



**WHEREAS**, Developer is the owner of the *real property* in Tarrant County Texas, *described in Article II, Section 1, of this Declaration* and desires to create thereof a planned community with open spaces and other common facilities for the benefit of the said community; and

**WHEREAS**, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities, and to this and desires to subject the real property described in *Article II, Section 1*, to the covenants, restrictions, conditions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

**WHEREAS**, Developer has deemed it desirable for the *efficient preservation of the values and amenities in said-community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants, restrictions and conditions and collecting and disbursing the assessments and charges hereinafter created*; and

**WHEREAS**, Developer has caused or will cause to be incorporated under the *laws of the State of Texas as a non-profit corporation, Fossil Creek Estates Homeowner's Association, Inc.*, for the purpose of exercising the functions aforesaid; and

**WHEREAS**, Developer previously adopted that certain Declaration of Restrictions, Covenants and Conditions of Fossil Creek Estates *dated May 15, 1997 and recorded as document number D197098500* in the Real Property Records of the Office of the Clerk of Tarrant County, Texas, as amended in that certain *Amended Declaration of Restrictions, Covenants and Conditions of Fossil Creek Estates dated September 18, 1997, and recorded on September 26, 1997, at Volume 12922, Page 202*, Real Property records of the Office of the Clerk of Tarrant County, Texas.

**WHEREAS**, *Section 11 of Article IX* therein provides that the Developer, at its sole discretion, *may amend or change the covenants or restrictions therein with the consent of at least fifty-one percent (51%) of the outstanding votes of the Association*; and

**WHEREAS**, *more than 51% of the outstanding votes of the Association consent to the amendments* herein set forth, and the Developer, joined by the other Owner or Owners signing below, hereby amend and restate the Declaration, which, as amended, is referred below as the "Declaration"; and

**NOW, THEREFORE**, Developer declares that the *real property described in Article II, Section 1*, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, conditions, easements, charges and liens (sometimes referred to herein as "restrictions, covenants and conditions") hereinafter set forth.

## **ARTICLE I** **DEFINITIONS**

**SECTION 1.** The following words, when used in *this Declaration or any supplemental Declaration* (unless otherwise indicated) shall have the following meanings:

- (a.) "**Association**" shall mean and refer to *Fossil Creek Estates Homeowners' Association, Inc.*, its successors and assigns.
- (b.) "**Properties**" shall mean and refer to all Existing Properties and additions thereto, as are subject to this Declaration or any Supplemental Declaration.
- (c.) "**Common Properties**" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of the members of *the Association*.
- (d.) "**Lot**" shall mean and refer to any plot of land shown upon any recorded subdivision plat of The Properties, with the exception of Common Properties as herein defined.
- (e.) "**Living Unit**" shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family.
- (f.) [Intentionally deleted]
- (g.) "**Owner**" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit which is a part of The Properties, including purchasers under contract from Developer, but notwithstanding any applicable theory of the mortgage, shall not mean or refer to the

mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

- (h.) "Member" shall mean and refer to every person or entity that holds *membership in the Association*.
- (i.) "Developer" shall mean and refer to Fossil Creek Partners, Ltd., its heirs, successors and assigns.

## ARTICLE II

### **PROPERTIES SUBJECT TO THIS DECLARATION: ADDITIONS THERETO**

**SECTION 1. EXISTING PROPERTY.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this *Declaration is located in Tarrant County, Texas*, and is more particularly described as follows: See Exhibit A attached hereto and incorporated here for all purposes, all of which properly shall hereafter be referred to as "Existing Property".

## ARTICLE III

### **ASSOCIATION, ORGANIZATION AND MANAGEMENT**

**SECTION 1. BOARD of DIRECTORS.** The *Board of Directors of the Association shall consist of not less than three (3) or more than nine (9) members, the exact number to be fixed in accordance with the provisions of the Bylaws.*

**SECTION 2. CLASSES of MEMBERS.** *The Association shall have two classes of voting membership:*

- (a.) **Class A:** Class A members shall be all Owners with the exception of the Developer. Class A members shall be entitled to one (1) vote for each Lot which they own. When more than one person holds record title to a Lot, all such persons shall be members of *the Association*; however, the vote for such Lot shall be exercised as they, among themselves determine, *but in no event shall more than one vote be cast with respect to any such Lot.*
- (b.) **Class B:** Class B members shall be the Developer. The Class B member shall have a total number of votes equal to one (1) more than the total number of votes of the Class A members combined; provided; however, at the time that the total number of Lots owned by the Class A members first equals or exceeds four (4) times the total number of Lots owned by the Class B member, the Class B member shall at all times thereafter be entitled to only one (1) vote for every Lot owned by it.

