, sidewalks and driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

6.2. **Architectural Control During the Development Period.** During the Development Period, neither the Association, the Board of Directors, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of new homes on vacant Lots. During the Development Period, the Architectural Reviewer for new homes on vacant Lots is the Declarant or its delegates.

6.2.1. **Declarant's Rights Reserved.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property or the ability of Builders to sell homes in the Property. Accordingly, each Owner agrees that - during the Development Period - **no improvements will be started or progressed on Owner's Lot without the prior written approval of Declarant**, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

6.2.2. **Delegation by Declarant.** During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (1) an Architectural Control Committee appointed by the Board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

**BEFORE MAKING ANY IMPROVEMENT OR ANY ALTERATION  
TO A LOT OR DWELLING, A BUILDER OR OWNER  
MUST APPLY FOR WRITTEN APPROVAL.**

6.3. **Architectural Control by Association.** Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Architectural Control Committee (the "ACC"), or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the ACC will assume jurisdiction over architectural control.

6.3.1. **ACC Membership.** The ACC will consist of at least 3 but not more than 7 persons appointed by the Board, pursuant to the ByLaws. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC are construed to mean the Board. Members of the ACC need not be Owners or residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

6.3.2. **Limits on Liability.** The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the ACC, (2) supervising construction for the Owner's compliance with approved plans and specifications, or (3) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

6.4. **Prohibition of Construction, Alteration & Improvement.** Without the Architectural Reviewer's prior written approval, a person may not construct a dwelling or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property, if it will be visible from a street, another Lot, or the Common Area. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

6.5. **Architectural Approval.** To request architectural approval, an Owner must make written application to the Architectural Reviewer and submit 2 identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. In support of the application, the Owner may but is not required to submit letters of support or non-opposition from Owners of Lots that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer will return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information Required." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Architectural Reviewer's files. **Verbal approval by an Architectural Reviewer, the Declarant, an Association director or officer, a member of the ACC, or the Association's manager does not constitute architectural approval by the appropriate Architectural Reviewer, which**

must be in writing.

6.5.1. **Deemed Approval.** Under the following limited conditions, the applicant may presume that his request has been approved by the Architectural Reviewer:

- a. If the applicant or a person affiliated with the applicant has not received the Architectural Reviewer's written response - approving, denying, or requesting additional information - within 60 days after delivering his complete application to the Architectural Reviewer.
- b. If the proposed improvement or modification strictly conforms to requirements and construction specifications contained in this Declaration and in any design guidelines for the Property in effect at the time of application.
- c. If those conditions are satisfied, the Owner may then proceed with the improvement, provided he adheres to the plans and specifications which accompanied his application, and provided he initiates and completes the improvement in a timely manner. In exercising deemed approval, the burden is on the Owner to document the Board's actual receipt of the Owner's complete application. Under no circumstance may approval of the Architectural Reviewer be deemed, implied, or presumed for an improvement or modification that would require a variance from the requirements and construction specifications contained in these Protective Covenants and in any design guidelines for the Property in effect at the time of application.

6.5.2. **No Approval Required.** No approval is required to repaint exteriors in accordance with the color scheme approved by the Architectural Reviewer, or to rebuild a dwelling in accordance with originally approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a dwelling.

6.5.3. **Building Permit.** If the application is for work that requires a building permit from a governmental body, the Architectural Reviewer's approval is conditioned on the issuance of the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, governmental approval does not ensure Architectural Reviewer approval.

6.5.4. **Neighbor Input.** The Architectural Reviewer may solicit comments on the application, including from Owners or residents of Lots that may be affected by the proposed change, or from which the proposed change may be visible. Whether to solicit comments, from whom to solicit comments, and whether to make the comments available to the applicant is solely at the discretion of the Architectural Reviewer. The Architectural Reviewer is not required to respond to the commentators in ruling on the application.

6.5.5. **Declarant Approved.** Notwithstanding anything to the contrary in

this Declaration, any improvement to the Property made or approved by Declarant during the Development Period is deemed to have been approved by the Architectural Reviewer.

6.6. **Architectural Guidelines**. Declarant, during the Development Period, and the Association thereafter, shall record architectural restrictions, guidelines, and standards, which may be revised from time to time to reflect changes in technology, style, and taste.

## **ARTICLE 7**

### **CONSTRUCTION AND USE RESTRICTIONS**

7.1. **Variance**. The use of the Property is subject to the restrictions contained in this Article, and subject to rules adopted pursuant to this Article. The Board or the Architectural Reviewer, as the case may be, may grant a variance or waiver of a restriction or rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not affect a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance.

7.2. **Construction Restrictions**. Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every Lot must have the characteristics described in Appendix B, which may be treated as the minimum requirements for improving and using a Lot. The Architectural Reviewer and the Board may promulgate additional rules and restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article. An Owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his Lot and dwelling.

7.3. **Association's Right to Promulgate Rules**. The Association, acting through its Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. In addition to the restrictions contained in this Article, each Lot is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of Common Areas.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use and consumption of propane whether billed to Owners or the Association.
- f. The use, maintenance, and appearance of exteriors of dwellings and Lots.
- g. Landscaping and maintenance of yards.

- h. The occupancy and leasing of dwellings.
- i. Animals.
- j. Vehicles.
- k. Disposition of trash and control of vermin, termites, and pests.
- l. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for residents.

7.4. **Accessory Sheds.** Without the prior written approval of the Architectural Reviewer, accessory structures - such as doghouses, gazebos, storage sheds, playhouses, and greenhouses - are prohibited (not allowed) if visible from a street, a Common Area or another Lot. Accessory structures may not be located in front yards or in unfenced portions of side yards facing streets. If an accessory structure that is visible from a street or another Lot is installed on a Lot without the prior written approval of the Architectural Reviewer, the Architectural Reviewer reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the Owner to screen it or to remove it.

7.5. **Animal Restrictions.** No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose or for food. Customary domesticated household pets may be kept for personal companionship subject to rules adopted by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than 3 total dogs and/or cats may be maintained on each Lot. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other Lots. Pets must be maintained inside the dwelling, or may be kept in a fenced yard only if they do not disturb residents of other Lots. Any pets permitted by a resident to be outdoors in the Fountain Village community must be strictly controlled by such resident, either on a leash, physically held by the resident or otherwise physically contained and controlled. Resident is responsible for the removal of his pet's wastes from the Property. Unless the Rules provide otherwise, a resident must prevent his pet from relieving itself on the Common Area or the Lot of another Owner.

7.6. **Annoyance.** No Lot or Common Area may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of residents of other Lots; (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The Board has the sole authority to determine what constitutes an annoyance.

7.7. **Appearance.** Both the Lot and the dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring Lots. The Architectural Reviewer is the arbitrator of acceptable appearance standards.

7.8. **Color Changes.** The colors of buildings, fences, exterior decorative items,



window treatments, and all other improvements on a Lot are subject to regulation by the Architectural Reviewer. Because the relative merits of any color are subjective matters of taste and preference, the Architectural Reviewer determines the colors that are acceptable to the Association. Do not change or add colors that are visible from the street or alley, a Common Area, or another Lot without the prior written approval of the Architectural Reviewer.

7.9. **Declarant Privileges.** In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and residents, as provided in Appendix C of this Declaration. Declarant's exercise of a Development Period right that appears to violate a rule or a use restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

7.10. **Drainage.** No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the Board.

7.11. **Driveways.** The driveway portion of a lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the Board's prior approval, a driveway may not be used: (1) for storage purposes, including storage of boats, trailers, and inoperable vehicles; or (2) for repair or restoration of vehicles.

7.12. **Fires.** Except for barbecue grills, no exterior fires on the Property are permitted.

7.13. **Garages.** Without the Board's prior written approval, the original garage area of a Lot may not be enclosed or used for any purpose that prohibits the parking of two standard-size operable vehicles therein. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

7.14. **Guns.** Hunting and shooting are not permitted anywhere on or from the Property.

7.15. **Landscaping and Association Maintenance.** No person may perform landscaping, planting, or gardening on the Common Area without the Board's prior written authorization. During the Development Period described in Schedule C, all front yard areas on every Lot in Fountain Village and all Common Area grounds shall be regularly mowed, trimmed, fertilized and otherwise maintained by Declarant or the Association (herein referred to as "Routine Yard Maintenance"). Further subject to the provisions in Schedule C, Declarant and the Association shall have a blanket "Yard Power Easement" on and over the front and rear yard areas of all Lots in the entire Fountain Village Property. If in the opinion of the Board a resident either violates the landscaping rules of these Protective Covenants, or the ByLaws, or other rules promulgated by the Board, or in the sole opinion of the Board causes or allows damage to occur to his yard, plant beds, other landscaping, or sprinkler system, that resident shall be liable for the cost of any repair or restoration. Individual residents, at such resident's sole expense, are obligated to maintain his side fenced-in Patio Yard. Owners may separately contract with the Association's yard maintenance contract provider for Patio Yard, plant beds, sprinkler system and other landscaping maintenance.

7.16. **Leasing of Homes.** Dwellings may be leased only in their entirety. All leases shall be in writing. No transient tenants may be accommodated in a dwelling. All leases must be for an initial term of not less than six (6) months. Whether or not it is so stated in a lease, every lease is subject to the Documents. An Owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto. Failure by the tenant or his invitees to comply with the Documents, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The Owner of a leased Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

7.17. **Noise & Odor.** A resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy residents of neighboring Lots. The Rules may prohibit the use of noise-producing security devices and wind chimes.

7.18. **Occupancy.** Other than the completed principal dwelling, no thing or structure on a Lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage, mobile homes, campers, and storage sheds.

7.19. **Residential Use.** The use of a house Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a resident from using a dwelling for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the dwelling as a residence; (2) the uses conform to applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the Lot by employees or the public in quantities that materially increase the number of vehicles parked on the Street; and (5) the uses do not interfere with residents' use and enjoyment of neighboring Lots.

7.20. **Screening.** The Architectural Reviewer may require that the following items must be screened from the view of the public and neighboring Lots and dwellings, if any of these items exists on the Lot: (1) air conditioning equipment; (2) propane tanks; (3) water softening equipment; (4) satellite reception equipment; (5) clotheslines, drying racks, and hanging clothes, linens, rugs, or textiles of any kind; (6) yard maintenance equipment; (7) wood piles and compost piles; (8) accessory structures that do not have prior approval of Architectural Reviewer; (9) garbage cans and refuse containers; (10) anything determined by the board to be unsightly or inappropriate for a residential subdivision. Screening may be achieved with fencing or with plant material, such as trees and bushes, or any combination of these. If plant material is used, a reasonable period of time is permitted for the plants to reach maturity as an effective screen. As used in this Section, "screened from view" refers to the view of a person in a passenger

vehicle driving on a Street or alley, or the view of a person of average height standing in the middle of a yard of an adjoining Lot.

7.21. **Signs.** An Owner may erect, per Lot, one professionally made sign, conforming to the rules of the Association, of not more than 5 square feet advertising the Lot for sale or for rent. The sign should be placed in parallel to the street in the flower bed of the home. No other sign or unsightly object may be erected, placed, or permitted to remain on the Property or to be visible from windows in the dwelling without the Board's prior written approval. The Board's approval may specify the location, nature, appearance, dimensions, number, and time period of a sign or object. The Association may effect the removal of any sign or object that violates this Section or which the Board deems inconsistent with neighborhood standards without liability for trespass or any other liability connected with the removal.

7.22. **Television, Electronic Equipment, Etc.** Each resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another Lot are prohibited within the Property, except (1) reception-only antennas or satellite dishes designed to receive television broadcast signals, (2) antennas or satellite dishes that are one meter or less in diameter and designed to receive direct broadcast satellite service (DBS), or (3) antennas or satellite dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services (MDS) (collectively, the "Antenna") are permitted if located (a) inside the structure (such as in an attic or garage) so as not to be visible from outside the structure, (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a structure below the eaves. If an Owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the Owner may install the Antenna in the least conspicuous location on or near the roof where an acceptable quality signal can be obtained. The Association may adopt reasonable rules for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law.

7.23. **Temporary Structures.** Except for "accessory sheds" as described above, improvements or structures of a temporary or mobile nature, such as tents, portable sheds, and mobile homes, may not be placed on a Lot if visible from a street or another Lot. However, an Owner or Owner's contractor may maintain a temporary structure (such as a portable toilet or construction trailer) on the Lot during construction of the dwelling.

7.24. **Vehicles.** All vehicles on the Property, whether owned or operated by the residents or their families and guests, are subject to this Section and Rules adopted by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may effect the removal of any vehicle in violation of this Section or the Rules without liability to the Owner or operator of the vehicle.

7.24.1. **Prohibited Vehicles.** Without prior written Board approval, the following types of vehicles and vehicular equipment - mobile or otherwise - may not be kept, parked, or stored anywhere on the Property - including overnight parking

on streets and driveways - if the vehicle is visible from a street or from another Lot: mobile homes, motor homes, buses, trailers, boats, aircraft, inoperable vehicles, commercial truck cabs, trucks with tonnage over one ton, vehicles which are not customary personal passenger vehicles, and any vehicle which the Board deems to be a nuisance, unsightly, or inappropriate. This restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a dwelling. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times.

7.24.2. **Unobstructed Alleys.** No vehicles or any other objects of any kind are permitted to be parked or placed in the driveways or on the rear of a Lot adjacent to an alley in any manner that would obstruct traffic in any of the alleys.

7.25. **Window Treatments.** All window treatments within the dwelling that are visible from the street or another dwelling must be maintained in good condition and must not detract from the appearance of the Property. The Architectural Reviewer may require an Owner to change or remove a window treatment that the ACC determines to be inappropriate or unattractive. The Architectural Reviewer may prohibit the use of certain colors or materials for window treatments.

## **ARTICLE 8**

### **ASSOCIATION AND MEMBERSHIP RIGHTS**

8.1. **Board.** Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors."

8.2. **The Association.** The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of the Fountain Village Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Documents. Among its duties, the Association levies and collects assessments, maintains the Common Areas, plus maintaining the Lot yards and Common Area grounds at the assessed expense of the Owners as set forth in Section 7.15 above, and pays the expenses of the Association, such as those described below. The Association shall come into operating existence on the earlier of (1) the issuance of its corporate charter and full legal formation, or (2) the initial levy of assessments against the Lots and Owners. The Association will continue to exist at least as long as these Protective Covenants are effective against the Property, regardless of whether its corporate charter lapses from time to time.

8.3. **Governance.** The Association will be governed by a Board of Directors elected by the Members. Unless the Association's ByLaws or Articles of Incorporation provide otherwise, the Board will consist of at least 3 persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the ByLaws, the Association Rules & Regulations, and these Protective Covenants. Unless the Documents provide

otherwise, any action requiring approval of the Members may be approved in writing by Owners of at least a majority of all Lots, or at a meeting by Owners of at least a majority of the Lots that are represented at the meeting.

8.4. **Membership.** Each Owner is a Member of the Association, ownership of a Lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Lot. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Lot is owned by more than one person or entity, each Co-Owner is a Member of the Association and may exercise the membership rights appurtenant to the Lot. A Member who sells his Lot under a Contract for Deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, regardless of the existence of the contract, seller remains liable for all assessments attributable to his Lot until fee title to the Lot is transferred.

8.5. **Voting.** One vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. If additional property is made subject to this Declaration, the total number of votes will be increased automatically by the number of additional Lots or tracts. Each vote is uniform and equal to the vote appurtenant to every other Lot, except during the Declarant Control Period as permitted in Appendix C. Cumulative voting is not allowed. Votes may be cast in person, by written proxy, or by absentee ballot according to the requirements of the Association's ByLaws.

8.6. **Voting by Co-Owners.** The one vote appurtenant to a Lot is not divisible. If only one of the multiple Co-Owners of a Lot is present at a meeting of the Association, that person may cast the vote allocated to the Lot. If more than one of the Co-Owners is present, the Lot's one vote may be cast with the Co-Owners' unanimous agreement. Co-owners are in unanimous agreement if one of the Co-Owners casts the vote and no other Co-Owner makes prompt protest to the person presiding over the meeting. Any Co-Owner of a Lot may vote by ballot or proxy, and may register protest to the casting of a vote by ballot or proxy by the other Co-Owners. If the person presiding over the meeting or balloting receives evidence that the Co-Owners disagree on how the one appurtenant vote will be cast, the vote will not be counted.

8.7. **Books & Records.** The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to Section 209.005 of the Texas Property Code.

8.8. **Indemnification.** The Association indemnifies every officer, director, committee chair, and committee member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors and officers' liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

8.9. **Obligations of Owners.** Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

8.9.1. **Information.** Within 30 days after acquiring an interest in a Lot, within 30 days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (1) a copy of the recorded deed by which Owner has title to the Lot; (2) the Owner's address, electronic mail address, phone number, and driver's license number, if any; (3) any mortgagee's name, address, and loan number; (4) the name and phone number of any resident other than the Owner; (5) the name, address, and phone number of Owner's managing agent, if any.

8.9.2. **Pay Assessments.** Each Owner will pay assessments properly levied by the Association against the Owner or his Lot, and will pay regular assessments without demand by the Association.

8.9.3. **Comply.** Each Owner will comply with the Documents as amended from time to time.

8.9.4. **Reimburse.** Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a resident of the Owner's Lot, or the Owner or resident's family, guests, employees, contractors, agents, or invitees.

8.9.5. **Liability.** Each Owner is liable to the Association for violations of the Documents by the Owner, a resident of the Owner's Lot, or the Owner's or resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

8.10. **Transfer-Related Fees.** A number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace and do not exceed the prescribed charges set by law. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (1) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (2) transfer to, from, or by the Association; (3) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-

related fees.

## ARTICLE 9 COVENANT FOR ASSESSMENTS

9.1. **Purpose of Assessments.** The Association will use assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of Owners and residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of assessments is final.

9.2. **Personal Obligation.** An Owner is obligated to pay assessments levied by the Board against the Owner or his Lot. An Owner makes payment to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which these Protective Covenants pertain. No Owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

9.3. **Control for Assessment Increases.** This Section of this Protective Covenants may not be amended without the approval of Owners of at least two-thirds (2/3rds) of the Lots. In addition to other rights granted to Owners by these Protective Covenants, Owners have the following powers and controls over the Association's budget:

9.3.1. **Veto Increased Dues.** At least 30 days prior to the effective date of an increase in Regular Assessments, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless Owners of at least two-thirds of the Lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

9.3.2. **Veto Special Assessment.** At least 30 days prior to the effective date of a Special Assessment, the board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the Special Assessment. The Special Assessment will automatically become effective unless owners of at least two-thirds of the Lots disapprove the Special Assessment by petition or at a meeting of the Association.

9.4. **Types of Assessments.** There are 4 types of assessments: Regular, Special, Individual, and Deficiency.

9.4.1. **Regular Assessments.** Regular assessments are based on the annual budget. Each Lot is liable for its equal share of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular

Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined. If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular Assessments are used for Common Expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- a. Maintenance, repair, and replacement, as necessary, and as appropriate, operating expenses, of the Common Area, specifically including but not limited to all roadways and recreational common areas and common facilities and amenities, including, without limitation, the brick wall surrounding the development.
- b. Utilities billed to the Association.
- c. Services billed to the Association and serving all Lots.
- d. Taxes on property owned by the Association and the Association's income taxes.
- e. Management, legal, accounting, auditing, and professional fees for services to the Association.
- f. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- g. Premiums and deductibles on insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including any required fidelity bonds and directors' and officers' liability insurance.
- h. Contributions to the reserve funds.
- i. All costs of the Association's performance of its Property (including but not limited to all Lots) landscaping and maintenance obligations in Section 7.15 above, including without limitation all costs of the Routine Yard Maintenance as provided therein.
- i. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

9.4.2. **Road Fund Assessments.** For each calendar year, the Association shall levy Road Fund Assessments against Owners of the Lots other than Declarant. The Association shall assess a sufficient amount to maintain a separate Road Fund set aside in an interest bearing account for the specific purpose of maintaining and repairing the Common Area, including the private



streets within the Property and the entrances from county roads into the Property. The initial amount allocated to the Road Fund is \$10.00 per Share per month. Each such Owner shall be obligated to pay the Road Fund Assessments levied against and allocated to each Owner and the Parcel of such Owner, as provided in this Declaration. The monthly Road Fund Assessments shall continue until the balance in the Road Fund account totals at least Fifteen Thousand Dollars (\$15,000.00); and, monthly Road Fund Assessments shall resume to build and continually maintain at least a Fifteen Thousand Dollars (\$15,000.00) account balance as expenditures for Common Area maintenance and repairs occur. Such Road Fund Assessments shall be allocated among the Lots of Owners in the same manner as Regular Assessments are allocated. Written notice of any proposed change in the amount of any monthly Road Fund Assessments shall be sent to every Owner subject thereto not less than thirty (30) days prior to the effective date of such proposed change, and shall be submitted to the Members for approval at the Association's annual meeting or at a special meeting of the Members called for such purpose. In the event Common Area maintenance or repairs are required due to water or sewer facilities repairs made by or at the direction of the Acton Municipal Utility District ("AMUD"), such Road Funds shall be utilized by the Association to repair all damages to the Common Area. During the first thirty-six (36) months from the effective date hereof, in the event adequate funds are not available in the Road Fund if and when damage is caused to the Common Area as a result of water or sewer facilities repairs made by or at the direction of AMUD, Declarant shall loan sufficient funds to the Association for such purpose. AMUD shall have no responsibility for such Common Area repairs or for the expense of such repairs. This Section 9.4.2 of the Protective Covenants may not be amended by the Association or its Members without the written approval of AMUD.