**SECTION 3. OTHER MEMBERSHIP PROVISIONS.** *Each Owner of the Lot shall be a member of the Association, and such membership shall continue so long as such person or entity continues to be an Owner. The membership of an Owner in the Association shall be appurtenant to and may not be separated from record ownership of any Lot, and the transfer of any membership in the Association which is not made as a part of a transfer of a Lot shall be null and void. Ownership of a Lot shall be the sole qualification of being a member of the Association. Each Owner shall comply with all rules and regulations as established by the Association from time to time.*

**SECTION 4. RIGHTS AND POWERS of ASSOCIATION.** *The Association shall have the duty to maintain, insure, and pay all taxes and assessments on (or reimburse Developer for same) all common areas on the Land and shall have the right, power, and authority to do any act which is consistent with or required by the provisions of this Declaration or the Bylaws, whether the same be expressed or implied, including but not limited to the following:*

- (a.) The power to promote the health, safety, and welfare of the Owners of the Lots.
- (b.) The power to exercise all of the powers and privileges and to perform all of the duties and obligations of the Corporation as set forth in the *Declaration and Bylaws of the Corporation*.
- (c.) The power to fix, levy, collect, and enforce payment of any charges or assessments as set forth in the Declaration and to pay all expenses in connection with such charges or assessments. All office expenses, and all other expenses incidental to the conduct of the business of the Corporation, including all licenses, taxes, or governmental charges levied or imposed against the property of the Corporation.
- (d.) The power to acquire (by gift, purchase, or otherwise), own, hold, improve, build on, operate, maintain, convey, sell, lease, transfer, to dedicate for public use, or otherwise to dispose of real personal property in connection with the affairs of the Corporation.
- (e.) The power to borrow money, to mortgage, to pledge, to deed in trust, or to hypothecate any or all of the Corporation's real or personal property as security for money borrowed or debts incurred. The power to keep accounting records with respect to all activities and operations of the Corporation.
- (g.) The power to contract with and employ others for maintenance and repair.

- (h.) The power to adopt rules and regulations concerning the operation of the Corporation.
- (i.) The power to appoint a management company to operate the Corporation.
- (j.) The power to have and to exercise any and all powers, rights, and privileges that a corporation organized under the Texas Non-Profit Corporation Act by law may now or at a later time have or exercise.
- (k.) The power to act in the capacity of principal, agent, joint venturer, partner, or otherwise.

**SECTION 5. ENFORCEMENT OF DECLARATION.** *The Association, through the Board of Directors, shall have the right to enforce this Declaration, except and to the extent that the right to enforce certain provisions hereof has been granted to the Architectural Control Committee, whether expressly or by implication. If the Board of Directors shall fail or refuse to enforce this Declaration for an unreasonable period of time, after written request to do so, then any aggrieved Owner may enforce this Declaration on his own behalf by appropriate action, whether in law or in equity.*

**ARTICLE IV**  
**PROPERTY RIGHTS IN COMMON PROPERTIES**

**SECTION 1. MEMBERS' EASEMENTS OF ENJOYMENT.** Subject to these terms, conditions and provisions hereof, every Member shall have a right and easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit. In addition, any member may delegate, in accordance with the *Bylaws of the Association*, his right and easement of enjoyment to members of his family, his guests, his tenants, or contract purchasers who reside on The Property.

**SECTION 2. TITLE TO COMMON PROPERTIES.** *Developer may retain the legal title or easements to the Common Properties until such time as it no longer owns any Lots. The Association shall pay or reimburse Developer for taxes, insurance premiums, and maintenance relating to the Common Properties.*

**SECTION 3. DECORATIVE FENCING.** In addition to the other common areas defined herein, the Common Properties shall include decorative fencing around a portion of the perimeter of The Properties and a portion of the Common Property. *The design and materials of construction and/or repair of the said decorative fence shall be approved by the Architectural Control Committee.*

**ARTICLE V**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

**SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** Developer, for each Lot or Living Unit owned by him within The Properties, hereby covenants, and each Owner of any Lot or Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments of charges, (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. Such annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon The Property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Separate annual or special assessments shall be made upon each Lot or Living Unit whether or not there is more than one Living Unit per Lot.

**SECTION 2. PURPOSE OF ASSESSMENTS.** *The assessments levied by the Association shall be used, exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Properties, and, in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon, or appurtenant to the Properties, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.*

**SECTION 3. ANNUAL ASSESSMENTS.** *The Board of Directors of the Association shall possess the right, power, and authority to establish the amount of the annual assessments sufficient in its judgment to pay when due all charges and expenses related to the operations of the Association. Annual assessments shall be payable by each Owner within 30 days after the Association sends an invoice for the annual assessment to such owner. The Developer, however, shall not pay any annual or other assessments on its Lots owned until the year 2002. No consent or approval of the Owners shall be required*

for the establishment of the amount of the annual assessments by the Board of Directors of the Association as contemplated by this Section.

**SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.** In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assignment, applicable to that year only, for the purpose of defraying, in whole or part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of 66 2/3 percent of the votes of each Member who has voted in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance setting forth the purpose of the meeting.

**SECTION 5. QUORUM FOR ANY ACTION UNDER SECTION 4.**

The Quorum for any action authorized by Section 4 shall be as follows:

- (a.) At the first meeting called as provided in Section 4 hereof, the presence at the meeting of Members or of proxies entitled to cast 51 percent of all the votes of the membership shall constitute a quorum.
- (b.) If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Section 4 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**SECTION 6. DUE DATE OF ASSESSMENTS.** The annual assessments provided for herein shall become due and payable on the 1st day of January after the commencement day herein above set out and the due date of any special assessment under Article V Section 4 hereof shall be fixed in the resolution authorizing such assessment, the Board of Directors may, at its option, change the annual assessments to semi-annual, quarterly, or monthly assessments and determine the due date thereof.

**SECTION 7. DUTIES OF THE BOARD OF DIRECTORS.** The Board of Directors of the Association shall, upon the commencement date herein provide prepare a roster of The Properties and assessments applicable thereto which shall be kept in the office of the Association, and shall be open to inspection by any Owner. Written notice of the initial assessment and of any subsequent changes therein shall be forthwith sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificate and such certificate shall be conclusively evidence of payment of any assessment therein stated to have been paid.

**SECTION 8. EFFECT OF NON-PAYMENT OF ASSESSMENT:** Personal Obligations of Owner; Lien; Remedies of Association. *If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, forthwith become a continuing lien on The Property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against The Property, and there shall be added to the amount of such assessment the cost of preparing and filing the petition in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the Court, together with costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-usage, of the Common Properties or abandonment of his property.*

**SECTION 9. SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon The Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

**SECTION 10. EXEMPT PROPERTY.** The following property subject to this Declaration *shall be exempt* from the assessments, charges and lien created herein:

- (a.) All properties to the extent of any easement or any other interest therein dedicated and accepted by the local public authority and devoted to public use.
- (b.) All Common Properties as defined in *Article 1, Section 1*, hereof.
- (c.) All properties exempted from taxation by the laws of the State of Texas, upon the terms and to the extent of such legal exemption.

*Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.*

## **ARTICLE VI ARCHITECTURAL CONTROL**

**SECTION 1.** The Developer hereby appoints an *Architectural Control Committee* (herein so called), which *shall consist of three (3) members*, who shall be appointed by the Developer. All matters before the *Architectural Control Committee* shall be *decided by majority vote* of its members. *After the Developer conveys the last Lot owned by the Developer, the Association shall assume all of the rights and powers of the Architectural Control Committee and shall exercise same, through the Board of Directors, in the manner herein provided.* In the event of the death, incapacity or resignation of a member of the *Architectural Control Committee*, the successor for such member shall be appointed by the majority of the remaining members of the *Architectural Control Committee* if such death, incapacity or resignation occurs on or before the Developer conveys the last Lot owned by the Developer, and by *the Association* if such death, incapacity or resignation occurs thereafter.