**9.4.3. Special Assessments.** In addition to Regular Assessments, and subject to the Owners' control for assessment increases, the Board may levy one or more Special Assessments against all Lots for the purposes of (1) defraying, in whole or in part, FV Investments, LLC's allocated cost of improvements to Lots and Common Areas (which costs are not included in the price of the Lot and Patio Home at the time of purchase by an Owner), or (2) funding Common Expenses not anticipated by the annual budget or reserve funds. Special Assessments shall be prorated equally among all Lots, and do not require the approval of the Owners. All Special Assessments will automatically become effective unless Owners of at least two-thirds (  $\frac{2}{3}$  ) of the Lots disapprove the Special Assessment by petition or at a meeting of the Association as provided in Section 9.3.2 above. However, the above provisions in this Section 9.4.2 notwithstanding, Special Assessments for the following purposes must be approved by Owners of at least a majority of the Lots:

- a. Acquisition of real property, other than the purchase of a Lot at the sale foreclosing the Association's lien against the Lot.
- b. Construction of additional improvements within the Property, but not replacement of original improvements.
- c. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

9.4.4. **Individual Assessments.** In addition to Regular and Special and Road Fund Assessments, the Board may levy an Individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an Owner or his Lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefits received.

9.4.5. **Deficiency Assessments.** The Board may levy a Deficiency Assessment against all Lots for the purpose of defraying, in whole or in part, the cost of repair or restoration of the Property if insurance proceeds or condemnation awards prove insufficient.

9.5. **Basis & Rate of Assessments.** The share of liability for Common Expenses allocated to each Lot is uniform for all Lots, regardless of a Lot's location or the value and size of the Lot or dwelling; subject, however, to the exemption for Declarant provided below and in Appendix C.

9.6. **Declarant Obligation.** Declarant's obligation for and exemption from assessments is described in Appendix C. Unless Appendix C creates an affirmative assessment obligation for Declarant, a Lot that is owned by Declarant during the Development Period is exempt from mandatory assessment by the Association. Declarant has a right to reimbursement for any assessment paid to the Association by Declarant during the Development Period. This provision may not be construed to prevent Declarant from making a loan or voluntary monetary donation to the Association, provided it is so characterized.

9.7. **Annual Budget.** The Board will prepare and approve an estimated Annual Budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

9.8. **Due Date.** The Board may levy regular assessments on any periodic basis, such as annually, semi-annually, quarterly, or monthly. Regular Assessments are due on the first day of the period for which levied. Special and Individual and Road Fund Assessments are due on the date stated in the Notice of Assessment or, if no date is stated, within 10 days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

9.9. **Reserve Funds.** The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association must budget

for reserves and may fund reserves out of Regular Assessments.

9.9.1. **Operations Reserves.** The Association will endeavor to maintain Operations Reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, such as the full amount of deductibles on insurance policies maintained by the Association.

9.9.2. **Replacement & Repair Reserves.** The Association will endeavor to maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Areas.

9.10. **Association's Right to Borrow Money.** The Association is granted the right to borrow money, subject to the consent of Owners of at least a majority of lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

9.11. **Limitations of Interest.** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Special and Regular Assessments, or reimbursed to the Owner if those assessments are paid in full.

## **ARTICLE 10**

### **ASSESSMENT LIEN**

10.1. **Assessment Lien.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his Lot.

10.2. **Superiority of Assessment Lien.** The Assessment Lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before these Protective Covenants, (3) a recorded deed of trust lien securing a loan for construction of the original dwelling, and (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the Delinquent Assessment became due. The Assessment Lien is subordinate and inferior to a recorded deed of trust lien that secures a first or senior purchase money mortgage, an FHA-insured mortgage, or a VA-guaranteed mortgage.

10.3. **Effect of Mortgagee's Foreclosure.** Foreclosure of a superior lien extinguishes the Association's claim against the Lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for assessments coming due from and after the date of the sale, and for the Owner's prorata share of the pre-foreclosure deficiency as an Association expense.

10.4. **Notice and Release of Notice.** The Association's lien for assessments is created by recordation of these Protective Covenants, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Hood County's Deed Records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner.

10.5. **Power of Sale.** By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of non-judicial sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

10.6. **Foreclosure of Lien.** The Assessment Lien may be enforced by judicial or non-judicial foreclosure. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code. Unless waived in writing by the owner at the time the foreclosure is sought, the Association may not foreclose its Assessment Lien non-judicially unless the Association first obtains a court order in an application for expedited foreclosure. A non-judicial foreclosure, once approved by court order, must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the ByLaws and applicable law, such as Chapter 209 of the Texas Property Code. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association may not foreclose the Assessment Lien if the debt consists solely of fines and/or a claim for reimbursement of attorney's fees incurred by the Association to collect such fines.

## **ARTICLE 11**

### **EFFECT OF NONPAYMENT OF ASSESSMENTS**

An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent assessments. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the ByLaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an assessment. The

following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

11.1. **Interest.** Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of 18 percent or the maximum permitted by law. If the Board fails to establish a rate, the rate is 10 percent per annum, compounded annually.

11.2. **Late Fees.** Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

11.3. **Costs of Collection.** The Owner of a Lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorneys' fees and processing fees charged by the manager.

11.4. **Acceleration.** If an Owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments on 10 days' written notice to the defaulting Owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

11.5. **Suspension of Use and Vote.** If an Owner's account has been delinquent for at least 30 days, the Association may suspend the right of Owners and residents to use Common Areas and Common Services during the period of delinquency. The Association may also suspend the right to vote appurtenant to the Lot. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay assessments.

11.6. **Money Judgment.** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of assessments, without foreclosing or waiving the Association's lien for assessments.

11.7. **Notice to Mortgagee.** The Association may notify and communicate with the holder of any lien against a lot regarding the owner's default in payment of assessments.

11.8. **Foreclosure of Assessment Lien.** As provided by these Protective Covenants, the Association may foreclose its lien against the Lot by judicial or non-judicial means.

11.9. **Application of Payments.** The Board may adopt and amend policies regarding the application of payments that conform to Section 209.0063 of the Texas Property Code. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Lot's account.

## ARTICLE 12 ENFORCING THE DOCUMENTS

12.1. **Notice and Hearing.** Before the Association may exercise any of its remedies for a violation of the Documents or damage to the Property, the Association must give an Owner written notice and an opportunity for a hearing, according to the requirements and procedures in the ByLaws and in applicable law, such as Chapter 209 of the Texas Property Code. Except as provided below, prior to suspending an Owner's right to use the Common Area, filing suit against an Owner (other than a lawsuit to collect an assessment or related charge or to foreclose the Association's Assessment Lien), charging an Owner for property damage, or levying a fine for a violation of the Documents, the Board or its delegate shall serve the alleged violator with written notice by certified mail, return receipt requested, notifying the Owner of the following: (i) the nature of the alleged violation or property damage and the amount, if any, due the Association from the Owner, (ii) a reasonable time period in which the violator may cure the violation and avoid the proposed sanction (unless the violator was given notice and a reasonable opportunity to cure a similar violation within the preceding six months), (iii) that the Owner may present a written request for a hearing on or before the 30th day after the date the Owner receives this notice, and (iv) notice that the owner "may have special rights or relief related to the enforcement action under federal law, including the Service Members Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the Owner is serving on active military duty."

The notice and hearing provisions of this Section 12.1 do not apply if the Association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. Notices are also required before an Owner is liable to the Association for certain charges, including reimbursement of attorney's fees incurred by the Association.

12.2. **Remedies.** The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following right to enforce the Documents, subject to applicable notice and hearing requirements:

12.2.1. **Nuisance.** The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

12.2.2. **Violations.** The Association may levy reasonable charges, as an individual assessment, against an Owner and his Lot if the Owner or resident, or the Owner or resident's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

12.2.3. **Suspension.** The Association may suspend the right of Owners and residents to use Common Areas for any period during which the Owner or resident, or the Owner's or resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

12.2.4. **Self-Help**. The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner 15 days' notice of its intent to exercise self-help.

12.2.5. **Legal Proceedings**. Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

12.3. **Board Discretion**. The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

12.4. **No Waiver**. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Documents at any future time. No officer, director, or Member of the Association is liable to any Owner for the failure to enforce any other Documents at any time.

12.5. **Recovery of Costs**. The costs of curing or abating a violation are at the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

### **ARTICLE 13** **MAINTENANCE AND REPAIR OBLIGATIONS**

13.1. **Association Maintains**. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs, and replaces, as a Common Expense, the portions of the Property listed below, regardless of whether the portions are on Lots or Common Areas.

- a. The Common Areas and all common facilities or amenities thereon.
- b. Any real and personal property owned by the Association but which is not a Common Area, such as a Lot owned by Declarant or the Association.
- c. All front yards of every Lot in Fountain Village and all Common Area grounds shall be regularly mowed, fertilized, trimmed, and otherwise maintained by Declarant or the Association (herein referred to as "Routine Yard Maintenance," subject to the Association's and the Lot Owners' obligations and limitations set out in Section 7.15 above and in Section 13.2.2 below.
- d. Any property adjacent to the Fountain Village Property, if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property.
- e. Any area, item, easement, or service, the maintenance of which is assigned to the Association by these Protective Covenants or by the Plat.

13.2. **Owner Responsibility.** Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the Patio Home provisions of Article 5, the architectural control requirements of Article 6, and the use restrictions of Article 7:

13.2.1. **House Maintenance.** Except as provided otherwise herein, each Owner, at the Owner's expense, must maintain all improvements on the Lot, including but not limited to the dwelling, fences, sidewalks, and driveways. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each Owner is expected to maintain his Lot's improvements at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each Owner must repair and replace, or cooperate with the Association at Owner's expense to repair and replace, all worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

13.2.2. **Yard Maintenance.** The Association will perform the "Routine Yard Maintenance" on all the Common Area yards as well as on all the front yards on every Lot in Fountain Village as set forth in Section 7.15 above at the Association's expense. Each Owner must maintain his Patio Yard on his Lot and all trees, plant beds and yard sprinkler systems on his Lot at such Owner's cost at a level, to a standard, and with an appearance that is commensurate with the neighborhood. "Yards" means all parts of the Lot other than the dwelling, including fenced and unfenced portions of the Lot. The area between the alley pavement and the back yard fence, if any, is a yard area. Each Owner must:

- a. Support the Association's maintenance of an attractive ground cover or lawn on all Common Area and Lot yards visible from a street or alley. Owners are encouraged to take pride in the Fountain Village community by avoiding littering at all times, and assisting in the removal of litter and trash in all these areas.



- b. Support the Association's edging and trimming throughout the Common Areas and on all the Lots along the street curbs, alley edges and front and back yard perimeter edges at regular intervals.
- c. Support the Association's mowing of the Common Areas and on all the front and back yard lawns on all the Lots at regular intervals.
- d. Prevent weeds from exceeding 6 inches in height in the plant beds.
- e. Screen plant vegetable gardens from being visible from a street or alley.
- f. Maintain an attractive appearance for trees, shrubs, flowers, other plant material, and all landscaping features and artifacts that are visible from a street or alley.
- g. Replace plant material, as needed, to maintain the minimum landscaping requirements of Appendix B.

13.2.3. **Avoid Damage**. An Owner may not do any work or fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

13.2.4. **Responsible for Damage**. An Owner is responsible for his own willful or negligent acts and those of his or the resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the Common Areas or the property of another Owner.

13.3. **Owner's Default in Maintenance**. If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and his Lot. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

13.4. **Party Wall Fences**. A fence located on or near the dividing line between 2 Lots and intended to benefit both Lots constitutes a Party Wall Fence and, to the extent not inconsistent with the provisions of this Section, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

13.4.1. **Encroachments & Easement**. If the Party Wall Fence is on one Lot or another due to an error in construction, the fence is nevertheless deemed to be on the dividing line for purposes of this Section. Each Lot sharing a Party Wall

Fence is subject to an easement for the existence and continuance of any encroachment by the fence as a result of construction, repair, shifting, settlement, or movement in any portion of the fence, so that the encroachment may remain undisturbed as long as the fence stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall Fence.

**13.4.2. Right to Repair.** If the Party Wall Fence is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the fence to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt fence.

**13.4.3. Shared Costs.** The Owners of adjoining Lots shall share equally the costs of repair, reconstruction, or replacement of the Party Wall Fence, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the fence, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall Fence, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Hood County's Deed Records, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to contribution from another Owner under this Section is appurtenant to the land and passes to the Owner's successors in title.

**13.4.4. Alterations.** The Owner of a Lot sharing a Party Wall Fence may not cut openings in the fence or alter or change the fence in any manner that affects the use, condition, or appearance of the fence to the adjoining Lot. Unless both Owners reach a mutual decision to the contrary, the Party Wall Fence will always remain in the same location as where initially erected.

## **ARTICLE 14** **INSURANCE**

**14.1. General Provisions.** All insurance affecting the Property is governed by the provisions of this Article, with which the Board will make every reasonable effort to comply. The cost of insurance coverages and bonds maintained by the Association is an expense of the Association. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally:

**14.1.1. Notice of Cancellation or Modification.** Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least 10 days' prior written notice to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

14.1.2. **Deductibles.** An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an Owner or resident or their invitees, the Owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

14.2. **Property.** To the extent it is reasonably available, the Association will obtain blanket all-risk insurance for insurable common area improvements. If blanket all-risk insurance is not reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any Lot owned by the Association.

14.3. **General Liability.** The Association will maintain a commercial general liability insurance policy over the common areas, expressly excluding the liability of each Owner and resident within his lot, for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

14.4. **Directors & Officers Liability.** To the extent it is reasonably available, the Association will maintain directors' and officers' liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

14.5. **Other Coverages.** The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by an Underwriting Lender for planned unit developments as long as an Underwriting Lender is a mortgagee or an Owner.

14.6. **Owner's Responsibility for Insurance.** Each Owner will obtain and maintain fire and extended coverage on all the improvements on his Lot, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each Owner will obtain and maintain general liability insurance on his Lot. Each Owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an Owner fails to maintain required insurance, or to provide the Association with proof of same, the Board may obtain insurance on behalf of the Owner who will be obligated for the cost as an individual assessment. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. Each Owner and resident is solely responsible for insuring his personal property in his dwelling and on the Lot, including furnishings, vehicles, and stored items. This Section may not be construed to require the Association to continually monitor the Owners' insurance coverages.

## **ARTICLE 15**

### **MORTGAGEE PROTECTION**

15.1. **Introduction.** This Article establishes certain standards for the benefit of Mortgagees, as defined below. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the Board, without approval of Owners or mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. As used in this Article, a "Mortgagee" is a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a Lot. Some Sections of this Article apply to all "Known Mortgagees." Other Sections apply to "Eligible Mortgagees," as defined below.

15.1.1. **Known Mortgagees.** An Owner who mortgages his Lot will notify the Association, giving the complete name and address of his mortgagee and the loan number. An Owner will also provide that information on request by the Association from time to time. The Association's obligations to mortgagees under the Documents extend only to those mortgagees known to the Association. All actions and approvals required by mortgagees will be conclusively satisfied by the mortgagees known to the Association, without regard to other holders of liens on Lots. The Association may rely on the information provided by Owners and mortgagees.

15.1.2. **Eligible Mortgagees.** "Eligible Mortgagee" means a mortgagee that submits to the Association a written notice containing its name and address, the loan number, the identifying number and street address of the mortgaged lot, and the types of actions for which the Eligible Mortgagee requests timely notice. A single notice per Lot will be valid so long as the Eligible Mortgagee holds a mortgage on the Lot. The Board will maintain this information. A representative of an Eligible Mortgagee may attend and address any meeting which an Owner may attend.

#### **15.2. Mortgage Rights.**

15.2.1. **Termination.** An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least fifty-one percent (51%) of Eligible Mortgagees, in addition to the required consents of Owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least two-thirds (2/3rds) of the Owners and the Eligible Mortgagees. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within 30 days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

15.2.2. **Inspection of Books.** Mortgagees may inspect the Association's books and records, including the Documents, by appointment, during normal business hours.

15.2.3. **Financial Statements.** If a Mortgagee so requests, the Association

will give the Mortgagee an audited statement for the preceding fiscal year within 120 days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

15.2.4. **Right of First Refusal.** Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Lot does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

15.3. **Insurance Policies.** If an Underwriting Lender is a Mortgagee, or if an Owner, at the request of the Underwriting Lender requests, the Association will comply with the Underwriting Lender's insurance requirements to the extent the requirements are reasonable and available, and do not conflict with other insurance requirements of these Protective Covenants.

## **ARTICLE 16** **AMENDMENTS**

16.1. **Consents Required.** As permitted by these Protective Covenants, certain amendments of these Protective Covenants may be executed by Declarant alone, or by the Board alone. Otherwise, amendments to these Protective Covenants must be approved by Owners of at least two-thirds (2/3rds) of the Lots.

16.2. **Method of Amendment.** For an amendment that requires the approval of Owners, these Protective Covenants may be amended by any method selected by the Board from time to time, pursuant to the ByLaws, provided the method gives an Owner of each Lot the specific wording of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

16.3. **Effective.** To be effective, an amendment approved by the Owners or by the Board must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners or directors and, if required, Eligible Mortgagees; and (3) recorded in the Deed Records of Hood County, except as modified by the following Section.

16.4. **Declarant Provisions.** Declarant has an exclusive right to unilaterally amend these Protective Covenants for the purposes stated in Appendix C. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under these Protective Covenants without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

16.5. **Ordinance Compliance.** When amending the Documents, the Association must consider the validity and enforceability of the amendment in light of current public law, including without limitation any City of De Cordova Subdivision Ordinance promulgated and in effect for the City's ETJ.

16.6. **Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by at least two-thirds (2/3<sup>rd</sup>) of the Owners of the Lots. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established upon any other property under its jurisdiction. No merger or consolidation, however, will affect a revocation, change, or addition to the covenants established by these Protective Covenants within the Property.

16.7. **Termination.** Termination of the terms of these Protective Covenants and the status of the Property as a planned unit development are according to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by owners of at least two-thirds of the lots. In the event of public condemnation of the entire Property, an amendment to terminate may be executed by the Board without a vote of Owners. In all other circumstances, an amendment to terminate must be approved by Owners of at least eighty percent (80%) of the Lots.

16.8. **Condemnation.** In any proceeding, negotiation, settlement, or agreement concerning condemnation of the Common Area, the Association will be the exclusive representative of the Owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the Common Area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

## **ARTICLE 17**

### **DISPUTE RESOLUTION**

17.1. **Introduction & Definitions.** The Association, the Owners, Declarant, all persons subject to these Protective Covenants, and any person not otherwise subject to these Protective Covenants who agrees to submit to this Article (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

17.1.1. **"Claim"** means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- a. Claims arising out of or relating to the interpretation, application, or enforcement of the Documents.
- b. Claims relating to the rights and/or duties of Declarant as Declarant under the Documents.

- c. Claims relating to the design, construction, or maintenance of the Property.

17.1.2. **"Claimant"** means any Party having a Claim against any other Party.

17.1.3. **"Exempt Claims"** means the following claims or actions, which are exempt from this Article:

- a. The Association's claim for assessments, and any action by the Association to collect assessments.
- b. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the Court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of these Protective Covenants.
- c. Enforcement of the easements, architectural control, maintenance, and use restrictions of these Protective Covenants.
- d. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

17.1.4. **"Respondent"** means the Party against whom the Claimant has a Claim.

17.2. **Mandatory Procedures.** Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

17.3. **Notice.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

17.4. **Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

17.5. **Mediation.** If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

17.6. **Termination of Mediation.** If the parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

17.7. **Allocation of Costs.** Except as otherwise provided in this Section, each party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys' fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

17.8. **Enforcement of Resolution.** Settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of the agreement, then the other party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the party taking action to enforce the agreement is entitled to recover from the non-complying party all costs incurred in enforcing the agreement, including, without limitation, attorneys' fees and court costs.