**SECTION 2.** *All building plans must be submitted to the Architectural Control Committee for approval before construction begins.* No building, fences, wall, sign, exterior light, or other structure or other apparatus, either permanent or temporary shall be commenced, erected, placed or maintained upon the Existing Property (or any Lot constituting a part thereof), nor shall any remodeling or reconstruction thereof, exterior addition thereto, change therein, or alteration, excavation, subdivision or re-subdivision thereof, including without limitation changes in or alterations of grade, roadways and walkways, be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location and other material attributes of the same *shall have been submitted to and approved in writing* as to harmony of external design and location in relation to surrounding structures and topography by the *Architectural Control Committee*; and shall include a plot plan showing the location of the improvements, the plan for drainage and the construction plans giving the dimensions of all improvements and shall specify in addition to construction diagrams and specifications, all materials to be used and color schemes for all improvements. *If the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after such plans and specifications have been submitted to it, approval of the Architectural Control Committee will be deemed to have been given, and this Article will be deemed to have been fully complied with.*

*The Architectural Control Committee shall have the right, all in the sole discretion of the Architectural Control Committee, to disapprove any plans and specifications submitted to it for any of the following reasons:*

- (a.) if such plans and specifications are not in accordance with any of the provisions of these covenants or the codes, ordinances and regulations of the City of Fort Worth, Texas;
- (b.) if the external design, elevation, appearance, location or color scheme for the proposed improvements are not in harmony with the general surrounding of the Existing Property or with the adjacent dwellings or structures or with the topography;
- (c.) if the plans and specifications submitted are incomplete;
- (d.) if the design, appearance or location of any landscaping is not in harmony with the general surroundings or topography;
- (e.) if the Architectural Control Committee deems the plans and specifications, or any part thereof, to be contrary to the interest, welfare or rights of any or all parts of the Existing Property.

The *Architectural Control Committee* is authorized to accept whatever drawings, plans or specifications as it deems desirable within its sole discretion to be in satisfaction of the foregoing. *The decision of the Architectural Control Committee shall be final, conclusive and binding upon all Owners.* Neither the *Architectural Control Committee* nor Developer shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing, nor for any structural or other defects in any work done according to such plans and specifications to meet local Code and Laws. *The signature of any two members of the Architectural Control Committee on*

any such plans and specifications with "approved" or "disapproved" written or stamped thereon shall be prima facie evidence as to such approval or disapproval being the act of the full Architectural Control Committee.

## **ARTICLE VII** **RESTRICTIVE COVENANTS**

Each of the specifically numbered Lots shown upon any recorded residential subdivision map of The Properties (as distinguished from such land, if any, within the limits of such subdivisions which is not specifically platted and numbered as Lots) shall be impressed with the following restrictions, covenants and conditions for the purpose of carrying out a general plan of development and maintenance for continuity and conformance with the intended master plan of the premises:

- (a.) No dwelling, accessory structure, alterations to existing structures, fence, or landscaping shall be erected or maintained on any Lot until the plans and specifications for same have been submitted according to the current Application Procedure and approved by the *Architectural Control Committee* prior to commencement of the same.
- (b.) No trees shall be removed except by utility easements as required in furnishing of utility services, and no building, fence, wall, or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the details, plans and specifications showing the color, nature, kind, shape, height, materials and location of same shall have been submitted, in writing, to and approved according to the Application Procedure, as to harmony of external design and location in relation to surrounding structures and topography by the *Architectural Control Committee*.
- (c.) All dwellings shall be constructed to front on the street on which the Lot fronts unless any Lot in question fronts on two streets in which case the dwelling constructed on such Lot shall front, as the *Architectural Control Committee* may approve, on either of the two streets or partially on both.
- (d.) All dwellings and accessory structures shall be erected and maintained behind the building line shown on the lot, or as otherwise approved by the *Architectural Control Committee*.
- (e.) No dwelling or accessory structure shall be *erected or maintained nearer than twenty-five (25) feet from one side line and twenty-five (25) feet from the other side line of any Lot or as approved otherwise by the Architectural Control Committee.*
- (f.) The floor area (that enclosed for heating and/or air conditioning) of any Living Unit shall be not less than the following: *all lots shall contain a minimum floor area of 2,000 square feet in the Living Unit.*
- (g.) All dwellings shall be constructed of stone, stucco, masonry, brick, or of a glass building material of the kind usually used for outside wall construction, or of such other materials as may be approved by the *Architectural Control Committee*, to the extent of at least seventy-five percent (75%) of the area of the outside walls on the first floor. The second floor of such dwellings may be masonry or such other material as may be approved by the *Architectural Control Committee*.
- (h.) No fence, wall, or hedge shall be placed on any portion of the sites with a greater height than seven feet (7'), and no fence is permitted on any part of any Lot unless approved by the *Architectural Control Committee*. Should a hedge, shrub, tree, flower or other planting be so placed, or afterwards grown, so as to encroach upon adjoining property, such encroachment shall be removed upon request of the owner of the adjoining property or at the request of the *Architectural Control Committee*. *Note: Owners of Lot 7 through Lot 11 of Block 3 and Lot 14 through Lot 43 of Block 3 shall be required to install the three-rail vinyl fencing (the brand to be approved by the Architectural Control Committee) along the Equestrian Easement at the rear of their Lots. Owners of Lots that share property line(s) with one of the Common Areas shall be permitted to install only the three-rail vinyl fencing or wrought-iron fencing (both types to be approved by the Architectural Control Committee) on those property lines.*
- (i.) *All Lots shall be used for single-family residential purposes only, no building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single-family residence per lot, which residence may not exceed two and one-half (2-1/2) stories in height (excluding basements), and a private garage as provided below.*
- (j.) *Each residence may be occupied by only one family consisting of persons related by blood, adoption or marriage or no more than two unrelated persons living together as a single housekeeping unit, together with any household servants.*
- (k.) *None of the Lots shall be subdivided into smaller Lots.*
- (l.) No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that horses, dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any

commercial purpose. Two (2) horses shall be allowed per Lot, unless the Lot is larger than two (2) acres in area, **whereby four (4) horses shall be allowed.**

- (m.) *No noxious or offensive act or activity shall be allowed upon any Lots, nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood.*
- (n.) No sign shall be erected or maintained on any Lot except a "for sale" sign which sign shall not exceed fifteen (15) square feet in size, or a sign owned by the Developer or by *the Association*.
- (o.) The location and design of *any proposed swimming pool, including fencing, pumps, backwash, and any other rotated paraphernalia* must be approved in writing by *the Architectural Control Committee*.
- (p.) *Roofs shall be composition shingles (25-year guarantee minimum), wood shingles, slate, imitation slate, or roof tiles if compatible in color and texture with the prevailing roofing of homes within The Property. Other roofing materials must be approved in advance by the Architectural Control Committee.*
- (q.) No pole mast, antenna, radio, television, satellite dish or other aerial shall be erected or maintained on any Lot except as approved by *the Architectural Control Committee*.
- (r.) *The garage door of any house or residence within The Properties, must open to the rear or side of the house or as approved by the Architectural Control Committee.*
- (s.) Sporting, recreation, exercise and or play equipment, dog runs or other outdoor items shall be placed in the back yards of the Lots.
- (t.) A Lot or any portion of any Lot that is exposed to the public view must be maintained by The Property Owner in a neat and orderly fashion. In the event this restriction is not complied with, *the Association* has the right to cause this maintenance to be done at the expense of The Property Owner.
- (u.) *No Lot affected hereby shall be used for the dumping or storage of rubbish, trash, debris, surplus soil or rocks, etc.*
- (v.) No drilling, oil development operations oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other similar structure shall be erected, maintained or permitted upon any Lot.
- (w.) No outbuilding, shop, trailer or residence of a temporary character shall be permitted (except as otherwise reserved as a right by the Developer). No building material of any kind shall be stored upon the lot until the owner is ready to commence improvement.
- (x.) *No boats, trailers, mobile home, camper, boat trailer or similar wheeled vehicle shall be stored (except temporarily, not to exceed 24 hours) nearer to the street than the front of the Living Unit situated thereon. No house trailer, mobile home, camper, boat trailer, or similar wheeled vehicle shall be stored or parked on any Lot except in a closed garage or within the fenced, wall or enclosed portion of such Lot and any such fence, wall or other enclosure shall be subject to approval by the Architectural Control Committee.*
- (y.) All houses and structures permitted shall be completed within twelve (12) months from date of commencement of construction or unless otherwise extended by the Architectural Control Committee. No structure shall be occupied unless and until the premises are connected in a proper way with its sewage treatment system.
- (z.) Specifically exempted from the provisions of this section are activities by the Developer, carried out in the regular pursuit of construction, maintenance and sales within the subdivision which exemption shall and when all development activity including sales by them are completed.
- (aa.) *No vehicle of any size which transports inflammatory or explosive or hazardous cargo may be kept in The Properties at any time.*
- (bb.) *No mailbox shall be installed without the prior approval of the Architectural Control Committee.*
- (cc.) The front yard of each Lot on which a residential Living Unit is constructed shall contain an underground water sprinkler system for the purpose of providing sufficient water to preserve and maintain the landscaping in a healthy and attractive condition.
- (dd.) Each lot on which a dwelling unit is constructed shall have landscaping in its front yard including but not limited to, shrubs flowers, trees, ground cover, grass, of a sufficient quality, quantity and design to be compatible with the intent of the Developer. *Landscaping of a Lot shall be completed within one hundred twenty (120) days after the date on which the Living Unit is ninety percent (90%) complete.* Lot owners shall use reasonable efforts to preserve, keep and maintain the Landscaping in a healthy and attractive condition.
- (ee.) *Each Lot owner shall mow and maintain the landscaping and vegetation on his/her Lot in such a manner as to control weeds, grass and/or other unsightly growth at all times, if after ten (10) days prior written notice and owner shall fail to (i) control weeds, grass and/or other unsightly growth; (ii) remove trash, rubble, building and construction debris; or (iii) exercise reasonable care or conduct to prevent or remedy an unclean, untidy or unsightly condition, then the Association shall have the easement, authority and right to go onto said Lot for the purpose of mowing and cleaning said Lot on each respective occasion of such mowing or cleaning, and*



*the costs thereof shall be assessed against the Lot of the offending Owner, who shall be given written notice thereof specifying the amount of assessment and demanding payment within thirty (30) days of said notice. The assessments together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the assessment occurred and may be enforced as set forth in Section 9 of Article IV, above. The lien securing any such assessment shall be subordinate and inferior to the lien of any mortgage or any renewals or extensions thereof existing prior to the assessment date.*

- (ff.) At the time of initial construction of any Living Unit, each residential dwelling shall include provisions for the installation of smoke detectors and such other safety and security devices which, in the opinion of the Architectural Control Committee, are reasonably required for the individual Living Unit.*
- (gg.) Each Lot on which a residential Living Unit is constructed shall contain an underground aerobic-type sewage treatment system, which system shall be subject to the approval of the Architectural Control Committee. The Association shall contract with an aerobic system maintenance company to provide the maintenance to all such systems.*
- (hh.) Each Owner of any Lot or dwelling unit in The Properties, shall maintain his Lot and shall construct and maintain all improvements thereon in accordance with the applicable ordinances and regulations of the City of Fort Worth, Texas.*

#### **ARTICLE VIII** **EASEMENTS RESERVED**

- (a.) No shrubbery, fence, building or other permanent structure shall be erected or maintained within areas designated on any recorded plat of The Properties as utility, drainage, equestrian, or landscaping easements, except as may be approved by the Architectural Control Committee. Notwithstanding the above, at least three (3) owners have erected fences across the equestrian easement along Hicks Road, which is more particularly described as being along Lots 1-12 of Block 2 of Fossil Creek Estates, an Addition to the City of Fort Worth, Texas (the "Hicks Road Easement"). Two of the fences have been in place for more than four (4) years. Accordingly, this Second Amendment places all owners and buyers on record notice that there exists three (3) fences across the Hicks Road Easement. In addition, owners of Lots 1-12, Block 2 of Fossil Creek Estates, an Addition to Fort Worth, Texas, along Hicks Road, my now place fences or landscaping in the Hicks Road Easement, provided such fences or landscaping are first approved by the Architectural Control Committee pursuant to Article VI of the Declaration.*
- (b.) Developer reserves for the use and benefit of the Association a perpetual easement as shown on the recorded plat of The Properties, and of such other additions as may hereafter be covered and included to this Declaration as Supplemented for the purpose of erecting a fence of reasonable height and composition. The Homeowners Association shall repair and maintain the fence as needed.*