17.9. **Release Exemptions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A party having an Exempt Claim may submit it to the procedures of this Article.

17.10. **Litigation Approval & Settlement.** In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial or administrative proceeding without the prior approval of Owners of at least a majority of the lots, except that no such approval is required (1) to enforce provisions of these Protective Covenants, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as



settlement agreements and waiver or release of claims. This Section may not be amended without the approval of Owners of at least 75 percent of the Lots.

## **ARTICLE 18**

### **GENERAL PROVISIONS**

18.1. **Compliance.** The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

18.2. **Higher Authority.** The Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

18.3. **Notice.** All demands or other notices required to be sent to an Owner or resident by the terms of this Declaration may be sent by ordinary or certified mail, postage prepaid, to the party's last known address as it appears on the records of the Association at the time of mailing. If an Owner fails to give the Association an address for mailing notices, all notices may be sent to the Owner's lot, and the Owner is deemed to have been given notice whether or not he actually receives it.

18.4. **Liberal Construction.** The terms and provision of each Document are to be liberally construed to give effect to the purposes and intent of the Document. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved in favor of the operation of the Association and its enforcement of the Documents, regardless which party seeks enforcement.

18.5. **Severability.** Invalidation of any provision of these Protective Covenants by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

18.6. **Captions.** In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Some boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

18.7. **Appendices.** The Following appendixes are attached to these Protective Covenants and incorporated herein by reference:

- A - Description of Subject Land
- B - Construction Specifications
- C - Declarant Representations & Reservations

18.8. **Interpretation.** Whenever used in the Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

18.9. **Run with the Property.** Unless terminated or amended by Owners as permitted herein, the provisions of these Protective Covenants run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

**SIGNED AND ACKNOWLEDGED**

SIGNED on this \_\_\_\_ day of \_\_\_\_\_, 2014.

FV Investments, LLC  
A Texas Limited Liability Company

By: \_\_\_\_\_  
Bruce Thompson, President

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF HOOD       §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2014 by Bruce Thompson, President of FV Investments, LLC a Texas corporation, on behalf of said corporation in its capacity as authorized agent for FV Investments, LLC, a Texas limited partnership, on behalf of the limited partnership.

\_\_\_\_\_  
Notary Signature

**APPENDIX A**  
**DESCRIPTION OF FOUNTAIN VILLAGE PROPERTY**

Metes and Bounds Description of the Property

A tract of land situated in the William Blair Survey, Abstract No. 45, Hood County, Texas and being a portion of a called 16.90 acre tract of land described in a deed to Danny Keith Thomas and wife, Carolyn Thomas recorded in Volume 1813, Page 474 of the Real Records of Hood County, Texas and being more particularly described as follows:

All that certain tract or parcel of land, being a portion of a 16.90 acre tract described in a deed to Danny Keith Thomas and wife, Carolyn Thomas, recorded in Volume 1813, Page 474 of the Real Records of Hood County, Texas and being more completely described as follows:

Beginning at a ½" iron rod set in the East line James Road, a 60' right-of-way, said point also being in the West line of said Thomas Tract and the Northwest corner of this tract being described herein;

Thence North 61°20'59" East, across said Thomas Tract, a distance of 300.06 feet to a ½" iron rod set in the East line of said Thomas Tract, said point also being in the West line of a 4.93 acre tract of land described in a deed to L.T. Solomon and wife, Betty K. Solomon, recorded in Volume 1095, Page 943 of said Deed Records, and being the Northeast corner of this tract;

Thence, 31°51'49" East, along the West line of said Solomon Tract, a distance of 852.45 feet to a 3" Steel Fence Corner Post found in the North line of North Gate Road, a 60' right-of-way, and being the Southwest corner of said Solomon Tract and the Southeast corner of this tract;

Thence South 61°20'59" West, along the North line of North Gate Road, a distance of 1008.55 feet to a ½" iron rod set at the intersection of James Road and North Gate Road, said point also being the Southwest corner of this tract;

Thence North 30°23'09" West, along the East line of said James Road, a distance of 26.49 feet to a ½" iron rod set for the beginning of a curve to the right;

Thence continuing along said Road and along said curve to the right having a radius of 630.00 feet, a Chord Bearing of North 03°48'54" East, 708.24 feet, and an arc distance of 752.12 feet to ½" iron rod set for the beginning of a curve to the left;

Thence along said curve to the left, having a radius of 705.71 feet, a Chord Bearing of North 22°25'40" East, 361.60 feet and an arc distance of 365.67 feet to the Point of Beginning, containing 15.000 acres of land.

## **APPENDIX B**

### **CONSTRUCTION SPECIFICATIONS**

All improvements on a lot must (1) comply with any applicable city ordinances and codes, (2) have a building permit issued by the City of De Cordova or Hood County, if and as applicable and if the type of improvement requires a permit, and (3) have the Architectural Reviewer's prior written approval. These 3 requirements are independent, that is one does not ensure or eliminate the need for another. The Lot Owner and/or Owner's contractor must comply with all 3 requirements. Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every Lot must have the following characteristics:

B.1. **Lots**. The size of each Lot and the density of the Lots in the Fountain Village Subdivision must comply with the requirements of applicable ordinances.

B.2. **Houses**. The principal improvement on a Lot must be one detached single family dwelling, as further defined by Hood County as a "Patio Home." The dwelling size, setbacks, and exterior materials must comply with the applicable ordinances and with any higher standards established by Declarant or by the Architectural Reviewer.

B.3. **New Construction**. The dwelling must be constructed on the Lot. A dwelling or addition constructed elsewhere may not be moved onto a Lot. Factory-built homes are not permitted, even though assembled or finished on the Lot. The construction of a dwelling must be started promptly after the Architectural Reviewer approves the dwelling's plans and specification. At the start of construction, but not before, building material to be used in the construction may be stored on the Lot or with the Declarant's approval, on a nearby Lot. Once started, the dwelling and all improvements on the Lot must be completed with due diligence.

B.4. **Exterior Wall Materials**. The type, quality, and color of exterior wall materials must be approved by the Architectural Reviewer.

B.5. **Roofs**. All roofs must maintain a roof pitch of at least 10:12. Roofs must be covered with material having a manufacturer's warranty of at least 20 years, such as GAF Sentinal or its equivalent. The use of fiberglass shingles is permitted. The color of roofing material must be weatherwood or an equivalent earth tone color. The Architectural Reviewer may permit or require other weights, materials, and colors.

B.6. **Garage & Driveway**. Each dwelling must have an attached garage for at least two standard-size cars. If the Lot has alley access, the garage must be a rear or side entry using the alley for access. The driveway must be surfaced with concrete.

B.7. **Carports**. No carport may be installed, constructed, or maintained on the front of any Lot or dwelling, with or without approval of the Architectural Reviewer. No carport may be installed, constructed, or maintained on any other portion of a Lot without the Architectural Reviewer's prior written consent. In other words, all carports require the written approval of the Architectural Reviewer, and carports on the front sides or front yards of dwellings are expressly prohibited and may not be authorized.

B.8. **Accessories**. Installation of all exterior items and surfaces, including address numbers, decorative hardware, external ornamentation, lights fixtures, and

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exterior paint and stain, is subject to the Architectural Reviewer's prior approval, including approval of design, color, materials, and location.

B.9. **Mailboxes**. Curbside mailboxes are not permitted.

B.10. **Fences & Walls**. This Section is subject to the Architectural Reviewer's right to adopt additional or different specifications for construction or reconstruction of fences. The height of fences must be between 6 feet and 8 feet. Fences must be made of masonry, wood, or other Architectural Reviewer-approved material. Retaining walls must be constructed entirely with Architectural Reviewer-approved materials, however railroad ties may not be used for a retaining wall visible from a street. Fences may not be constructed between a dwelling's front building line and the Street. The use of chain link fencing is prohibited.

B.11. **Fence Stain**. Wood fences may be left in a natural state. If stained, wood fences must be stained with a color approved by the Architectural Reviewer, which may require a uniform color of stain. Wood fences may not be painted.

B.12. **Utilities**. All utility lines and equipment must be located underground, except for: (1) elevated or surface lines or equipment required by a public utility or the city; (2) elevated or surface lines or equipment installed by Declarant as part of the development plan; and (3) surface equipment necessary to maintain, operate, or read underground facilities, such as meters, risers, service pedestals, and transformers. The Architectural Reviewer may require that utility meters, risers, pedestals, and transformers be visually screened from the street and neighboring lots. Except for temporary water and sewage facilities and systems which may be installed and used by Declarant or by Builders (and which must comply with the requirements of applicable ordinances) prior to having access to city water and sewage systems, each Lot will use city water and sewage systems as they are available and functional for use by dwellings in Fountain Village. All temporary water and sewage systems must be removed within 60 days of Individual water supply and sewage disposal systems are not otherwise permitted.

B.13. **Air Conditioners**. Air conditioning equipment may not be installed in the front yard of a dwelling. Window units are prohibited.

B.14. **Propane Tanks**. Propane tanks may not be installed in the front yard of a dwelling.

B.15. **No Lot Subdivision**. No Lot may be subdivided. One or more Lots may be replatted with the approval of all Owners of the Lots directly affected by the replatting. The parties executing the replat will provide a copy of the recorded replat to the Association. Replatting of Lots may not alter the number of votes and assessments allocated to the Lots as originally platted. If replatting reduces the number of Lots by combining Lots, the joined Lot will have the votes and assessments allocated to the Lots as originally platted.

B.16. **Debris**. No Lot or other part of the Property may be used as a dumping ground. Waste materials incident to construction or repair of improvements on a Lot may be stored temporarily on the Lot during construction while work progresses and must be removed when construction or repair is complete.

**APPENDIX C**  
**DECLARANT REPRESENTATIONS & RESERVATIONS**

**C.1. General Provisions.**

C.1.1. **Introduction.** Declarant intends these Protective Covenants to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of these Protective Covenants, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Appendix.

C.1.2. **General Reservation & Construction.** Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix C, which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Appendix and any other Document, this Appendix controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

C.1.3. **Purpose of Development and Declarant Control Periods.** This Appendix C gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly build-out and sellout of the Property, which is ultimately for the benefit and protection of owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with 90 days' notice.

C.1.4. **Definitions.** As used in this Appendix and elsewhere in the Documents, the following words and phrases, when capitalized, have the following specified meanings:

a. **"Builder"** means a person or entity which purchases, or contracts to purchase, a Lot from Declarant or from a Builder for the purpose of constructing a dwelling for resale or under contract to an Owner other than Declarant. As used in this Declaration, Builder does not refer to Declarant or to any home building or home marketing company that is an affiliate of Declarant.

b. **"Declarant Control Period"** means that period of time during which this Second Amended Protective Covenants (the "Declaration") controls the operation of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed four months after title to 85 percent of the Lots that may be created in the Property and or the Additional Land has been conveyed to Owners other than Builders.

C.1.5. **Builders**. Declarant, in its own name or through its affiliates, intends to construct dwellings on the Lots in connection with the sale of the Lots. However, Declarant may, without notice, sell some or all of the Lots to one or more Builders to improve the Lots with dwellings to be sold and occupied.

C.2. **Declarant Control Period Reservations**. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

C.2.1. **Officers & Directors**. Except as hereinafter provided, during the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, including the Architectural Control Committee, none of whom need be Members or Owners, and each of whom is indemnified by the Association as a "Leader." Notwithstanding the foregoing reservation of Declarant rights, on or before the 120<sup>th</sup> day after the date 75 percent of the Lots that may be created and made subject to the Declaration and conveyed to Owners other than Declarant, at least one-third of the board members must be elected by Owners other than the Declarant.

C.2.2. **Weighted Votes**. During the Declarant Control Period, the vote appurtenant to each Lot owned by Declarant is weighted 3 times that of the vote appurtenant to a Lot owned by another Owner. In other words, during the Declarant Control Period, Declarant may cast the equivalent of 3 votes for each Lot owned by Declarant on any issue before the Association. On termination of the Declarant Control Period and thereafter, the vote appurtenant to Declarant's Lots is weighted uniformly with all other votes.

C.2.3. **Budget Funding**. During the Declarant Control Period only, Declarant is responsible for the difference between the Association's operating expenses and the Regular Assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant will cease being responsible for the difference between the Association's operating expenses and the assessments received from Owners other than Declarant.

C.2.4. **Funding of Lots and Common Area Improvements**. FV Investments, LLC allocated cost of improvements to Lots and Common Areas (which costs are not included in the price of the Lot and Patio Home at the time of purchase by an Owner) shall be assessed to the Owners as a Special Assessment under Section 9.4.2 in the Fountain Village Protective Covenants.

C.2.5. **Declarant Assessments**. During the Declarant Control Period, any real property owned by Declarant is not subject to assessment by the Association.

C.2.6. **Builder Obligations**. During the Declarant Control Period only, Declarant has the right but not the duty (1) to reduce or waive the assessment obligation of a Builder, and (2) to exempt a Builder from any or all liabilities for transfer-related fees charged by the Association or its manager, provided the agreement is in writing. Absent such an exemption, any Builder who owns a Lot is liable for all assessments and other fees charged by the Association in the same manner as any Owner.

C.2.7. **Commencement of Assessments.** During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of Regular Assessments until a certain number of Lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies Regular Assessments against the Lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association.

C.2.8. **Expenses of Declarant.** Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association except as provided in Section C.2.4 above.

C.2.9. **Budget Control.** During the Declarant Control Period, the right of Owners to veto assessment increases or special assessments is not effective and may not be exercised.

C.2.10. **Organizational Meeting.** Within 60 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call an organizational meeting of the Members of the Association for the purpose of electing, by vote of the Owners, directors to the Board. Written notice of the organizational meeting must be given to an Owner of each Lot at least 10 days before the meeting. For the organizational meeting, Owners of 10 percent of the Lots constitute a quorum. The directors elected at the organizational meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin.

C.3. **Development Period Reservations.** Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

C.3.1. **Platting.** If the Property includes unplatted parcels, they may be platted in whole or in part, and in phases. The right to plat belongs to the owner of the unplatted parcel, provided, however, that a plat that creates Common Areas or obligations for the Association must also be approved by Declarant. Declarant's right to have the Property platted, or to approve such plats, is for a term of years and does not require that Declarant own land described in Appendix A at the time or times Declarant exercises its right of platting. Any unplatted parcel in the Property constitutes a "Lot" as defined in Article 1 of these Protective Covenants. For any act or decision that requires a count of Lots or a vote of Lot Owners, each unplatted parcel is counted as one Lot per one-fifth acre of gross area, rounding down to the nearest one-fifth acre. The Owner of an unplatted parcel has one vote for the first one-fifth acre of gross area and an additional vote for each additional full one-fifth acre of gross area (the equivalent of 5 votes per acre of gross area), which must be cast as a block and may not be divided for purposes of voting.

C.3.2. **Expansion.** The Property is subject to expansion. During the Development Period, Declarant may, but is not required to, annex any real property: (1) any portion of which is contiguous with, adjacent to, or within 1,000 feet of any real property that is subject to these Protective Covenants, (2) in any addition or subdivision platted by the City of De Cordova as a phase or section of Fountain Village, or (3) located in a planned development district created by the City of De Cordova for the property subject to these Protective Covenants. Declarant annexes real property by



subjecting it to these Protective Covenants and the jurisdiction of the Association by recording a supplement or an amendment of these Protective Covenants, executed by Declarant, in Hood County's Real Property Records. The supplement or amendment of annexation must include a description of the additional real property or a reference to the recorded plat that describes the additional real property. Declarant's right to annex land is for a term of years and does not require that Declarant own land described in Appendix A at the time or times Declarant exercises its right of annexation.

C.3.3. **Withdrawal**. During the Development Period, Declarant may withdraw from the Property any portion of the real property (1) that is not platted with house Lots or (2) that is platted as a phase of Fountain Village, provided that no Lot in the phase to be withdrawn has been conveyed to an Owner other than Declarant or a Builder.

C.3.4. **Changes in Development Plan**. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the owner of the land or Lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of Lots and streets; (b) change the minimum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

C.3.5. **Builder Limitations**. Declarant may require its approval (which may not be unreasonably withheld) of all documents and materials used by a Builder in connection with the development and sale of Lots, including without limitation promotional materials; deed restrictions; forms for deeds, Lot sales, and Lot closings. Without Declarant's prior written approval, a Builder may not use a sales office or model in the Property to market houses, Lots, or other products located outside the Property.

C.3.6. **Architectural Control**. During the Development Period, Declarant has the absolute right to serve as the Architectural Reviewer pursuant to Article 6 of these Protective Covenants. Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under Article 6 and this Appendix to (1) an Architectural Control Committee appointed by the Board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Declarant also has the unilateral right to exercise architectural control over vacant Lots in the Property. Neither the Association, the Board of Directors, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of new homes and related improvements on vacant Lots.

C.3.7. **Amendment**. During the Development Period, Declarant may amend these Protective Covenants and the other Documents, without consent of other Owners or any mortgagee, for the following limited purposes:

- a. To add real property and improvements to the Property.
- b. To withdraw real property from the Property.

c. To create Lots, Easements, and Common Areas, Common Facilities and Common Amenities within the Property.

d. To subdivide, combine, or reconfigure Lots.

e. To convert Lots into Common Areas.

f. To convey or dedicate portions of the Property to the Association or to Hood County.

g. To modify the construction and use restrictions of Article 7 of these Protective Covenants.

h. To modify the construction specifications of Appendix B of this Declaration.

i. To merge the Association with another property owners association.

j. To comply with requirements of an underwriting lender.

k. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.

l. To enable any reputable title insurance company to issue title insurance coverage on the Lots.

m. To enable an institutional or governmental lender to make or purchase mortgage loans on the Lots.

n. To change the name or entity of Declarant.

o. To change the name of the addition in which the Property is located.

p. To change the name of the Association.

q. For any other purpose, provided the amendment has no material adverse effect on any right of any Owner.

C.3.8. **Completion.** During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the Plat; (2) the right to sell or lease any Lot owned by Declarant; and (3) an Easement and right to erect, construct, and maintain on and in the Common Area and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

C.3.9. **Easement to Inspect & Right to Correct.** During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist

Fountain Village Protective Covenants

on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a Screening Wall located on a Lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.

C.3.10. **Promotion.** During the Development Period, Declarant reserves for itself an Easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and residents, for purposes of promoting, identifying, and marketing the Property and/or Declarant's houses, Lots, developments, or other products located outside the Property. Declarant reserves an Easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events, such as open houses, MLS tours, and brokers parties, at the Property to promote the sale of Lots. During the Development Period, Declarant also reserves (1) the right to permit Builders to place signs and promotional materials on the Property and (2) the right to exempt Builders from the sign restriction in this Declaration.

C.3.11. **Offices.** During the Development Period, Declarant reserves for itself the right to use dwellings owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to Lots and dwellings used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

C.3.12. **Access.** During the Development Period, Declarant has an Easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property and the Additional Land, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the home-buying public through any existing or future gate that restricts vehicular access to the Property or to the Additional Land in connection with the active marketing of Lots and homes by Declarant or Builders, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

C.3.13. **Utility Easements.** During the Development Period, Declarant may grant permits, licenses, and Easements over, in, on, under, and through the Property for drainage, utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the Easements on any Lot, as shown on the Plat, to more efficiently or economically install drainage features, utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, propane, telephone, television, cable, internet service, and security. To exercise this right as to

land that is not a Common Area of the Property or not owned by Declarant, Declarant must have the prior written consent of the land owner.

C.3.14. **Assessments**. For the duration of the Development Period, any Lot owned by Declarant is not subject to mandatory assessment by the Association until the date Declarant transfers title to an Owner other than Declarant. If Declarant owns a Lot on the expiration or termination of the Development Period, from that day forward Declarant is liable for assessments on each Lot owned by Declarant in the same manner as any Owner.

C.3.15. **Land Transfers**. During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Documents, including without limitation an obligation for transfer or resale certificate fees, and the transfer-related provisions of Article 8 of these Protective Covenants. The application of this provision includes without limitation Declarant's Lot take-downs, Declarant's sale of Lots to Builders, and Declarant's sale of Lots to homebuyers.

C.4. **Common Areas**. Declarant will convey title to the Common Areas to the Association by one or more deeds, with or without warranty. Any initial Common Area improvements will be installed, constructed, or authorized by Declarant. At the time of conveyance to the Association, the Common Areas will be free of encumbrance except for the property taxes accruing for the year of conveyance. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of Common Areas requiring inspection, evaluation, acceptance, or approval of Common Area improvements by the Owners.

C.5. **Declarant's and/or the Association's Yard Power**. Although the Association is interested in the condition and appearance of all Lots in the Property, Declarant may be particularly concerned, from time to time, about the appearance of the unfenced front and side yards because of their heightened visibility to potential purchasers of the Property. Therefore, on recording this Declaration, Declarant creates the Yard Power Easement defined below, which attaches to and burdens all of the Lots in the Property for the duration of the Development Period. The purpose of this easement is to permit, but not require, the Association, following the Development Period, to control the condition and attractiveness of yards that are visible to the home buying public.

C.5.1. **Definitions**. As used in this Section, the following terms have specified meanings:

a. **"Yard Area"** means that portion of the Lot surface that is (1) exterior to the dwelling, (2) not within a fenced yard, and (3) visible from a Street.

b. **"Yard Improvements"** means all items, materials, and plants in the Yard Area, including but not limited to fences, retaining walls, planter boxes, plant beds, mailboxes, yard lamps, decorative yard items, trees, shrubs, flowers, ground covers, lawns, other plant material, and yard irrigation systems. All Yard Improvements are owned by the Lot Owner.

c. **"Yard Power Easement"** means an easement of maintenance,

access, and entry over the Yard Areas of all Lots in the Property to ensure the attractiveness of the Yard Areas from streets in and around the Property. Declarant hereby reserves a right and easement of access and entry to the front and back Yard Areas of each Lot to exercise the discretionary rights created by this easement. Nothing in this Section may be construed to obligate Declarant to install any improvement on any Lot in the Property.

C.5.2. **Owner's Duties.** Following the Development Period, the Association may elect by a majority of the Lot Owners to rescind the obligation of the Association to maintain the front Areas as provided in these Protective Covenants. In the event such obligation of the Association is rescinded, the Owner of each Lot, at the Owner's expense, must continually maintain all the Yard Area and Yard Improvements on his Lot in a neat, groomed, healthy, and attractive condition, and to a standard that is commensurate with the neighborhood as determined by the Association. The Owner must regularly water lawns and plant material, and trim and maintain shrubs, flowers and other plant material, and remove litter. As needed, the Owner will treat plant diseases and infestations, and replace dead plant material. An Owner may not install or construct substantial Yard Improvements without the prior written consent of the Architectural Reviewer.

C.5.3. **Neighborhood Standards.** For purposes of this Section, the Architectural Reviewer shall be the arbiter of the standards of maintenance and appearance for the Yard Areas. The Architectural Reviewer may have higher standards for Yard Areas in certain parts of the Property at different times during the marketing of homes.

C.5.4. **Duration of Easement.** This easement for Declarant terminates automatically at the end of the Development Period, but may continue in effect if adopted by the Association. Declarant may terminate this easement earlier by recording a notice of termination in the Real Property Records of Hood County, Texas.

C.6. **Working Capital Fund.** Declarant may (but is not required to) establish a working capital fund for the Association by requiring purchasers of Lots to make a one-time contribution to this fund, subject to the following conditions:

a. The amount of the contribution will be not less than one-sixth of the Lot's annual assessment nor more than \$250.00 and will be collected on the closing of the sale of the Lot to an Owner other than Declarant, a Successor Declarant, or a Declarant-affiliate.

b. A Builder who buys Lots from Declarant is not exempt from the purchaser's obligation. If the Builder's contribution is not collected at time of closing on the Lot purchased from Declarant, for any reason or no reason, the Builder guarantees that the contribution will be paid when Builder closes the sale of the Lot to another Owner.

c. Subject to the foregoing Builder provision, if a Lot's contribution is not collected from the Owner at closing either by payment in cash or by Owner's execution of a Regular Assessment or Special Assessment Promissory Note payable to the Declarant or to the Association, neither Declarant nor the Owner of the Lot is thereafter liable for the contribution. Declarant acknowledges that

this condition may create an inequity among the Owners, but deems it a necessary response to the diversification of marketing and closing Lot sales.

d. Contributions to the fund are not advance payments of regular assessments and are not refundable to the contributor by the Association or by Declarant. This may not be construed to prevent a selling Owner from negotiating reimbursement of the contribution from a purchaser.

e. Declarant will transfer the balance of the working capital fund to the Association on or before termination of the Declarant Control Period. Declarant may not use the fund to defray Declarant's expenses or construction costs.

C.7. **Successor Declarant.** Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Real Property Records of Hood County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

#### **CERTIFICATION & ACKNOWLEDGMENT**

As the Declarant of Fountain Village and the initial and sole Member of the Fountain Village Homeowners Association, Inc., I certify that the foregoing Protective Covenants of Fountain Village Homeowners Association, Inc. were adopted by the Board of Directors of Fountain Village Homeowners Association, Inc. for the benefit of the Association and its Members.

#### **SIGNED AND ACKNOWLEDGED**

SIGNED on this 8<sup>th</sup> day of September, 2014.

#### **DECLARANT:**

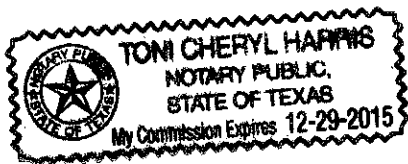
FV Investments, LLC

A Texas Limited Partnership

  
By: Bruce Thompson, President

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF HOOD       §

This instrument was acknowledged before me on this 8<sup>th</sup> day of September 2014 by Bruce Thompson, President of FV Investments, LLC, a Texas corporation, on behalf of said corporation in its capacity as authorized agent for FV Investments, LLC, a Texas limited liability company, on behalf of the limited liability company.



Toni Cheryl Harris  
Notary Signature

After recording, please return to:

Fountain Village Homeowners Association, Inc.  
1914 Acton Highway  
Granbury, Texas 76049

**Hood County Clerk  
201 W Bridge Street  
PO BOX 339  
Granbury, Texas 76048  
Phone: 817-579-3222**

Document Number: 2017-0001128 -  
Filed and Recorded - Real Records

**RESTRICTION**

Grantor: FOUNTAIN VILLAGE HOA

Pages: 2

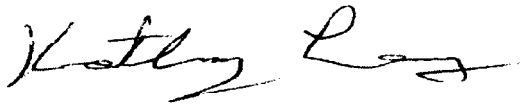
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<b>Receipt Number:</b>	R171003	
<b>Amount:</b>	\$21.00	
<b>Recorded By:</b>	Catherine Sarsfield	

Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**I hereby certify that this instrument was filed and duly  
recorded in the Official Records of Hood County, Texas**



Katie Lang  
County Clerk  
Hood County, Texas



**Return To: In Office**

LARRY FRENCH  
4900 CENTRE CT  
GRANBURY, TX 76049





## Amendment to Second Amended Protective Covenants Fountain Village Homeowners Association

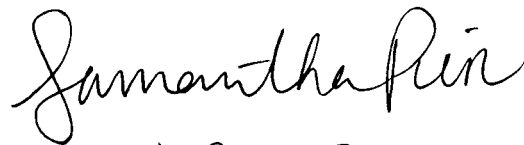
This amendment is made by the Fountain Village HOA Board effective January 17, 2017. This amendment replaces the affected sections in their entirety:

Section 7.24.1: **Vehicle/Vehicle Parking.** Owner's or tenant's passenger vehicles, of whatsoever kind and character, shall be parked in such owner's or tenant's garage or the space immediately behind the garage when not in use. This parking restriction shall not apply to visitors whose vehicles are not an oversize vehicle, as defined below, or persons performing work on or about the owner's premises on a temporary basis. Visitor's vehicles may be parked in front of a residence for a maximum of three consecutive days in any thirty day period. The parked visitor's vehicle (not running) must not be hazardous to, or impede normal vehicle traffic driving through, entering or exiting the street, nor parked in such a manner to impede any emergency vehicle entering Fountain Village. Any large truck, bus boat, boat trailer, utility trailer, mobile home, campmobile, camper or other conveyance, and any other vehicle which the Board deems to be a nuisance, unsightly, or inappropriate, that because of its size may not fit in an owner's garage or space immediately behind the garage may only be parked in front of an owner's home with the approval of the Board.

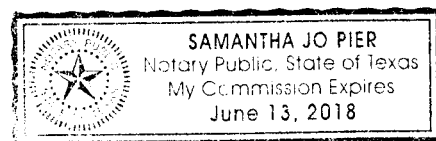
This restriction does not apply to vehicles and equipment temporarily on the property in connection with the construction or maintenance of a dwelling. Vehicles that transport inflammatory or explosive cargo are prohibited from the entire Fountain Village property.

Except as set forth in this amendment, the Covenants is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between tis amendment and the Covenants, the terms of this amendment will prevail.

  
Bruce Thompson, Chairman

  
1-23-17

1-23-17  
Date



**Hood County Clerk  
201 W Bridge Street  
PO BOX 339  
Granbury, Texas 76048  
Phone: 817-579-3222**

Document Number: 2017-0001129 -  
Filed and Recorded - Real Records

**RESTRICTION**

Grantor: FOUNTAIN VILLAGE HOA

Pages: 2

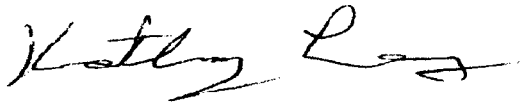
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<b>Document Number:</b>	2017-0001129	
<b>Receipt Number:</b>	R171003	
<b>Amount:</b>	\$21.00	
<b>Recorded By:</b>	Catherine Sarsfield	

Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**I hereby certify that this instrument was filed and duly  
recorded in the Official Records of Hood County, Texas**



Katie Lang  
County Clerk  
Hood County, Texas



**Return To: In Office**

LARRY FRENCH  
4900 CENTRE CT  
GRANBURY, TX 76049




**Amendment to Second Amended Protective Covenants  
Fountain Village Homeowners Association  
Appendix B**

This amendment is made by the Fountain Village HOA Board effective January 17, 2017. This amendment replaces the affected sections in their entirety:


**B.3 New Construction:** The dwelling must be constructed on the Lot. A dwelling or addition constructed elsewhere may not be moved onto a lot. Factory built homes are not permitted, even though assembled or finished on the Lot. The construction of a dwelling must be started promptly after the Architectural Reviewer approves the dwelling's plans and specification. All homes must meet the following "heated" square footage exclusive of any space in garage, porches or patios: minimum of 1600 square feet. At the start of construction, but not before, building material to be used in the construction may be stored on the Lot or with the Declarant's approval, on a nearby Lot. Once started, the dwelling and all improvements on the Lot must be completed within 180 days, barring any unusual weather or other difficulty (exceptions may only be approved by the Architectural Reviewer).

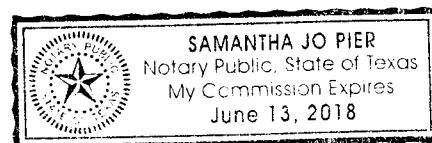
**B. 4 Exterior Wall Materials:** All exterior elevations visible from the street must be built with brick or stone or both. Any exceptions (use of stucco, hardy plank, etc.) must have the specific approval of the architectural reviewer. The quality and color of exterior wall materials and doors must be approved by the Architectural Reviewer. It is expected that the materials and colors will be in harmony with other homes in Fountain Village. Any exceptions must be approved by the Architectural Reviewer.

Except as set forth in this amendment, the Covenants/Appendix is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this amendment and the Covenants/Appendix, the terms of this amendment will prevail.

  
Bruce Thompson, Chairman

1-23-17  
Date

  
1-23-17



Return to: Larry French, 4900 Centre Ct, Granbury TX 76049

Hood County Clerk  
201 W Bridge Street  
PO BOX 339  
Granbury, Texas 76048  
Phone: 817-579-3222

Document Number: 2018-0016682 -  
Filed and Recorded - Real Records

OWNERS ASSOCIATION

Grantor: FOUNTAIN VILLAGE OA

Pages: 3

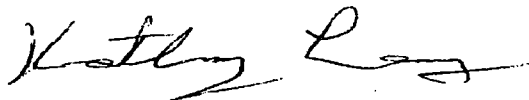
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<b>Recorded On:</b>	12/21/2018 04:13 PM	<b>Notes:</b>     
<b>Document Number:</b>	2018-0016682	
<b>Receipt Number:</b>	R1817039	
<b>Amount:</b>	\$25.00	
<b>Recorded By:</b>	Lauren Waite	

Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**I hereby certify that this instrument was filed and duly  
recorded in the Official Records of Hood County, Texas**



Katie Lang  
County Clerk  
Hood County, Texas



**Return To: In Office**



**Fountain Village Homeowners Association  
Rules and Regulations  
December 1, 2018**

**These Rules and Regulations are developed by the Board of Directors as outlined in the Covenants Section 7.3. Any exception to any of these rules must be requested from the Board**

1. **Parking Rules:** Overnight resident vehicle parking is not allowed on the street. Visitors may park on the street for no more than three consecutive days in a 30 day period. Trailers and oversized vehicles are prohibited. NO vehicle may be parked in an alleyway or driveway access at any time. Parking for events at the clubhouse is limited to only one side of the street to allow for emergency vehicles. The resident reserving the clubhouse is responsible for enforcing this rule.
2. **Speed Limit/one way driveway/exit and entry ROW:** No 'one way' rule has been established as of this date. However, exiting vehicles to the street should be allowed right of way. Also, NO vehicle may be parked in the alleys/driveway entrances including all construction vehicles. The speed limit has been established at 15 MPH, and signs are posted. Interior alleys are NOT shortcuts.
3. **Clubhouse/Pool/Common Areas:** The clubhouse, not including the pool, is available to residents by reservation and the resident is required to be on site during their event. Resident rental fee is \$50/day. Rental is only available to residents whose dues are current.  
The pool is open daily from 8 AM to 9PM. A pool service has been hired to take care of water levels and chemical application. Residents may not adjust pool levels or chemicals. Smoking is NOT allowed in the pool/clubhouse area.  
The small park areas around the community are provided for use by neighbors and to add beauty to the neighborhood. Residents are encouraged to avoid damaging structures in these areas.
4. **Pets:** Pet ownership is limited to three animals of a size appropriate for the small courtyard areas. Residents must pick up after their pets when walking. All pets must be on a leash when out of the house/yard. Noisy animals that disturb residents must be restrained.
5. **External Decorations:** Holiday decorations are encouraged, but must be removed in a timely manner. They should not be put up before November 1 and must be taken down before January 31. Lighting should not cause any issues with neighbors.
6. **Fireworks/Other Noise:** Fireworks are prohibited. Any other noise making activity is strongly discouraged.
7. **Landscaping/Front Yard Maintenance:** FV contracts with a lawn service to maintain and fertilize lawns, maintain shrubs and trees, and repair damage to sprinkler systems in the Common Areas. Fenced in yards and all flower beds are the responsibility of the lot owner. Yard art is allowable, but only in front and side flower beds.

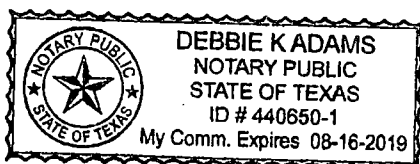
8. **Home Based Business:** Allowable as long as there is no external evidence of business use.
9. **Disposal of Vermin, Termites, Fire Ants, and other pests:** Pest control in common areas is the responsibility of the HOA. Control of pests on private lots is the responsibility of the lot/homeowner. Residents are responsible to maintain control of pests and vermin on their properties.
10. **Gate Opening and Closing:** The Property Committee will from time to time advise all neighbors about the times of front gate opening/closing. During the construction phase, the back gate will be open Monday through Saturday. Construction vehicles of all kinds are required to use the back gate.
11. **Construction/ACC Rules:**
  - a. A checklist is required for all reviews of site plans to be completed by ACC
  - b. Driveways and alleyways may not be blocked by construction vehicles. Fines will be issued WITHOUT advance warning
  - c. Contractor signage is required showing the name, company, and phone number for the responsible party
  - d. Construction and personal trash is expected to be picked up routinely. A schedule for these pick-ups must be provided to the ACC with the site plan.
  - e. Contractor certificate of liability insurance is required
  - f. Drainage plan is required if requested by the ACC
  - g. Damage to streets and curbs during construction must be repaired upon completion of the home on the property nearest the damage.
  - h. Damage to common areas including sprinklers, structures, and landscaping is required then the damage is discovered.
  - i. NO exterior home construction is allowed on Sundays, Thanksgiving Day, Christmas day, and New Years day. Noisy internal work is also prohibited.
12. **Home Leasing**
  - a. Upon acquiring ownership of a home in Fountain Village, the initial or future owner may not lease the residence or any portion of it until the expiration of twelve (12) months from the date of closing of the sale of the home, or recording of the deed to the home which conveys title, whichever is earlier. Hardship cases will be reviewed by the Board.
  - b. Leasing applications must be referred to the Board before a lease agreement may be executed in Fountain Village.



Larry P. French, President

State of Texas, County of Hood

This instrument was acknowledged before me on 12/21/18 by Larry P French,  
President of Fountain Village Homeowners Association, a Texas Corporation on  
Behalf of said Corporation




**Hood County Clerk  
201 W Bridge Street  
PO BOX 339  
Granbury, Texas 76048  
Phone: 817-579-3222**

Document Number: 2019-0008039 -  
Filed and Recorded - Real Records

**RESTRICTION**

Grantor: FOUNTAIN VILLAGE HOA

Pages: 3

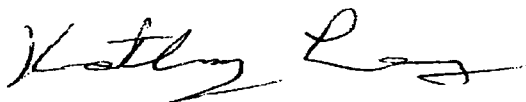
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<b>Document Number:</b>	2019-0008039	
<b>Receipt Number:</b>	R198318	
<b>Amount:</b>	\$25.00	
<b>Recorded By:</b>	Lauren Waite	

Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**I hereby certify that this instrument was filed and duly  
recorded in the Official Records of Hood County, Texas**



Katie Lang  
County Clerk  
Hood County, Texas



**Return To: In Office**



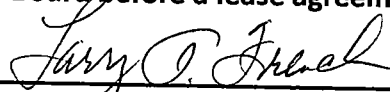
**Fountain Village Homeowners Association  
Rules and Regulations  
April 1, 2019**

These revised Rules and Regulations are developed by the Board of Directors as outlined in the Covenants Section 7.3. Any exception to any of these rules must be requested from the Board

1. **Parking Rules:** Overnight resident vehicle parking is not allowed on the street. Visitors may park on the street for no more than three consecutive days in a 30 day period. Trailers and oversized vehicles are prohibited. NO vehicle may be parked in an alleyway or driveway access at any time. Parking for events at the clubhouse is limited to only one side of the street to allow for emergency vehicles. The resident reserving the clubhouse is responsible for enforcing this rule.
2. **Speed Limit/one way driveway/exit and entry ROW:** No 'one way' rule has been established as of this date. However, exiting vehicles to the street should be allowed right of way. Also, NO vehicle may be parked in the alleys/driveway entrances including all construction vehicles. The speed limit has been established at 15 MPH, and signs are posted. Interior alleys are NOT shortcuts.
3. **Clubhouse/Pool/Common Areas:** The clubhouse, not including the pool, is available to residents by reservation and the resident is required to be on site during their event. Resident rental fee is \$50/day. Rental is only available to residents whose dues are current.  
The pool is open daily from 8 AM to 9PM. A pool service has been hired to take care of water levels and chemical application. Residents may not adjust pool levels or chemicals. Smoking is NOT allowed in the pool/clubhouse area.  
The small park areas around the community are provided for use by neighbors and to add beauty to the neighborhood. Residents are encouraged to avoid damaging structures in these areas.
4. **Pets:** Pet ownership is limited to three animals of a size appropriate for the small courtyard areas. Residents must pick up after their pets when walking. All pets must be on a leash when out of the house/yard. Noisy animals that disturb residents must be restrained.
5. **External Decorations:** Holiday decorations are encouraged, but must be removed in a timely manner. They should not be put up before November 1 and must be taken down before January 31. Lighting should not cause any issues with neighbors. Otherwise, natural plants only are permitted as exterior decorations in Fountain Village. Other decorations must be approved by the Board.
6. **Fireworks/Other Noise:** Fireworks are prohibited. Any noise making activity is strongly discouraged.
7. **Landscaping/Front Yard Maintenance:** FV contracts with a lawn service to maintain and fertilize lawns, maintain shrubs and trees, and repair damage to sprinkler systems in the Common Areas. Fenced in yards and all flower beds are the responsibility of the lot owner. Yard art is allowable, but only in front and side flower beds (see #5).