#### **ARTICLE IX** **GENERAL PROVISIONS**

***SECTION 1. DURATION.*** *Conditions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of fifty-one percent (51%) of the Lots or Living Units has been recorded, agreeing to change said restrictions, covenants and conditions in whole or in part; provided, however, that no such agreement to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change and unless written notice of the proposed agreement is sent to every Owner at least thirty (30) days in advance of any action taken.*

***SECTION 2. RESERVED RIGHTS OF DEVELOPER.*** *Notwithstanding any other provision hereof, Developer reserves the right (upon application and request of the owner of any Lot) to waive, vary or amend (by an appropriate letter to that effect addressed and delivered to such applicant owner by Developer) the application of any of these covenants and restrictions to such Lot if, in the sole discretion of Developer such action be necessary to relieve hardship or permit good architectural planning to be affected. Developer also reserves the right: To redivide and replat any of The Property shown on the Plat of any Lot or Unit now or hereafter recorded for any Lot or Unit of The Properties at any time in question owned by Developer without any notice or consent of any other Owner.*

**SECTION 3. SALES OFFICE.** Developer may designate the location of a Sales Office for use in offering Lots for sale, and for all purposes incident hereto. Said use is intended as temporary, and shall cease at such time as seventy five percent (75%) of the lots in all have been sold and Living Units constructed thereon, or on December 31, 1999, whichever occurs later.

**SECTION 4. INVALIDATION AND SEVERABILITY.** The invalidation by any Court of any reservation, covenant and restriction herein or in any contract or deed contained shall not impair the full force and effect of any other reservation, covenant or restriction.

**SECTION 5. ACCEPTANCE OF DECLARATION.** The provisions hereof are hereby made a part of each contract and deed in respect of any Lot to the same effect as if fully set forth therein, and each such contract and deed shall be conclusively held to be executed, delivered and accepted upon and subject to the provisions and conditions herein set forth.

**SECTION 6. INTERPRETATION.** *This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for The Properties.*

**SECTION 7. OTHER COMMITTEES.** Developer may appoint a committee of one or more persons to exercise any or all of the discretionary rights and powers reserved herein to Developer.

**SECTION 8. ASSIGNMENT.** Developer may assign to any person or corporation any or all rights, powers, reservations, easements and privileges herein reserved by and to Developer and any such assignee shall have the same right to so assign.

**SECTION 9. NOTICES.** Any notice required to be sent to any Member or Owner under the provisions of this *Declaration* shall be deemed to have been properly sent when mailed postage prepaid to the last known address of the person who appears as a Member or Owner on the records of *the Association* at the time of such mailing.

**SECTION 10. ENFORCEMENT: ATTORNEY'S FEES.** Enforcement of these restrictions, covenants and conditions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any of such restrictions, covenants and conditions, either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by *the Association* or any Owner to enforce any restriction, covenant or condition herein contained shall in no event be deemed a waiver of the right to do so thereafter. If any controversy, claim, or dispute arises relating to this Instrument, its breach or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees, and court costs.

**SECTION 11. AMENDMENTS.** Notwithstanding anything herein above, Developer, at its sole discretion, *may amend or change these covenants and restrictions with the consent of at least fifty-one percent (51%) of the outstanding votes of the Association.*

**SECTION 12. RULES AND REGULATIONS.** Developer may adopt certain reasonable rules and regulations, together with sanctions for the violation thereof, to insure maintenance of the character and quality of Fossil Creek Estates in harmony with the guidelines set forth in these Restrictive Covenants and Conditions. From time to time, the Association may amend or vary such rules and regulations according to the Bylaws of the Association.