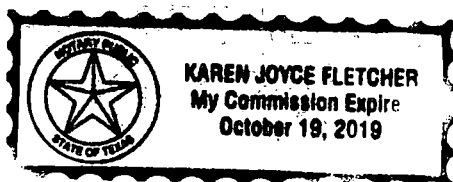


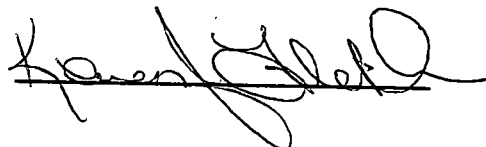
8. **Home Based Business:** Allowable (no external evidence of business use).
9. **Disposal of Vermin, Termites, Fire Ants, and other pests:** Pest control in common areas is the responsibility of the HOA. Control of pests on private lots is the responsibility of the lot/homeowner. Residents are responsible to maintain control of pests and vermin on their properties.
10. **Gate Opening and Closing:** The Property Committee will from time to time advise all neighbors about the times of front gate opening/closing. During the construction phase, the back gate will be open Monday through Saturday. Construction vehicles of all kinds are required to use the back gate.
11. **Construction/ACC Rules:**
  - a. A checklist is required for all reviews of site plans to be completed by ACC
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  - e. Contractor certificate of liability insurance is required
  - f. Drainage plan is required if requested by the ACC
  - g. Damage to streets and curbs during construction must be repaired upon completion of the home on the property nearest the damage.
  - h. Damage to common areas including sprinklers, structures, and landscaping is required then the damage is discovered.
  - i. NO exterior home construction is allowed on Sundays, Thanksgiving Day, Christmas day, and New Years day. Noisy internal work is also prohibited.
12. **Home Leasing**
  - a. Upon acquiring ownership of a home in Fountain Village, the initial or future owner may not lease the residence or any portion of it until the expiration of twelve (12) months from the date of closing of the sale of the home, or recording of the deed to the home which conveys title, whichever is earlier.
  - b. Hardship cases will be reviewed by the Board, including (but not limited to): a new home that does not sell within 120 days of completion; family crisis; unexpected changes in employment/personal financial conditions; etc.
  - c. Leasing applications must be referred to the Board before a lease agreement may be executed in Fountain Village.

  
 Larry P. French, President

State of Texas, County of Hood

This instrument was acknowledged before me on 23rd 2 June 2019 by Larry P. French, President of Fountain Village Homeowners Association, a Texas Corporation on behalf of said Corporation





**Hood County Clerk  
201 W Bridge Street  
PO BOX 339  
Granbury, Texas 76048  
Phone: 817-579-3222**

Document Number: 2020-0004528 -  
Filed and Recorded - Real Records

DECLARATION/DESIGNATION

Grantor: FOUNTAIN VILLAGE HOA

Pages: 49

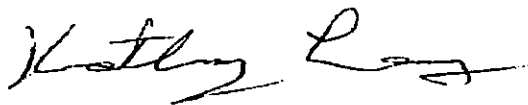
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<b>Recorded On:</b>	04/02/2020 02:12 PM	<b>Notes:</b>     
<b>Document Number:</b>	2020-0004528	
<b>Receipt Number:</b>	R204718	
<b>Amount:</b>	\$209.00	
<b>Recorded By:</b>	Jeannie Ingram	

Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**I hereby certify that this instrument was filed and duly  
recorded in the Official Records of Hood County, Texas**



Katie Lang  
County Clerk  
Hood County, Texas



**Return To: Mail Back**

LARRY FRENCH PRESIDENT  
3317 FOUNTAIN WAY  
GRANBURY , TX 76049



**THIRD AMENDED AND RESTATED**

**DECLARATION OF TERMS, CONDITIONS,  
RESTRICTIONS AND PROTECTIVE COVENANTS**

**FOR**

**FOUNTAIN VILLAGE**

**A RESIDENTIAL SUBDIVISION  
LOCATED IN HOOD COUNTY, TEXAS**

**PROPERTY**

Fountain Village is an addition located in the ETJ of the City of De Cordova, Hood County, Texas, the Final Plat having been recorded on June 27, 2006, as Slide No. C-66, and the First Amended Final Plat having been recorded on February 15, 2007, as Slide No. C-124, and Second Amended Final Plat recorded August 5, 2008 in slide C-228, and Third Amended Final Plat recorded April 17, 2008 in slide C-210, and partial Replat filed September 6, 2012 in slide P-417 and partial Replat filed April 4, 2014 in slide P-478.

STATE OF TEXAS            )  
  )  
COUNTY OF HOOD        )

**THIRD AMENDED AND RESTATED  
DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND  
PROTECTIVE COVENANTS FOR FOUNTAIN VILLAGE**

(herein the "**PROTECTIVE COVENANTS**")

**THIS AMENDED DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND PROTECTIVE COVENANTS FOR FOUNTAIN VILLAGE**, (hereinafter referred to as the "**Protective Covenants**") made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2020 by Fountain Village Homeowner's Association, Inc., as hereinafter described, and as may be redefined and amended in the future.

**WITNESSETH:**

**THAT WHEREAS**, Fountain Village Homeowner's Association represents owners of certain real property in the County of Hood, State of Texas, described in Exhibit "A" attached hereto (the "Property"), being 75 platted Patio Home Lots contained in the Fountain Village Subdivision recorded as described on Page 1 of this document.

**WHEREAS**, that certain First Amended Declaration of Terms, Conditions, Restrictions and Protective Covenants for Fountain Village were recorded on February 15, 2007, in Volume 2275, Page 0994 of the Deed Records of Hood County (the "First Amended Protective Covenants") as amended by the Second Amended Declaration of Terms, Conditions, restrictions and Protective Covenants for Fountain Village on September 8, 2014; and

**WHEREAS** for the protection and benefit of all persons who are owners of Lots or who may hereafter become owners of Lots located within the Subdivision, that the Second Amended Protective Covenants be replaced and superseded by this Third Amended and Restated Declaration (herein the "Protective Covenants") and that the Property continue to be developed with limitations, restrictions and uses. This Declaration (herein the "Protective Covenants") shall run with the land and be binding upon all parties who have acquired title to Lots and who may hereafter acquire title to Lots within the Property until July 31, 2050, at which time said Protective Covenants shall be automatically extended for successive periods of (10) years, unless by vote of a majority of the total votes allocated to property owners in the Association (over 50%) agree to change these Protective Covenants in whole or in part.

**ARTICLE 1  
DEFINITIONS**

The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. **"Additional Land"** means real property which may be added to the Property and subjected to these Protective Covenants as described in Section 3.2 of this Declaration.

1.2. **"Applicable Law"** means the statutes, public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of any provision in any Document. Statutes and ordinances specifically referenced in the Documents are "Applicable Law" on the date of the Document, and are not intended to apply to the Property or to the Subdivision if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.3. **"Architectural Reviewer"** means the entity having jurisdiction over a particular application for architectural approval. The board-appointed Architectural Control Committee is the Architectural Reviewer.

1.4. **"Assessment"** means any charge levied against a Lot or Owner by the Association, pursuant to the Documents or State law, including but not limited to Annual Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article 9 of these Protective Covenants.

1.5. **"Association"** means the association of Owners of all Lots in the Property, initially organized as "Fountain Village Homeowners Association, Inc." a Texas nonprofit corporation, and serving as the "Property Owners' Association" defined in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from these Protective Covenants and the ByLaws.

1.6. **"Board"** means the Board of Directors of the Association.

1.7. **"City ETJ"** means the Extra Territorial Jurisdiction of the City of De Cordova, Texas, in which the Property is located.

1.8. **"Common Area"** (inclusive, but not limited to the designation of real property as **"Recreational Area"**) means portions of real property and improvements thereon that are owned and/or maintained by the Association, as described in Article 4 below.

1.9. **"Documents"** means, singly or collectively as the case may be, these Protective Covenants, the Plat, the ByLaws, the Association's Articles of Incorporation, and the Rules and Regulations of the Association, as any of these may be amended from time to time. An Appendix, Exhibit, Schedule, Certification or any other attachment accompanying a Document is a part of that Document.

1.10. **"Lot"** means a portion of the Property intended for independent ownership, on which there is or will be constructed a Patio Home (aka "Garden Home") residential dwelling, as shown on the Plat. As a defined term, "Lot" does not refer to Common Areas, even if platted and numbered as a Lot. Where the context indicates or requires, "Lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the Lot. Unplatted tracts may be included in the meaning of "Lot" pursuant to Section C.3.1 of Appendix C of these Fountain Village Protective Covenants

## Protective Covenants.

1.11. **"Majority"** means more than half. A reference to "a majority of Owners" in any Document or applicable law means "Owners of at least a majority of the Lots," unless a different meaning is specified.

1.12. **"Member"** means a Member of the Association, each Member being an Owner of a Lot, unless the context indicates that member means a member of the Board or a member of a committee of the Association. In the context of votes and decision-making, each Lot has only one Membership, although it may be shared by Co-Owners of a Lot.

1.13. **"Owner"** means a holder of recorded fee simple title to a Lot. Contract sellers and mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association. A reference in any Document or applicable law to a percentage or share of Owners or Members means Owners of at least that percentage or share of the Lots, unless a different meaning is specified. For example, "a Majority of Owners" means Owners of at least a majority of the Lots.

1.14. **"Plat"** means all plats, singly and collectively, recorded in the Real Property Records of Hood County, Texas, and pertaining to the real property described in Appendix A of these Protective Covenants, including all dedications, limitations, restrictions, easements, notes, and reservations shown on the First Amended Final Plat, as it may be amended from time to time. The First Amended Final Plat of Fountain Village was recorded on February 15, 2007, as Slide No. C-124, and Second Amended Final Plat recorded August 5, 2008 in slide C-228, and Third Amended Final Plat recorded April 17, 2008 in slide C-210, and partial Replat filed September 6, 2012 in slide P-417 and partial Replat filed April 4, 2014 in slide P-478.

1.15. **"Property"** means all the land subject to these Protective Covenants and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Fountain Village. The Property is located on land described in Appendix A to these Protective Covenants, and includes every Lot and any Common Area thereon.

1.16. **"Protective Covenants"** means this Document, as it may be amended from time to time.

1.17. **"Resident"** means an owner or leasee of a Patio Home residential dwelling.

1.18. **"Rules"** means Rules and Regulations of the Association adopted in accordance with the Documents or applicable law

1.19. **"Underwriting Lender"** means Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or U.S. Department of Veterans Affairs (VA), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options nor as a representation that the Property is approved by any institution.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO DOCUMENTS**

2.1. **Property.** The real property described in Appendix A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of these Protective Covenants, which run with the Property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. **Additional Property.** Additional real property may be annexed to the Property and subjected to these Protective Covenants and the jurisdiction of the Association on approval of Owners representing at least two-thirds of the Lots in the Property. Annexation of Additional Property is accomplished by recording a Declaration of Annexation, including an Amendment of Appendix A, in Hood County's Real Property Records.

2.3. **De Cordova's Ordinance - General.** The City of De Cordova, Hood County, Texas may from time to time have an ordinance pertaining to planned developments with property owners associations in the City ETJ. No amendment of the Documents, nor any act or decision of the Association after the passage of an ordinance or an amendment to an ordinance, which is not in compliance with the ordinance during its period of effectiveness, may violate the requirements of the ordinance. The Association should stay informed about the city's requirements.

2.4. **Hood County Regulations.** Notwithstanding the fact that the development of property within the City ETJ is not regulated by Hood County, Fountain Village Homeowner's Association will continue to use its "best efforts" to comply with Hood County Regulations including emergency accessibility and fire hydrant placement, property drainage, and the paving density of the road construction.

2.5. **Adjacent Land Use.** Association makes no representations of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property.

2.6. **Plat Dedications, Easements & Restrictions.** In addition to the easements and restrictions contained in these Protective Covenants, the Property is subject to the dedications, limitations, notes, easements, restrictions, and reservations shown or cited on the Plat, which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by the Plat, and further agrees to maintain any easement that crosses his Lot and for which the Association does not have express responsibility.

2.7. **Streets Within Property.** Because streets, alleys, and cul-de-sacs within the Property (herein "**streets**") are capable of being converted from privately owned to publicly dedicated, and vice versa, this Section addresses both conditions. Private streets are part of the Common Area, which is governed by the Association. Public streets are part of the Common Area only to the extent they are not maintained or regulated by the city or county. To the extent not prohibited by public law, the Fountain Village Protective Covenants

Association, acting through the Board of Directors (herein "**Board**"), is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of the streets - whether private or public - including but not limited to:

- a. Identification of vehicles used by Owners and residents and their guests.
- b. Designation of speed limits and parking or no-parking areas.
- c. Limitations or prohibitions on curbside parking.
- d. Removal or prohibition of vehicles that violate the Association's applicable rules and regulations.
- e. Fines for violations of the Association's applicable rules and regulations.

### **ARTICLE 3**

#### **PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS**

3.1. **General.** In addition to other easements and rights established by the Documents, the Property is subject to the easements and rights contained in this Article.

3.2. **Public Access Easement.** As noted and shown on the Plat of Fountain Village, various Common Areas are burdened by specific public access easements that may be used by emergency personnel.

3.3. **Drainage Easement.** Certain Common Areas are burdened by a "Drainage Easement." The Drainage Easement, including drainage maintenance and related matters thereon, shall be maintained by the Association as a Common Expense.

3.4. **Easement for Screening Wall.** The Association is hereby granted a perpetual easement (the "**Screening Wall Easement**") over each Lot (1) on or along North Gate Road and James Road, and (2) that abuts or contains a portion of the Property's main entry and emergency entry features or screening walls, fences, or berms, or other landscaping for the purposes stated in this Section, regardless of whether or how the Plat shows the easement or the entry feature, screening wall, fence, berm, or other landscaping. The purpose of the Screening Wall Easement is to provide for the existence, repair, improvement, and replacement of the Property's entry features, screening walls, fences, berms, and landscaping to be maintained by the Association as a Common Area. In exercising this Screening Wall Easement, the Association may construct, repair, maintain, improve, and replace improvements reasonably related to the entrances and screening of the residential subdivision, including: screening walls, fences, community gates, berms, planter beds, landscaping, plant material, electrical and water meters, fountains, water falls, and all related equipment, street lamps and fixtures, light fixtures and sprinkler systems, all Recreational Area facilities and equipment, all other Common Area equipment, and all signage relating to the Property. The Owners of the Lots burdened with the Screening Wall Easement will have the continual use and enjoyment of their Lots for any purpose that does not interfere with and prevent the Association's use of the Screening Wall Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of any potentially burdened Lot as may be reasonably necessary for the Association to perform its contemplated work on the Screening Wall

Fountain Village Protective Covenants



Easement. This easement is perpetual. The Screening Wall Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. This Screening Wall Easement does not apply or pertain to fences installed on individual Lots, even though the Lot abuts a public or private roadway.

3.5. **Owner's Easement of Enjoyment.** Every Owner is granted a right and easement of enjoyment over the Common Areas and to use of all improvements therein, subject to other rights and easements contained in the Documents. An Owner who does not occupy a Lot delegates this right of enjoyment to the residents of his Lot. Notwithstanding the foregoing, if a portion of a Common Area, specifically the Clubhouse, is designed for owner use, the Association may temporarily reserve the use of such area for certain persons and purposes.

3.6. **Owner's Ingress/Egress Easements.** Every Owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his Lot. Similarly, every Owner is granted a perpetual easement over the Property's sidewalks and all Recreational Areas and Common Areas, subject to abiding by the rules of the Association.

3.7. **Rights of City and County.** The City of De Cordova and the County of Hood, including their agents and employees, have the right of immediate access to the Common Areas at all times as necessary for the welfare and protection of the public, to enforce city and county ordinances, or for the preservation of public property. If the Association fails to maintain the Common Areas to a standard acceptable to the City, the City may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the City's written demand (at least 90 days), the City may maintain the Common Areas at the expense of the Association after giving written notice of its intent to do so to the Association. To fund or reimburse the City's cost of maintaining the Common Areas, the City may levy an assessment against the Association's Common Area property in the same manner as if the Association levied a special assessment against the Lots. The City may give its notices and demands to any officer, director, or agent of the Association. The rights of the City under this Section are in addition to other rights and remedies provided by law.

3.8. **Association's Access Easement.** The Association is granted an easement of access and entry to every Lot and Common Area to perform maintenance, to enforce architectural and use restrictions, to respond to emergencies, and to perform any other duties required by the Documents, specifically including but not limited to "Routine Yard Maintenance" and the Association's blanket "Lot Yards & Grounds Maintenance Easement" on and over the entire Property, including all Lots, as set out in Section 7.14 below.

3.9. **Utility Easements.** The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of the Property and the Fountain Village community. Any company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement

may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television and/or internet, and security.

3.10. **Prohibition Against Water Wells.** The drilling of water wells on any Association Properties or Member Properties without the written consent of both the Association and the Acton Municipal Utility District ("AMUD") is prohibited. This Section 3.10 may not be amended by the Association or the Members without the written approval of AMUD.

3.11. **Mineral Rights.** Some or all of the Property may be subject to a previous owner's acquisition, reservation, or conveyance of oil, gas, or mineral rights pursuant to one or more deeds recorded in the Real Property Records of Hood County, Texas, including but not limited to rights to all oil, gas, or other minerals lying on, in, or under the Property and surface rights of ingress and egress. Because any deed reserving a mineral interest may have been recorded prior to these Protective Covenants, it would be a superior interest in the Property and is not affected by any provision to the contrary in these Protective Covenants. By accepting title to or interest in a Lot, every Owner acknowledges the existence of the mineral right or reservation referenced in this Section and its attendant rights in favor of the owner of the mineral interest.

3.12. **Notice of Limitation on Liability.** The development of the Property occurs during a period when many local governments are trying to be absolved of liability for flood damage to private property. As a condition of Plat approval, a governmental entity may require a Plat note that not only disavows the entity's liability for flood damage, but affirmatively assigns the liability to the Association. Notwithstanding Plat notes or public codes or ordinances now in existence or hereafter created, the Association cannot and should not be liable for acts of God or for property damage that is not the result of the Association's negligence or willful misconduct. The Association does not accept liabilities imposed by any governmental entity for which the Association cannot obtain insurance at a reasonable cost, or for which its Members refuse to fund reserve accounts at levels sufficiently high to pay the damages for which the governmental entity may seek to make the Association liable. This notice is not intended to create a liability for any governmental entity. Further, this notice may not be construed to create a duty for the Association to obtain insurance or to fund reserve accounts for damage from rising or flooding waters.

3.13. **Security.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and resident acknowledges and agrees, for himself and his guests, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and resident further acknowledges that the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and resident acknowledges and agrees the Fountain Village Protective Covenants

Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

3.14. **Risk.** Each resident uses all Recreational Areas and Common Areas at his own risk. All Recreational Areas and Common Areas are unattended and unsupervised. Each resident is solely responsible for his own safety and that of his guests. The Association disclaims any and all liability or responsibility for injury or death occurring from use of the Common Areas.

#### **ARTICLE 4 COMMON AREA**

4.1. **Ownership.** The designation of real property as a Common Area (inclusive, but not limited to the designation of real property as "Recreational Area") is determined by the Plat and these Protective Covenants, and not by the ownership of the Property. These Protective Covenants contemplate that the Association will eventually hold title to every Common Area capable of independent ownership by the Association. All costs attributable to Common Areas, including general maintenance, road and alley maintenance and repair, sidewalk maintenance and repair, landscaping and all landscaping features (including water fountains and related facilities and equipment) maintenance and repair, the maintenance of Common Area structures and improvements, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the Common Areas, unless these Protective Covenants elsewhere provide for a different allocation for a specific Common Area.

4.2 **Acceptance.** By accepting an interest in or title to a Lot, each Owner is deemed (1) to accept the Common Area of the Property, and any improvement thereon, in its then-existing "as is" condition; (2) to acknowledge the authority of the Association, acting through its Board of Directors, for all decisions pertaining to the Common Area; (3) to acknowledge the continuity of maintenance of the Common Area, regardless of changes in the Association's Board of Directors or management.

4.3. **Components.** The Common Area of the Property consists of the following components on or adjacent to the Property, even if located on a Lot or a public right-of-way:

- a. All of the Property, save and except the Patio Home Lots, specifically including but not limited to all community roadways, alleys, sidewalks, courtyards, and the Community Center lot, building and pool, community park, garden, or recreational areas which exist and/or are depicted on the Plat.
- b. The land described in Appendix A describes the whole property location.
- c. Any area shown on the Plat as Common Area or an area to be maintained by the Association.
- d. The main James Road entrance and the emergency North Gate Road entrance to the Property, including (if any) the signage, landscaping, berms,

fountains, water falls, electrical, security, lighting and water installations and related equipment, planter boxes, gates and related equipment, and fencing.

- e. The screening walls, fences, berms, or landscaping along the James Road and North Gate Road sides of the Property.
- f. Landscaping in Common Areas, including but not limited to on street islands, if any.
- g. The grounds between the perimeter streets and the screening walls, fences, berms or landscaping, to the extent that the Association has a right or duty to maintain or regulate that portion of the right-of-way.
- h. Any property adjacent to Fountain Village if the maintenance of same is deemed to be in the best interests of the Association, and is not prohibited by the Owner or operator of said property.
- i. Any modification, replacement, or addition to any of the above-described areas and improvements.
- j. Personal property owned by the Association, such as books and records, office equipment, and supplies.

## **ARTICLE 5**

### **PATIO HOME LOTS**

5.1. **General.** As shown on the Plat, most of the Lots in Fountain Village are designed for rows of patio homes that are similar in design to Zero-Lot-Line developments. Typically, the sidewall of one Patio Home serves as the courtyard wall of the neighboring patio home. The below-defined Wall Lot and Patio Lot are paired for purposes of this Article. An interior Lot may be paired on both sides – being a Wall Lot in relation to the neighboring Lot on one side, and a Patio Lot in relation to the neighboring Lot on the other side.

5.1.1. **Definitions.** As used in this Article, the following terms are defined:

- a. **"Wall"** means the side of a house that is in most cases approximately parallel to and within 5 feet of the Shared Lot Line, as defined below. Due to the curvature of the streets and the Property, some Lots are somewhat pie-shaped or shaped otherwise to conform to the curvatures; and therefore have larger varied distances from the Shared Lot Line. **"Wall Lot"** means the Lot on which the Wall is located. **"Wall House"** means the building of which the Wall is a structural component.
- b. **"Patio Lot"** means the Lot that shares the Shared Lot Line with the Wall Lot. **"Patio Home"** means the building on the Patio Lot. **"Patio"** means the fence-enclosed side yard or courtyard that may use all or part of the Wall as a courtyard wall. **"Patio Fence"** means the sections of fencing on the Patio Lot and the Wall

Easement Area that are in most cases more or less perpendicular to the Wall and which may tie to the Wall House, thereby enclosing the Patio for use by the Owner of the Patio Home.

- c. **"Shared Lot Line"** means the actual platted boundary between the Wall Lot and the Patio Lot, although the boundary may not be apparent on the site.
- d. **"Wall Easement Area"** means the strip of land entirely on the Wall Lot along the full length of the Shared Lot Line, and being as wide as the distance between the Wall and the Shared Lot Line (a minimum typical on many Lots is 3 feet wide). The Wall Easement Area adjoins the Patio Easement Area.
- e. **"Patio Easement Area"** means the strip of land entirely on the Patio Lot along the full length of the Shared Lot Line, and in most cases being at least 3 feet wide. The Patio Easement Area adjoins the Wall Easement Area.
- f. **"Shared Easement Area"** means the combination of the Wall Easement Area and the Patio Easement Area.

5.1.2. **City Ordinances.** Ordinances which may be adopted by the City of De Cordova will be provided to Owners, as required, and will be complied with if the physical nature of the Property and each Lot permit.

5.1.3. **Lot Use and Accessibility.** As a general rule, the Owner of a Lot has the sole and exclusive use of his Lot - from boundary to boundary, and is solely responsible for the maintenance of all portions of his Lot and all of the improvements on his Lot from boundary to boundary. The Patio Home concept at Fountain Village modifies that general rule. One purpose of this Article is to address the rights and responsibilities of the Owners of the paired Lots. Another purpose is to encourage a cooperative relationship between the Owners of the paired Lots. Reasons why the general rule of private property ownership are modified at Fountain Village include, but are not limited to, the following:

- a. The Association needs access to front and rear yard areas on all Fountain Village Lots to perform regular mowing, trimming, fertilization, weed control, and other front and rear yard maintenance. Owners may separately contract with the Association's yard maintenance contract provider for Patio Yard (fenced-in area), plant beds, sprinkler system and other landscaping maintenance.
- b. The Owner of the Wall Lot needs access to the Patio Lot to make repairs to the Wall House, which is located too close to the Shared Lot Line to provide a reasonable work area for equipment, materials, or personnel.
- b. The Owner of the Patio Lot needs use of the Wall and the Wall Easement Area as an extension of his Patio.

- c. The Owner of the Wall Lot needs use of the Wall Easement Area on the back side of the Wall Lot for utility meters and air conditioning equipment.
- d. The Owner of the Patio Lot needs use of the Wall Easement Area on the front side of the Wall Lot for maintenance of the Patio Fence and the front yard between the Patio Fence and the street.
- e. The Owner of either the Wall Lot or the Patio Lot may need use of either the Wall Easement Area or the Patio Easement Area on the back side of the Lots for the continued existence of the parking pad, if any, appurtenant to his driveway.

5.2. **Reservations and Easements.** The following reservations and easements are created by this Declaration and are in addition to easements, if any, shown on a Plat or created by separate instrument.

5.2.1. **Wall Lot Reservation.** Regardless of any right or easement created in favor of the Patio Lot, each Owner of a Wall Lot hereby reserves for himself the right to use the Wall Easement Area to maintain, use, remove, replace, or reconstruct the improvements on the Wall Lot that serve or support the Wall House, including without limitation the utility meters and air conditioning equipment located on the alley side or Patio Home side of the Wall Lot.

5.2.2. **Wall Lot Easement.** Subject to the foregoing reservation, the Patio Lot Owner is hereby granted an exclusive and perpetual right and easement of enjoyment and use over the Wall Easement Area, as may be reasonably required, for use as part of the Patio and the front yard area of the Patio Lot, including but not limited to landscaping, irrigation, and lighting. Specifically, the Patio Lot Owner is solely responsible for (1) maintenance, repair, and replacement of the Patio and Patio Fence, including any portion of the Patio and Patio Fence that is in the Wall Easement Area, and (2) the portion of the Wall Easement Area that is adjacent to the front yard of the Patio Home. The Patio Lot Owner is further hereby granted a non-exclusive and perpetual right and easement of enjoyment and use over the exterior surface of the Wall.

5.2.3. **Easement on Patio Lot.** The Wall Lot Owner is hereby granted a non-exclusive and perpetual right and easement of access across the Patio Lot to use the Patio Easement Area for purposes of maintaining, repairing, replacing, or reconstructing the Wall House.

5.2.4. **Driveway & Parking Pad Encroachments.** The concrete driveways and additional parking pads are constructed as the initial improvements on the Property without respect for individual Lot lines. A concrete driveway or parking pad that is on a Lot other than the Lot it is intended to serve is hereby deemed to be a permitted perpetual encroachment which may remain undisturbed as long as the driveway or parking pad exists. The Owner of the Lot that is served by the driveway or parking pad has exclusive use of those improvements and is solely responsible for the maintenance, repair, replacement, and reconstruction of same as if it were constructed entirely on the Owner's Lot.

5.3. **Limitations.** The reservations and easements created by this Article are subject to and conditioned by the following restrictions:

5.3.1. **Barriers.** Except for the Patio Fence, no person may construct a wall, fence, or other barrier or obstacle in the Shared Easement Area that interferes with the use of the easements and reservation created by this Article. In the event that a Patio Lot Owner does construct a structure, barrier or obstacle in the Shared Easement Area with or without the approval of the Architectural Control Committee that interferes with the use of the easements and reservation created by this Article, the Patio Lot Owner shall be solely responsible for the removal and any replacement or repair costs of such structure, barrier or obstacle in the Shared Easement Area to permit the use of the easements and reservation created by the Article.

5.3.2. **Access Request.** Except in case of an emergency or for the Lot yards maintenance and landscaping access, access to and use of the Shared Easement Area by the Owner of the Wall Lot requires a request to the Owner of the Patio Lot, in advance, for a time reasonably convenient for the Patio Lot Owner. The Patio Lot Owner may not refuse to provide access.

5.3.3. **Structural Change.** The Owner of either Lot may not make any structural change to the Wall or fail to do any act that interferes with the purpose of the Wall to structurally support and enclose the Wall House and to simultaneously serve as a courtyard wall for the Patio.

5.3.4. **Damage to Wall.** If an Owner is responsible for damage to or destruction of the Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Deed Records of Hood County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to contribution from another Owner under this Section is appurtenant to the land and passes to the Owner's successors in title.

5.3.5. **Damage to Property.** If an Owner damages the adjoining Lot, or damages or destroys any improvement or personal property on the adjoining Lot, in exercising the easements and reservation created by this Article, the Owner is obligated to restore the damaged property to its original condition (just prior to the damage), at his expense, within a reasonable period of time.

5.3.6. **Preventing Damage.** Use of the Shared Easement Area by the Owner of a Patio Lot must not damage the Wall House. Towards that end, the Owner of a Patio Lot must:

- a. Avoid planting or permitting the volunteer growth of trees with root systems that are destructive to the Wall House or its subsurface utility lines.
- b. Avoid allowing the ground to be so wet or so dry as to create a significant moisture imbalance for the foundation of the Wall House.

- c. Prevent trees on the Patio Lot from damaging the roof of the Wall House.
- d. Treat or allow the Wall Lot Owner to treat the Shared Easement Area for termites or other wood destroying pests if the Owner of the Wall Lot has reason to believe that such treatment is necessary to prevent termite damage to the Wall House.

5.3.7. **Drainage Issues.** The Owners of the paired Lots are required to cooperate to prevent or reduce drainage problems on either Lot. If the Owners fail or refuse to cooperate in a joint solution to a drainage problem that adversely affects either Lot, the Owner of the adversely affected Lot is hereby authorized to fix the problem, even if it requires maintenance, repair, replacement, or improvement of components or grading on the other Lot.

5.4. **Cooperation.** Each Owner of a Wall Lot or Patio Lot will endeavor to exercise his rights under this Article in a manner calculated to respect the rights, privacy, and privileges of the Owner of the paired lot. Each Owner will make a diligent effort to be cooperative, responsive, and civil in communications pertaining to the purposes of this Article. No provision of this Article may be interpreted as authority for one Owner to harass, inconvenience, tyrannize, or otherwise impose himself on the other Owner or the Owner's Lot. If a dispute arises between the Owners of the paired lots on a matter pertaining to this Article, the Owners will employ the dispute resolution procedures of Article 17 of these Protective Covenants.

5.5. **Applicability.** In the course of platting the Property and designing the houses, some variations exist. For example, if the Wall Lot is next to a Common Area, the Common Area may find itself in the role of a "Patio Lot" for purposes of providing access to the Owner of the Wall Lot, even though the Common Area does not have a Patio House. Some Lots are larger than others, or somewhat pie-shaped, or shaped otherwise to conform to the curvatures of the streets and the Property; and therefore have larger varied distances from the Shared Lot Line, thus making the applicability of this Article more subject to common sense and cooperation between neighbors. Users of this Article must apply common sense and rules of liberal construction in determining whether or how the terms of this Article apply to a particular Lot. In case of a conflict between a provision of this Article and a provision elsewhere in these Protective Covenants, the Architectural Control Committee controls.

## **ARTICLE 6**

### **ARCHITECTURAL COVENANTS AND CONTROL**

6.1. **Purpose.** Because the Lots are part of a single, unified community, these Protective Covenants create rights to regulate the design, use, and appearance of the Lots and the Common Areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements on a Lot, including but not limited to dwellings,

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fences, landscaping, retaining walls, yard art, sidewalks and driveways, and further including replacements or modifications of original construction or installation.

**BEFORE MAKING ANY IMPROVEMENT OR ANY ALTERATION  
TO A LOT OR DWELLING, A BUILDER OR OWNER  
MUST APPLY FOR WRITTEN APPROVAL.**

6.2. **Architectural Control by Association.** The Fountain Village board has full authority over Architectural Control through it's Architectural Control Committee.

6.2.1. **ACC Membership.** The ACC will consist of at least 3 but not more than 7 persons appointed by the Board, pursuant to the ByLaws. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC are construed to mean the Board. Members of the ACC need not be Owners or residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

6.2.2. **Limits on Liability.** The ACC has **sole discretion** with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the ACC, (2) supervising construction for the Owner's compliance with approved plans and specifications, or (3) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

6.3. **Prohibition of Construction, Alteration & Improvement.** Without the Architectural Reviewers' prior written approval, a person may not construct a dwelling or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property, if it will be visible from a street, another Lot, or the Common Area. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

6.4. **Architectural Approval.** To request architectural approval, an Owner must make written application to the Architectural Reviewer and submit 2 identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. In support of the application, the Owner may but is not required to submit letters of support or non-opposition from Owners of Lots that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer will return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information Required." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Architectural Reviewer's files. **Verbal approval by an Architectural Reviewer, an Association director or officer, a member of the ACC, or the Association's manager does not constitute**

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**architectural approval by the appropriate Architectural Reviewer, which must be in writing.**

6.4.1. **Deemed Approval.** Under the following limited conditions, the applicant may presume that his request has been approved by the Architectural Reviewer:

- a. If the applicant or a person affiliated with the applicant has not received the Architectural Reviewer's written response - approving, denying, or requesting additional information - within 60 days after delivering his complete application to the Architectural Reviewer.
- b. If the proposed improvement or modification strictly conforms to requirements and construction specifications contained in this Declaration and in any design guidelines for the Property in effect at the time of application.
- c. If those conditions are satisfied, the Owner may then proceed with the improvement, provided he adheres to the plans and specifications which accompanied his application, and provided he initiates and completes the improvement in a timely manner. In exercising deemed approval, the burden is on the Owner to document the Board's actual receipt of the Owner's complete application. Under no circumstance may approval of the Architectural Reviewer be deemed, implied, or presumed for an improvement or modification that would require a variance from the requirements and construction specifications contained in these Protective Covenants and in any design guidelines for the Property in effect at the time of application.

6.4.2. **No Approval Required.** No approval is required to repaint exteriors in accordance with the color scheme approved by the Architectural Reviewer, or to rebuild a dwelling in accordance with originally approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a dwelling as long as the remodeling or repainting doesn't affect the exterior whereby it can be seen.

6.4.3. **Building Permit.** If the application is for work that requires a building permit from a governmental body, the Architectural Reviewer's approval is conditioned on the issuance of the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, governmental approval does not ensure Architectural Reviewer approval.

6.4.4. **Neighbor Input.** The Architectural Reviewer may solicit comments on the application, including from Owners or residents of Lots that may be affected by the proposed change, or from which the proposed change may be visible. Whether to solicit comments, from whom to solicit comments, and whether to make the comments available to the applicant is solely at the discretion of the Architectural Reviewer. The Architectural Reviewer is not required to respond to the commentators in ruling on the application.

6.5. **Architectural Guidelines.** The Association shall record architectural restrictions, guidelines, and standards, which may be revised from time to time to reflect changes in technology, style, and taste.

## **ARTICLE 7**

### **CONSTRUCTION AND USE RESTRICTIONS**

7.1. **Variance.** The use of the Property is subject to the provisions of the documents defined in Section 1.9, and subject to rules adopted pursuant to this Article. The Board or the Architectural Reviewer, as the case may be, may grant a variance or waiver of a restriction or rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not affect a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance.

7.2. **Construction Restrictions.** Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every Lot must have the characteristics described in Appendix B, which may be treated as the minimum requirements for improving and using a Lot. The Architectural Reviewer and the Board may promulgate additional rules and restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article. An Owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his Lot and dwelling.

7.3. **Association's Right to Promulgate Rules.** The Association, acting through its Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. In addition to the restrictions contained in this Article, each Lot is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of Common Areas.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use and consumption of propane whether billed to Owners or the Association.
- f. The use, maintenance, and appearance of exteriors of dwellings and Lots.
- g. Landscaping and maintenance of yards.
- h. The occupancy and leasing of dwellings.
- i. Animals.

- j. Vehicles.
- k. Disposition of trash and control of vermin, termites, and pests.
- l. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for residents.

7.4. **Accessory Sheds.** Without the prior written approval of the Architectural Reviewer, accessory structures - such as doghouses, gazebos, storage sheds, playhouses, and greenhouses - are prohibited (not allowed) if visible from a street. Accessory structures may not be located in front yards or in unfenced portions of side yards facing streets. If an accessory structure that is visible from a street or another Lot is installed on a Lot without the prior written approval of the Architectural Reviewer, the Architectural Reviewer reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the Owner to screen it or to remove it.

7.5. **Animal Restrictions.** No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose or for food. Customary domesticated household pets may be kept for personal companionship subject to rules adopted by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than 3 dogs and/or cats may be maintained on each Lot. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other Lots. Pets must be maintained inside the dwelling, or may be kept in a fenced yard only if they do not disturb residents of other Lots. Any pets permitted by a resident to be outdoors in the Fountain Village community must be strictly controlled by such resident, either on a leash, physically held by the resident or otherwise physically contained and controlled. Resident is responsible for the removal of his pet's wastes from the Property. Unless the Rules provide otherwise, a resident must prevent his pet from relieving itself on the Common Area or the Lot of another Owner.

7.6. **Annoyance.** No Lot or Common Area may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of residents of other Lots; (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The Board has the sole authority to determine what constitutes an annoyance.

7.7. **Appearance.** Both the Lot and the dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring Lots. The Architectural Reviewer is the arbitrator of acceptable appearance standards.

7.8. **Color Changes.** The colors of buildings, fences, exterior decorative items, window treatments, and all other improvements on a Lot are subject to regulation by the Architectural Reviewer. Because the relative merits of any color are subjective matters of taste and preference, the Architectural Reviewer determines the colors that are acceptable to the Association. Do not change or add colors that are visible from the Fountain Village Protective Covenants

street or alley, a Common Area, or another Lot without the prior written approval of the Architectural Reviewer.

7.9. **Drainage.** No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the Board.

7.10. **Driveways.** The driveway portion of a lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the Board's prior approval, a driveway may not be used: (1) for storage purposes, including storage of boats, trailers, and inoperable vehicles; or (2) for repair or restoration of vehicles.

7.11. **Fires.** Except for barbecue grills and firepits, no exterior fires on the Property are permitted.

7.12. **Garages.** Without the Board's prior written approval, the original garage area of a Lot may not be enclosed or used for any purpose that prohibits the parking of two standard-size operable vehicles therein. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

7.13. **Guns.** Hunting and shooting are not permitted anywhere on or from the Property.

7.14. **Landscaping and Association Maintenance.** No person may perform landscaping, planting, or gardening on the Common Area without the Board's prior written authorization. All front yard areas on every Lot in Fountain Village and all Common Area grounds shall be regularly mowed, trimmed, fertilized and otherwise maintained by the Association (herein referred to as "Routine Yard Maintenance") the Association shall have a blanket "Yard Power Easement" on and over the front and rear yard areas (outside the private walled area) of all Lots in the entire Fountain Village Property. If in the opinion of the Board a resident either violates the landscaping rules of these Protective Covenants, or the ByLaws, or other rules promulgated by the Board, or in the sole opinion of the Board causes or allows damage to occur to his yard, plant beds, other landscaping, or sprinkler system, that resident shall be liable for the cost of any repair or restoration. Individual residents, at such resident's sole expense, are obligated to maintain his side fenced-in Patio Yard. Owners may separately contract with the Association's yard maintenance contract provider for Patio Yard, plant beds, sprinkler system and other landscaping maintenance.

7.15. **Leasing of Homes.** Upon acquiring ownership of a home in Fountain Village, the first or future owner may not lease the residence until the expiration of twelve (12) months from the date of closing of the purchase of the home, or the recording of the deed to the home which conveys title, whichever is earlier. Dwellings may be leased only in their entirety. All leases shall be in writing. No transient tenants may be accommodated in a dwelling. All leases must be for an initial term of not less than twelve (12) months. Whether or not it is so stated in a lease, every lease is subject to the Documents. An Owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto. Failure by the tenant or his invitees to comply with the Documents, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's

violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The Owner of a leased Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

7.16. **Noise & Odor.** A resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy residents of neighboring Lots. The Rules may prohibit the use of noise-producing security devices and wind chimes.

7.17. **Occupancy.** Other than the completed principal dwelling, no thing or structure on a Lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage, mobile homes, campers, and storage sheds.

7.18. **Residential Use.** The use of a house Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a resident from using a dwelling for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the dwelling as a residence; (2) the uses conform to applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the Lot by employees or the public in quantities that materially increase the number of vehicles parked on the Street; and (5) the uses do not interfere with residents' use and enjoyment of neighboring Lots. Prohibited uses include use of the Lot for retail, business, for profit or commercial use, including but not limited to an apartment house, flat, lodging house, hotel, motel, bed and breakfast lodge (for example Air BnB, Home Away or VBRO), or short-term rental property.

7.19. **Screening.** The Architectural Reviewer may require that the following items must be screened from the view of the public and neighboring Lots and dwellings, if any of these items exists on the Lot: (1) satellite reception equipment; (2) clotheslines, drying racks, and hanging clothes, linens, rugs, or textiles of any kind; (3) yard maintenance equipment; (4) wood piles and compost piles; (5) accessory structures that do not have prior approval of Architectural Reviewer; (6) garbage cans and refuse containers; (7) anything determined by the board to be unsightly or inappropriate for a residential subdivision. Screening may be achieved with fencing or with plant material, such as trees and bushes, or any combination of these. If plant material is used, a reasonable period of time is permitted for the plants to reach maturity as an effective screen. As used in this Section, "screened from view" refers to the view of a person in a passenger vehicle driving on a Street or alley, or the view of a person of average height standing in the middle of a yard of an adjoining Lot.

7.20. **Signs.** An Owner may erect, per Lot, one professionally made sign, conforming to the rules of the Association, of not more than 5 square feet advertising the Lot for sale or for rent. The sign should be placed in parallel to the street in the flower bed of the home. No other sign or unsightly object may be erected, placed, or permitted

to remain on the Property or to be visible from windows in the dwelling without the Board's prior written approval. The Board's approval may specify the location, nature, appearance, dimensions, number, and time period of a sign or object. The Association may effect the removal of any sign or object that violates this Section or which the Board deems inconsistent with neighborhood standards without liability for trespass or any other liability connected with the removal.

**7.21. Television, Electronic Equipment, Etc.** Each resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another Lot are prohibited within the Property, except (1) reception-only antennas or satellite dishes designed to receive television broadcast signals, (2) antennas or satellite dishes that are one meter or less in diameter and designed to receive direct broadcast satellite service (DBS), or (3) antennas or satellite dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services (MDS) (collectively, the "Antenna") are permitted if located (a) inside the structure (such as in an attic or garage) so as not to be visible from outside the structure, (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a structure below the eaves. If an Owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the Owner may install the Antenna in the least conspicuous location on or near the roof where an acceptable quality signal can be obtained. The Association may adopt reasonable rules for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law.

**7.22. Temporary Structures.** Except for "accessory sheds" as described above, improvements or structures of a temporary or mobile nature, such as tents, portable sheds, and mobile homes, may not be placed on a Lot if visible from a street or another Lot. However, an Owner or Owner's contractor may maintain a temporary structure (such as a portable toilet or construction trailer) on the Lot during construction of the dwelling.

**7.23. Vehicles.** All vehicles on the Property, whether owned or operated by the residents or their families and guests, are subject to this Section and Rules adopted by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may effect the removal of any vehicle in violation of this Section or the Rules without liability to the Owner or operator of the vehicle.

**7.23.1. Prohibited Vehicles.** Without prior written Board approval, the following types of vehicles and vehicular equipment - mobile or otherwise - may not be kept, parked, or stored anywhere on the Property - including overnight parking on streets and driveways - if the vehicle is visible from a street or from another Lot: mobile homes, motor homes, buses, trailers, boats, aircraft, inoperable vehicles, commercial truck cabs, trucks with tonnage over one ton, vehicles which are not customary personal passenger vehicles, and any vehicle which the Board deems to be a nuisance, unsightly, or inappropriate. This restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a dwelling. Vehicles that transport flammable or

explosive cargo are prohibited from the Property at all times, except commercial delivery of gas for residential use.

7.23.2. **Vehicle Parking.** Owner's or Tenant's passenger vehicles, of whatsoever kind and character, shall be parked in such owner's or tenant's garage or the space immediately behind the garage when not in use. This parking restriction shall not apply to visitors whose vehicles are not an oversized vehicle, as defined below, or persons performing work on or about the owner's premises on a temporary basis. Visitor's vehicles may be parked in front of a residence for a maximum of three consecutive days in any thirty day period. The parked visitor's vehicle (not running) must not be hazardous to, or impede normal vehicle traffic driving through, entering or exiting the street, nor parked in such a manner to impede any emergency vehicle entering Fountain Village. Any large truck, bus, boat, boat trailer, utility trailer, mobile home, camper or other conveyance, and any other vehicle which the Board deems to be a nuisance, unsightly, or inappropriate, that because of its size may not fit in an owner's garage or space immediately behind the garage may only be parked in front of an owner's home with the approval of the Board. This restriction does not apply to vehicles and equipment temporarily on the property in connection with the construction or maintenance of a dwelling. Vehicles that transport flammable or explosive cargo are prohibited from the entire Fountain Village property as stated in 7.23.1 above..

7.24. **Window Treatments.** All window treatments within the dwelling that are visible from the street or another dwelling must be maintained in good condition and must not detract from the appearance of the Property. The Architectural Reviewer may require an Owner to change or remove a window treatment that the ACC determines to be inappropriate or unattractive. The Architectural Reviewer may prohibit the use of certain colors or materials for window treatments.

## **ARTICLE 8**

### **ASSOCIATION AND MEMBERSHIP RIGHTS**

8.1. **Board.** Unless the Documents expressly reserve a right, action, or decision to the Owners, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors."

8.2. **The Association.** The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of the Fountain Village Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Documents. Among its duties, the Association levies and collects assessments, maintains the Common Areas, plus maintaining the Lot yards and Common Area grounds at the assessed expense of the Owners as set forth in Section 7.14 above, and pays the expenses of the Association, such as those described below. The Association shall come into operating existence on the earlier of (1) the issuance of Fountain Village Protective Covenants



its corporate charter and full legal formation, or (2) the initial levy of assessments against the Lots and Owners. The Association will continue to exist at least as long as these Protective Covenants are effective against the Property, regardless of whether its corporate charter lapses from time to time.

8.3. **Governance.** The Association will be governed by a Board of Directors elected by the Members. Unless the Association's ByLaws or Articles of Incorporation provide otherwise, the Board will consist of at least 3 persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the ByLaws and these Protective Covenants. Unless the Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners of at least a majority of all Lots, or at a meeting by Owners of at least a majority of the Lots that are represented at the meeting.

8.4. **Membership.** Each Owner is a Member of the Association, **ownership of a Lot being the sole qualification for membership.** Membership is appurtenant to and may not be separated from ownership of the Lot. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Lot is owned by more than one person or entity, each Co-Owner is a Member of the Association and may exercise the membership rights appurtenant to the Lot. A Member who sells his Lot under a Contract for Deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, regardless of the existence of the contract, seller remains liable for all assessments attributable to his Lot until fee title to the Lot is transferred.

8.5. **Voting.** One vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. If additional property is made subject to this Declaration, the total number of votes will be increased automatically by the number of additional Lots or tracts. Each vote is uniform and equal to the vote appurtenant to every other Lot. Cumulative voting is not allowed. Votes may be cast in person, by written proxy, or by absentee ballot according to the requirements of the Association's ByLaws.

8.6. **Voting by Co-Owners.** The one vote appurtenant to a Lot is not divisible. If only one of the multiple Co-Owners of a Lot is present at a meeting of the Association, that person may cast the vote allocated to the Lot. If more than one of the Co-Owners is present, the Lot's one vote may be cast with the Co-Owners' unanimous agreement. Co-owners are in unanimous agreement if one of the Co-Owners casts the vote and no other Co-Owner makes prompt protest to the person presiding over the meeting. Any Co-Owner of a Lot may vote by ballot or proxy, and may register protest to the casting of a vote by ballot or proxy by the other Co-Owners. If the person presiding over the meeting or balloting receives evidence that the Co-Owners disagree on how the one appurtenant vote will be cast, the vote will not be counted.

8.7. **Books & Records.** The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to Section 209.005 of the Texas Property Code.

8.8. **Indemnification.** The Association indemnifies every officer, director, committee chair, and committee member (for purposes of this Section, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors' and officers' liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

8.9. **Obligations of Owners.** Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

8.9.1. **Information.** Within 30 days after acquiring an interest in a Lot, within 30 days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (1) a copy of the recorded deed by which Owner has title to the Lot; (2) the Owner's address, electronic mail address, phone number, and driver's license number, if any; (3) any mortgagee's name, address, and loan number; (4) the name and phone number of any resident other than the Owner; (5) the name, address, and phone number of Owner's managing agent, if any.

8.9.2. **Pay Assessments.** Each Owner will pay assessments properly levied by the Association against the Owner or his Lot, and will pay regular assessments without demand by the Association.

8.9.3. **Comply.** Each Owner will comply with the Documents as amended from time to time.

8.9.4. **Reimburse.** Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a resident of the Owner's Lot, or the Owner or resident's family, guests, employees, contractors, agents, or invitees.

8.9.5. **Liability.** Each Owner is liable to the Association for violations of the Documents by the Owner, a resident of the Owner's Lot, or the Owner's or resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

8.10. **Transfer-Related Fees.** A number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in Fountain Village Protective Covenants

amount, kind, and number for the local marketplace and do not exceed the prescribed charges set by law. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (1) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (2) transfer to, from, or by the Association; (3) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board or the manager to levy transfer-related fees.

## **ARTICLE 9**

### **COVENANT FOR ASSESSMENTS**

9.1. **Purpose of Assessments.** The Association will use assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of Owners and residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of assessments is final.

9.2. **Personal Obligation.** An Owner is obligated to pay assessments levied by the Board against the Owner or his Lot. An Owner makes payment to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which these Protective Covenants pertain. No Owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

9.3. **Control for Assessment Increases.** This Section of this Protective Covenants may not be amended without the approval of Owners of a majority of the Lots. In addition to other rights granted to Owners by these Protective Covenants, Owners have the following powers and controls over the Association's budget:

9.3.1. **Veto Increased Dues.** At least 30 days prior to the effective date of an increase in Regular Assessments, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless Owners of at least a majority of the Lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

9.3.2. **Veto Special Assessment.** At least 30 days prior to the effective date of a Special Assessment, the board will notify an Owner of each Lot of the

amount of, the budgetary basis for, and the effective date of the Special Assessment. The Special Assessment will automatically become effective unless owners of at least a majority of the Lots disapprove the Special Assessment by petition or at a meeting of the Association.

9.4. **Types of Assessments.** There are 4 types of assessments: Regular, Special, Individual, and Deficiency, and Common Area.

9.4.1. **Regular Assessments.** Regular assessments are based on the annual budget. Each Lot is liable for its equal share of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined. If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular Assessments are used for Common Expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- a. Maintenance, repair, and replacement, as necessary, and as appropriate, operating expenses, of the Common Area, specifically including but not limited to all roadways and recreational common areas and common facilities and amenities, including, without limitation, the brick wall surrounding the development.
- b. Utilities billed to the Association.
- c. Services billed to the Association and serving all Lots.
- d. Taxes on property owned by the Association and the Association's income taxes.
- e. Management, legal, accounting, auditing, and professional fees for services to the Association.
- f. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- g. Premiums and deductibles on insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including any required fidelity bonds and directors' and officers' liability insurance.
- h. Contributions to the reserve funds.
- i. All costs of the Association's performance of its Property (including but not limited to all Lots) landscaping and maintenance obligations in Section 7.15 above, including without limitation all costs of the Routine Yard Maintenance as provided therein.

- i. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

**9.4.2. Common Area Assessments.** For each calendar year, the Association shall levy Common Area Fund Assessments against Owners of the Lots. The Association shall assess a sufficient amount to maintain a separate Common Area Fund set aside in an interest bearing account for the specific purpose of maintaining and repairing the Common Area, including the private streets within the Property and the entrances from county roads into the Property. Each such Owner shall be obligated to pay the Common Area Fund Assessments levied against and allocated to each Owner and the Parcel of such Owner, as provided in this Declaration. Such Common Area Fund Assessments shall be allocated among the Lots of Owners in the same manner as Regular Assessments are allocated. Written notice of any proposed change in the amount of any monthly Common Area Fund Assessments shall be sent to every Owner subject thereto not less than thirty (30) days prior to the effective date of such proposed change, and shall be submitted to the Members for approval at the Association's annual meeting or at a special meeting of the Members called for such purpose. In the event Common Area maintenance or repairs are required due to water or sewer facilities repairs made by or at the direction of the Acton Municipal Utility District ("AMUD"), such Common Area Funds shall be utilized by the Association to repair all damages to the Common Area. AMUD shall have no responsibility for such Common Area repairs or for the expense of such repairs. This Section 9.4.2 of the Protective Covenants may not be amended by the Association or its Members without the written approval of AMUD.

**9.4.3. Special Assessments.** In addition to Regular Assessments, and subject to the Owners' control for assessment increases, the Board may levy one or more Special Assessments against all Lots for the purposes of (1) defraying, in whole or in part, Fountain Village Homeowner's Association allocated cost of improvements to Lots and Common Areas (which costs are not included in the price of the Lot and Patio Home at the time of purchase by an Owner), or (2) funding Common Expenses not anticipated by the annual budget or reserve funds. Special Assessments shall be prorated equally among all Lots, and do not require the approval of the Owners. All Special Assessments will automatically become effective unless Owners of a majority of the lots of the Lots disapprove the Special Assessment by petition or at a meeting of the Association as provided in Section 9.3.2 above. However, the above provisions in this Section 9.4.2 notwithstanding, Special Assessments for the following purposes must be approved by Owners of at least a majority of the Lots:

- a. Acquisition of real property, other than the purchase of a Lot at the sale foreclosing the Association's lien against the Lot.
- b. Construction of additional improvements within the Property, but not replacement of original improvements.
- c. Any expenditure that may reasonably be expected to significantly

increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

9.4.4. **Individual Assessments.** In addition to Regular and Special and Common Area Fund Assessments, the Board may levy an Individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an Owner or his Lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefits received.

9.4.5. **Deficiency Assessments.** The Board may levy a Deficiency Assessment against all Lots for the purpose of defraying, in whole or in part, the cost of repair or restoration of the Property if insurance proceeds or condemnation awards prove insufficient.

9.5. **Basis & Rate of Assessments.** The share of liability for Common Expenses allocated to each Lot is uniform for all Lots, regardless of a Lot's location or the value and size of the Lot or dwelling.

9.6. **Annual Budget.** The Board will prepare and approve an estimated Annual Budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

9.7. **Due Date.** The Board may levy regular assessments on any periodic basis, such as annually, semi-annually, quarterly, or monthly. Regular Assessments are due on the first day of the period for which levied. Special and Individual and Common Area Fund Assessments are due on the date stated in the Notice of Assessment or, if no date is stated, within 10 days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

9.8. **Reserve Funds.** The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association must budget for reserves and may fund reserves out of Regular Assessments.

9.8.1. **Operations Reserves.** The Association will endeavor to maintain Operations Reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, such as the full amount of deductibles on insurance policies maintained by the Association.

9.8 .2. **Replacement & Repair Reserves.** The Association will endeavor to maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Areas.

9.9. **Association's Right to Borrow Money.** The Association is granted the right to borrow money, subject to the consent of Owners of at least a majority of lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

9.11. **Limitations of Interest.** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Special and Regular Assessments, or reimbursed to the Owner if those assessments are paid in full.

## **ARTICLE 10 ASSESSMENT LIEN**

10.1. **Assessment Lien.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his Lot.

10.2. **Superiority of Assessment Lien.** The Assessment Lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before these Protective Covenants, (3) a recorded deed of trust lien securing a loan for construction of the original dwelling, and (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the Delinquent Assessment became due. The Assessment Lien is subordinate and inferior to a recorded deed of trust lien that secures a first or senior purchase money mortgage, an FHA-insured mortgage, or a VA-guaranteed mortgage.

10.3. **Effect of Mortgagee's Foreclosure.** Foreclosure of a superior lien extinguishes the Association's claim against the Lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for assessments coming due from and after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as an Association expense.

10.4. **Notice and Release of Notice.** The Association's lien for assessments is created by recordation of these Protective Covenants, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Hood County's Deed Records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner.

10.5. **Power of Sale.** By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of non-judicial sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

10.6. **Foreclosure of Lien.** The Assessment Lien may be enforced by judicial or non-judicial foreclosure. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code. Unless waived in writing by the owner at the time the foreclosure is sought, the Association may not foreclose its Assessment Lien non-judicially unless the Association first obtains a court order in an application for expedited foreclosure. A non-judicial foreclosure, once approved by court order, must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the ByLaws and applicable law, such as Chapter 209 of the Texas Property Code. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association may not foreclose the Assessment Lien if the debt consists solely of fines and/or a claim for reimbursement of attorney's fees incurred by the Association to collect such fines.

## **ARTICLE 11**

### **EFFECT OF NONPAYMENT OF ASSESSMENTS**

An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent assessments. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the ByLaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

11.1. **Interest.** Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the maximum permitted by law. If the Board fails to establish a rate, the rate is 10 percent per annum, compounded annually.



11.2. **Late Fees.** Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

11.3. **Costs of Collection.** The Owner of a Lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorneys' fees and processing fees charged by the manager.

11.4. **Acceleration.** If an Owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments on 10 days' written notice to the defaulting Owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

11.5. **Suspension of Use and Vote.** If an Owner's account has been delinquent for at least 30 days, the Association may suspend the right of Owners and residents to use Common Areas and Common Services during the period of delinquency. The Association may also suspend the right to vote appurtenant to the Lot. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay assessments.

11.6. **Money Judgment.** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of assessments, without foreclosing or waiving the Association's lien for assessments.

11.7. **Notice to Mortgagee.** The Association may notify and communicate with the holder of any lien against a lot regarding the owner's default in payment of assessments.

11.8. **Foreclosure of Assessment Lien.** As provided by these Protective Covenants, the Association may foreclose its lien against the Lot by judicial or non-judicial means.

11.9. **Application of Payments.** The Board may adopt and amend policies regarding the application of payments that conform to Section 209.0063 of the Texas Property Code. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Lot's account.

## **ARTICLE 12**

### **ENFORCING THE DOCUMENTS**

12.1. **Notice and Hearing.** Before the Association may exercise any of its remedies for a violation of the Documents or damage to the Property, the Association must give an Owner written notice and an opportunity for a hearing, according to the requirements and procedures in the ByLaws and in applicable law, such as Chapter 209 of the Texas Property Code as amended from time to time. Except as provided below, prior to suspending an Owner's right to use the Common Area, filing suit against an Owner (other than a lawsuit to collect an assessment or related charge or to foreclose the Association's Assessment Lien), charging an Owner for property damage, or levying

a fine for a violation of the Documents, the Board or its delegate shall serve the alleged violator with written notice by certified mail, return receipt requested, notifying the Owner of the following: (i) the nature of the alleged violation or property damage and the amount, if any, due the Association from the Owner, (ii) a reasonable time period in which the violator may cure the violation and avoid the proposed sanction (unless the violator was given notice and a reasonable opportunity to cure a similar violation within the preceding six months), (iii) that the Owner may present a written request for a hearing on or before the 30th day after the date the Owner receives this notice, and (iv) notice that the owner "may have special rights or relief related to the enforcement action under federal law, including the Service Members Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the Owner is serving on active military duty."

The notice and hearing provisions of this Section 12.1 do not apply if the Association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. Notices are also required before an Owner is liable to the Association for certain charges, including reimbursement of attorney's fees incurred by the Association.

**12.2. Remedies.** The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following right to enforce the Documents, subject to applicable notice and hearing requirements:

**12.2.1. Nuisance.** The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

**12.2.2. Violations.** The Association may levy reasonable charges, as an individual assessment, against an Owner and his Lot if the Owner or resident, or the Owner or resident's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

**12.2.3. Suspension.** The Association may suspend the right of Owners and residents to use Common Areas for any period during which the Owner or resident, or the Owner's or resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

**12.2.4. Self-Help.** The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner 15 days' notice of its intent to exercise self-help.

**12.2.5. Legal Proceedings.** Failure to comply with the Documents will be

grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

12.3. **Board Discretion.** The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

12.4. **No Waiver.** The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Documents at any future time. No officer, director, or Member of the Association is liable to any Owner for the failure to enforce any other Documents at any time.

12.5. **Recovery of Costs.** The costs of curing or abating a violation are at the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

### **ARTICLE 13** **MAINTENANCE AND REPAIR OBLIGATIONS**

13.1. **Association Maintains.** The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs, and replaces, as a Common Expense, the portions of the Property listed below, regardless of whether the portions are on Lots or Common Areas.

- a. The Common Areas and all common facilities or amenities thereon.
- b. Any real and personal property owned by the Association but which is not a Common Area.
- c. All front yards of every Lot in Fountain Village and all Common Area grounds shall be regularly mowed, fertilized, trimmed, and otherwise maintained by the Association (herein referred to as "Routine Yard Maintenance," subject to the Association's and the Lot Owners' obligations and limitations set out in Section 7.14 above and in Section 13.2.2 below.

- d. Any property adjacent to the Fountain Village Property, if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property.
- e. Any area, item, easement, or service, the maintenance of which is assigned to the Association by these Protective Covenants or by the Plat.

13.2. **Owner Responsibility.** Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the Patio Home provisions of Article 5, the architectural control requirements of Article 6, and the use restrictions of Article 7:

13.2.1. **House Maintenance.** Except as provided otherwise herein, each Owner, at the Owner's expense, must maintain all improvements on the Lot, including but not limited to the dwelling, fences, sidewalks, and driveways. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each Owner is expected to maintain his Lot's improvements at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each Owner must repair and replace, or cooperate with the Association at Owner's expense to repair and replace, all worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

13.2.2. **Yard Maintenance.** The Association will perform the "Routine Yard Maintenance" on all the Common Area yards as well as on all the front yards on every Lot in Fountain Village as set forth in Section 7.14 above at the Association's expense. Each Owner must maintain his Patio Yard on his Lot and all trees, plant beds and yard sprinkler systems on his Lot at such Owner's cost at a level, to a standard, and with an appearance that is commensurate with the neighborhood. "Yards" means all parts of the Lot other than the dwelling, including fenced and unfenced portions of the Lot. The area between the alley pavement and the back yard fence, if any, is a yard area. Each Owner must:

- a. Support the Association's maintenance of an attractive ground cover or lawn on all Common Area and Lot yards visible from a street or alley. Owners are encouraged to take pride in the Fountain Village community by avoiding littering at all times, and assisting in the removal of litter and trash in all these areas.
- b. Support the Association's edging and trimming throughout the Common Areas and on all the Lots along the street curbs, alley edges and front and back yard perimeter edges at regular intervals.
- c. Support the Association's mowing of the Common Areas and on all the front and back yard lawns on all the Lots at regular intervals.
- d. Prevent weeds from exceeding 6 inches in height in the plant beds.
- e. Screen plant vegetable gardens from being visible from a street or alley.

- f. Maintain an attractive appearance for trees, shrubs, flowers, other plant material, and all landscaping features and artifacts that are visible from a street or alley.
- g. Replace plant material, as needed, to maintain an appearance that is consistent with other lots in the neighborhood.

13.2.3. **Avoid Damage.** An Owner may not do any work or fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

13.2.4. **Responsible for Damage.** An Owner is responsible for his own willful or negligent acts and those of his or the resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the Common Areas or the property of another Owner.

13.3. **Owner's Default in Maintenance.** If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and his Lot. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

13.4. **Party Wall Fences.** A fence located on or near the dividing line between 2 Lots and intended to benefit both Lots constitutes a Party Wall Fence and, to the extent not inconsistent with the provisions of this Section, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

13.4.1. **Encroachments & Easement.** If the Party Wall Fence is on one Lot or another due to an error in construction, the fence is nevertheless deemed to be on the dividing line for purposes of this Section. Each Lot sharing a Party Wall Fence is subject to an easement for the existence and continuance of any encroachment by the fence as a result of construction, repair, shifting, settlement, or movement in any portion of the fence, so that the encroachment may remain undisturbed as long as the fence stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall Fence.

13.4.2. **Right to Repair.** If the Party Wall Fence is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the fence to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt fence.

13.4.3. **Shared Costs.** The Owners of adjoining Lots shall share equally the costs of repair, reconstruction, or replacement of the Party Wall Fence, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the fence, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall Fence, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Hood County's Deed Records, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to contribution from another Owner under this Section is appurtenant to the land and passes to the Owner's successors in title.

13.4.4. **Alterations.** The Owner of a Lot sharing a Party Wall Fence may not cut openings in the fence or alter or change the fence in any manner that affects the use, condition, or appearance of the fence to the adjoining Lot. Unless both Owners reach a mutual decision to the contrary, the Party Wall Fence will always remain in the same location as where initially erected.

## **ARTICLE 14** **INSURANCE**

14.1. **General Provisions.** All insurance affecting the Property is governed by the provisions of this Article, with which the Board will make every reasonable effort to comply. The cost of insurance coverages and bonds maintained by the Association is an expense of the Association. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally:

14.1.1. **Notice of Cancellation or Modification.** Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least 10 days' prior written notice to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

14.1.2. **Deductibles.** An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an Owner or resident or their invitees, the Owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

14.2. **Property.** To the extent it is reasonably available, the Association will obtain blanket all-risk insurance for insurable common area improvements. If blanket all-risk insurance is not reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the

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improvements on any Lot owned by the Association.

14.3. **General Liability.** The Association will maintain a commercial general liability insurance policy over the common areas, expressly excluding the liability of each Owner and resident within his lot, for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

14.4. **Directors & Officers Liability.** To the extent it is reasonably available, the Association will maintain directors' and officers' liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

14.5. **Other Coverages.** The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by an Underwriting Lender for planned unit developments as long as an Underwriting Lender is a mortgagee or an Owner.

14.6. **Owner's Responsibility for Insurance.** Each Owner will obtain and maintain fire and extended coverage on all the improvements on his Lot, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each Owner will obtain and maintain general liability insurance on his Lot. Each Owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an Owner fails to maintain required insurance, or to provide the Association with proof of same, the Board may obtain insurance on behalf of the Owner who will be obligated for the cost as an individual assessment. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. Each Owner and resident is solely responsible for insuring his personal property in his dwelling and on the Lot, including furnishings, vehicles, and stored items. This Section may not be construed to require the Association to continually monitor the Owners' insurance coverages.

## **ARTICLE 15**

### **MORTGAGEE PROTECTION**

15.1. **Introduction.** This Article establishes certain standards for the benefit of Mortgagees, as defined below. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the Board, without approval of Owners or mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. As used in this Article, a "Mortgagee" is a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of

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trust lien against a Lot. Some Sections of this Article apply to all "Known Mortgagees." Other Sections apply to "Eligible Mortgagees," as defined below.

15.1.1. **Known Mortgagees.** An Owner who mortgages his Lot will notify the Association, giving the complete name and address of his mortgagee and the loan number. An Owner will also provide that information on request by the Association from time to time. The Association's obligations to mortgagees under the Documents extend only to those mortgagees known to the Association. All actions and approvals required by mortgagees will be conclusively satisfied by the mortgagees known to the Association, without regard to other holders of liens on Lots. The Association may rely on the information provided by Owners and mortgagees.

15.1.2. **Eligible Mortgagees.** "Eligible Mortgagee" means a mortgagee that submits to the Association a written notice containing its name and address, the loan number, the identifying number and street address of the mortgaged lot, and the types of actions for which the Eligible Mortgagee requests timely notice. A single notice per Lot will be valid so long as the Eligible Mortgagee holds a mortgage on the Lot. The Board will maintain this information. A representative of an Eligible Mortgagee may attend and address any meeting which an Owner may attend.

## 15.2. **Mortgagee Rights.**

15.2.1. **Termination.** An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least fifty-one percent (51%) of Eligible Mortgagees, in addition to the required consents of Owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least two-thirds (2/3rds) of the Owners and the Eligible Mortgagees. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within 30 days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

15.2.2. **Financial Statements.** If a Mortgagee so requests, the Association will give the Mortgagee an audited statement for the preceding fiscal year within 120 days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

15.2.3. **Right of First Refusal.** Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Lot does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

15.3. **Insurance Policies.** If an Underwriting Lender is a Mortgagee, or if an Owner, at the request of the Underwriting Lender requests, the Association will comply with the Underwriting Lender's insurance requirements to the extent the requirements are reasonable and available, and do not conflict with other insurance requirements of these Protective Covenants.



## **ARTICLE 16**

### **AMENDMENTS**

16.1. **Consents Required.** Amendments to these Protective Covenants must be approved by Owners of a majority of the Lots.

16.2. **Method of Amendment.** For an amendment that requires the approval of Owners, these Protective Covenants may be amended by any method selected by the Board from time to time, pursuant to the ByLaws, provided the method gives an Owner of each Lot the specific wording of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

16.3. **Effective.** To be effective, an amendment approved by the Owners or by the Board must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners or directors and, if required, Eligible Mortgagees; and (3) recorded in the Deed Records of Hood County, except as modified by the following Section.

16.4. **Ordinance Compliance.** When amending the Documents, the Association must consider the validity and enforceability of the amendment in light of current public law, including without limitation any City of De Cordova Subdivision Ordinance promulgated and in effect for the City's ETJ.

16.5. **Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by a majority of the Owners of the Lots. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established upon any other property under its jurisdiction. No merger or consolidation, however, will affect a revocation, change, or addition to the covenants established by these Protective Covenants within the Property.

16.6. **Termination.** Termination of the terms of these Protective Covenants and the status of the Property as a planned unit development are according to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by owners of at least two-thirds of the lots. In the event of public condemnation of the entire Property, an amendment to terminate may be executed by the Board without a vote of Owners. In all other circumstances, an amendment to terminate must be approved by Owners of at least eighty percent (80%) of the Lots

16.7. **Condemnation.** In any proceeding, negotiation, settlement, or agreement concerning condemnation of the Common Area, the Association will be the exclusive representative of the Owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the Common Area, real or personal,

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caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

## **ARTICLE 17** **DISPUTE RESOLUTION**

**17.1. Introduction & Definitions.** The Association, the Owners, and all persons subject to these Protective Covenants, and any person not otherwise subject to these Protective Covenants who agrees to submit to this Article (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

**17.1.1. "Claim"** means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- a. Claims arising out of or relating to the interpretation, application, or enforcement of the Documents.
- b. Claims relating to the design, construction, or maintenance of the Property.

**17.1.2. "Claimant"** means any Party having a Claim against any other Party.

**17.1.3. "Exempt Claims"** means the following claims or actions, which are exempt from this Article:

- a. The Association's claim for assessments, and any action by the Association to collect assessments.
- b. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the Court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of these Protective Covenants.
- c. Enforcement of the easements, architectural control, maintenance, and use restrictions of these Protective Covenants.
- d. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

17.1.4. **"Respondent"** means the Party against whom the Claimant has a Claim.

17.2. **Mandatory Procedures.** Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

17.3. **Notice.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

17.4. **Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

17.5. **Mediation.** If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

17.6. **Termination of Mediation.** If the parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

17.7. **Allocation of Costs.** Except as otherwise provided in this Section, each party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys' fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

17.8. **Enforcement of Resolution.** Settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of the agreement, then the other party may file suit or initiate administrative proceedings to enforce the agreement without the need to again

comply with the procedures set forth in this Article. In that event, the party taking action to enforce the agreement is entitled to recover from the non-complying party all costs incurred in enforcing the agreement, including, without limitation, attorneys' fees and court costs.

17.9. **Release Exemptions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A party having an Exempt Claim may submit it to the procedures of this Article.

17.10. **Litigation Approval & Settlement.** In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial or administrative proceeding without the prior approval of Owners of at least a majority of the lots, except that no such approval is required (1) to enforce provisions of these Protective Covenants, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims. This Section may not be amended without the approval of Owners of at least a majority of the Lots.

## **ARTICLE 18**

### **GENERAL PROVISIONS**

18.1. **Compliance.** The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

18.2. **Higher Authority.** The Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

18.3. **Notice.** All demands or other notices required to be sent to an Owner or resident by the terms of this Declaration may be sent by ordinary or certified mail, postage prepaid, to the party's last known address as it appears on the records of the Association at the time of mailing. If an Owner fails to give the Association an address for mailing notices, all notices may be sent to the Owner's lot, and the Owner is deemed to have been given notice whether or not he actually receives it.

18.4. **Liberal Construction.** The terms and provision of each Document are to be liberally construed to give effect to the purposes and intent of the Document. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved in favor of the operation of the Association and its enforcement of the Documents, regardless which party seeks enforcement.

18.5. **Severability.** Invalidation of any provision of these Protective Covenants by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

18.6. **Captions.** In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Some boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

18.7. **Appendices.** The Following appendixes are attached to these Protective Covenants and incorporated herein by reference:

A - Description of Subject Land

B - Construction Specifications

18.8. **Interpretation.** Whenever used in the Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

18.9. **Run with the Property.** Unless terminated or amended by Owners as permitted herein, the provisions of these Protective Covenants run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

#### **SIGNED AND ACKNOWLEDGED**

SIGNED on this 18 day of MARCH, 2020

Fountain Village Homeowner's Association, Inc.

By:

Larry P. French Susan D. Kennedy  
 Printed Name: LARRY P. FRENCH Susan D. Kennedy

Its: President

Nancy Q. Wright

Vice-President

CAROL L. HAWKINS

Nancy Q. Wright

Board Member

Carol L. Hawkins

Board Member

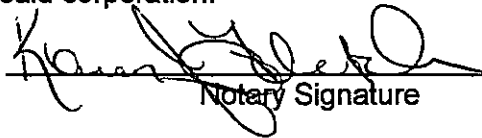
Nicholas T. Maudsley

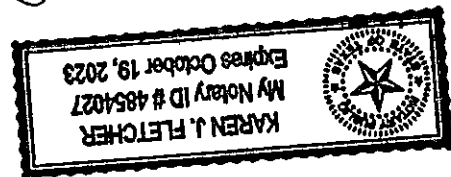
NT. Maudsley

Board Member

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF HOOD       §

This instrument was acknowledged before me on this 18 day of MARCH, 2020 by Larry P. French, President of Fountain Village Homeowner's Association, Inc., Susan Kennedy, Vice-President, and Board Members Carol Hawkins, Nancy Q. Wright and Nicholas Maudsley on behalf of said corporation.

  
\_\_\_\_\_  
Notary Signature



**APPENDIX A**  
**DESCRIPTION OF FOUNTAIN VILLAGE PROPERTY**

Metes and Bounds Description of the Property

A tract of land situated in the William Blair Survey, Abstract No. 45, Hood County, Texas and being a portion of a called 16.90 acre tract of land described in a deed to Danny Keith Thomas and wife, Carolyn Thomas recorded in Volume 1813, Page 474 of the Real Records of Hood County, Texas and being more particularly described as follows:

All that certain tract or parcel of land, being a portion of a 16.90 acre tract described in a deed to Danny Keith Thomas and wife, Carolyn Thomas, recorded in Volume 1813, Page 474 of the Real Records of Hood County, Texas and being more completely described as follows:

Beginning at a ½" iron rod set in the East line James Road, a 60' right-of-way, said point also being in the West line of said Thomas Tract and the Northwest corner of this tract being described herein;

Thence, 31°51'49" East, along the West line of Solomon Tract, a distance of 852.45 feet to a 3" Steel Fence Corner Post found in the North line of North Gate Road, a 60' right-of-way, and being the Southwest corner of said Solomon Tract and the Southeast corner of this tract;

Thence South 61°20'59" West, along the North line of North Gate Road, a distance of 1008.55 feet to a ½" iron rod set at the intersection of James Road and North Gate Road, said point also being the Southwest corner of this tract;

Thence North 30°23'09" West, along the East line of said James Road, a distance of 26.49 feet to a ½" iron rod set for the beginning of a curve to the right;

Thence continuing along said Road and along said curve to the right having a radius of 630.00 feet, a Chord Bearing of North 03°48'54" East, 708.24 feet, and an arc distance of 752.12 feet to ½" iron rod set for the beginning of a curve to the left;

Thence along said curve to the left, having a radius of 705.71 feet, a Chord Bearing of North 22°25'40" East, 361.60 feet and an arc distance of 365.67 feet to the Point of Beginning, containing 15.000 acres of land.

## **APPENDIX B**

### **CONSTRUCTION SPECIFICATIONS**

All improvements on a lot must (1) comply with any applicable city ordinances and codes, (2) have a building permit issued by the City of De Cordova or Hood County, if and as applicable and if the type of improvement requires a permit, and (3) have the Architectural Reviewer's prior written approval. These 3 requirements are independent, that is one does not ensure or eliminate the need for another. The Lot Owner and/or Owner's contractor must comply with all 3 requirements. Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every Lot must have the following characteristics:

B.1. **Lots.** The size of each Lot and the density of the Lots in the Fountain Village Subdivision must comply with the requirements of applicable ordinances.

B.2. **Houses.** The principal improvement on a Lot must be one detached single family dwelling, as further defined by Hood County as a "Patio Home." The dwelling size, setbacks, and exterior materials must comply with the applicable ordinances and with any higher standards established by these specifications or by the Architectural Reviewer.

B.3. **New Construction.** The dwelling must be constructed on the Lot. A dwelling or addition constructed elsewhere may not be moved onto a Lot. Factory-built homes are not permitted, even though assembled or finished on the Lot. The construction of a dwelling must be started promptly after the Architectural Reviewer approves the dwelling's plans and specification. Once started, the dwelling and all improvements on the Lot must be completed with due diligence, but must be completed within 180 days. All homes must meet the following 'heated' square footage exclusive of any space in garage, porches or patios: minimum of 1600 Square feet.

B.4. **Exterior Wall Materials.** All exterior elevations visible from the street must be built with brick or stone or both. Any exceptions (use of stucco hardy plank, etc.) must have the specific approval of the architectural reviewer. The quality and color of exterior wall materials and doors must be approved by the architectural reviewer. It is expected that the materials and colors will be in harmony with other homes in Fountain Village. Any exceptions must be approved by the architectural reviewer.

B.5. **Roofs.** All roofs must maintain a roof pitch of at least 10:12. Roofs must be covered with material having a manufacturer's warranty of at least 20 years, such as GAF Sentinel or its equivalent. The use of fiberglass shingles is permitted. The color of roofing material must be weatherwood or an equivalent earth tone color. The Architectural Reviewer may permit or require other weights, materials, and colors.

B.6. **Garage & Driveway.** Each dwelling must have an attached garage for at least two standard-size cars. If the Lot has alley access, the garage must be a rear or side entry using the alley for access. The driveway must be surfaced with concrete.

B.7. **Carports.** No carport may be installed, constructed, or maintained on the front of any Lot or dwelling, with or without approval of the Architectural Reviewer. No carport may be installed, constructed, or maintained on any other portion of a Lot without the Architectural Reviewer's prior written consent. In other words, all carports require Fountain Village Protective Covenants



the written approval of the Architectural Reviewer, and carports on the front sides or front yards of dwellings are expressly prohibited and may not be authorized.

B.8. **Accessories.** Installation of all exterior items and surfaces, including address numbers, decorative hardware, external ornamentation, lights fixtures, and exterior paint and stain, is subject to the Architectural Reviewer's prior approval, including approval of design, color, materials, and location.

B.9. **Mailboxes.** Curbside mailboxes are not permitted.

B.10. **Fences & Walls.** This Section is subject to the Architectural Reviewer's right to adopt additional or different specifications for construction or reconstruction of fences. The height of fences must be between 6 feet and 8 feet. Fences must be made of masonry, wood, or other Architectural Reviewer-approved material. Retaining walls must be constructed entirely with Architectural Reviewer-approved materials, however railroad ties may not be used for a retaining wall visible from a street. Fences may not be constructed between a dwelling's front building line and the Street. The use of chain link fencing is prohibited.

B.11. **Fence Stain.** Wood fences may be left in a natural state. If stained, wood fences must be stained with a color approved by the Architectural Reviewer, which may require a uniform color of stain. Wood fences may not be painted.

B.12. **Utilities.** All utility lines and equipment must be located underground, except for: (1) elevated or surface lines or equipment required by a public utility or the city; (2) elevated or surface lines or equipment installed as part of the development plan; and (3) surface equipment necessary to maintain, operate, or read underground facilities, such as meters, risers, service pedestals, and transformers. The Architectural Reviewer may require that utility meters, risers, pedestals, and transformers be visually screened from the street and neighboring lots. Except for temporary water and sewage facilities and systems which may be installed and used by Builders (and which must comply with the requirements of applicable ordinances) prior to having access to city water and sewage systems, each Lot will use city water and sewage systems as they are available and functional for use by dwellings in Fountain Village. All temporary water and sewage systems must be removed within 60 days of Individual water supply and sewage disposal systems are not otherwise permitted.

B.13. **Air Conditioners.** Air conditioning equipment may not be installed in the front yard of a dwelling. Window units are prohibited.

B.14. **Propane Tanks.** Propane tanks may not be installed in the front yard of a dwelling.

B.15. **No Lot Subdivision.** No Lot may be subdivided. One or more Lots may be replatted with the approval of all Owners of the Lots directly affected by the replatting. The parties executing the replat will provide a copy of the recorded replat to the Association. Replatting of Lots may not alter the number of votes and assessments allocated to the Lots as originally platted. If replatting reduces the number of Lots by combining Lots, the joined Lot will have the votes and assessments allocated to the Lots as originally platted.

B.16. **Debris**. No Lot or other part of the Property may be used as a dumping ground. Waste materials incident to construction or repair of improvements on a Lot may be stored temporarily on the Lot during construction while work progresses and must be removed when construction or repair is complete.