**EXHIBIT A: ADDENDUM – Known as “Existing Property”**

*Part of the J. HIBBINS SURVEY, Abstract No. 639, situated about 11 miles North 17 1/2 degrees West from the courthouse of Tarrant County, Texas; and embracing all the 377-409/1000 acres tract described in the deed to Mary Pauline Bennett, Individually and as Independent Executrix of the Estate of Jerrell Bennett, deceased, Lee Wall Bennett and Jerrell Bennett, Jr. recorded in Volume 10338, page 345 of the Tarrant County Deed Records.*

*Beginning at the northeast corner of the said Hibbins Survey and the southeast corner of the J. Highland Survey, Abstract No. 752 in the west line of the H. Robertson Survey, Abstract No. 1259 for the northeast corner of the said 377-409/1000 acres tract from which a 7/8" iron recovered bears South 20 degrees-47 minutes west 31-9/10 feet.*

*Thence South no degrees-08 minutes-26 seconds East, along the east line of said Hibbins Survey and the said west line of Robertson Survey for the east line of said 377-409/1000 acres tract in County Road No. 4108 (Wagley-Robertson Road), 3893-60/1000 feet to the southeast corner of said 377-409/1000 acres tract from which a 1" iron recovered bears South 89 degrees-54 minutes West 11-1/10 feet.*

*Thence South 89 degrees-54 minutes West, along the south line of said 377-409/1000 acres tract, 4031-46/100 feet to a 1" iron recovered is the east line of Tract 1 described in the deed to Defense Plant Corporation recorded in Volume 1678, Page 412 of the said Deed Records for the southerly southwest corner of said 377-409/1000 acres tract.*

*Thence Northerly along the said east line of Tract No.1, to and along the east line of the 236-11/100 acres tract described in the deed to Pettibone recorded in Volume 4418, Page 159 of the said Deed Records for the westerly line of said 377-409/1000 acres tract:*

North 1 degrees-25 minutes-55 seconds West 231-67/100 feet to a 1" iron recovered;

South 88 degrees-07 minutes-37 seconds West 150 feet to the southeast corner of said 236-11/100 acres tract from which a 1" iron rod found bears South 62 degrees-24 minutes West 2-09/100 feet;

North 01 degrees-28 minutes West 585-35/100 feet to a 5/8" iron set

North 01 degrees-21 minutes-18 seconds West 1388-81/100 feet to a 1" iron recovered for the northeast corner of said Tract No.1 and said 236-11/100 acres tract and southeast corner of the 211-67/100 acres tract described in the deed to Bernard Cardwell Williams, Sr., et al recorded in Volume 5936, Page 804 of the said Deed Records.

*Thence North 01 degrees-17 minutes West, generally along a fence and the east line of the said 211-67/100 acres tract for the west line of said 377-409/1000 acres tract, 1707-78/100 feet to the north line of said Hibbins Survey and south line of said Highland Survey for the northeast corner of said 211-67/100 acres tract and northwest corner of said 377-*

009/1000 acres tract County Road No. 4005 (Hicks Road) from which a 5/8" iron recovered beats South 01 degrees-17 minutes East 32-12/100 feet and the northwest corner of said *Hibbins Survey* bears 992-1/10 feet.

*Thence* South 89 degrees-54 minutes-21 seconds East, along the said north line of *Hibbins Survey* and said south line of *Highland Survey* for the north line of said 377-409/1000 acres tract in said County Road, 4263-69/100 feet to the place of beginning and containing 377-440/1000 acres of which 4-027/1000 acres are within said County roads, leaving 373-413/1000 acres, more or less, exclusive of said Roads.

**Now platted into:**

Lots 1-27, Block 1; Lots 1-25, Block 2; Lots 1-50, Block 3 and Lot 1, Block 4, FOSSIL CREEK ESTATES, and Addition to Tarrant County, Texas, according to the plat recorded in Cabinet A, Slide 3523, Plat Records, Tarrant County, Texas

Also known as Lots 1-27, Block 1; Lots 1-25, Block 2; Lots 1-50, Block 3; and Lot 1, Block 4 of FOSSIL CREEK ESTATES, an Addition to the City of Fort Worth, Texas.

D198274076  
FOSSIL ESTATES PARTNERS LTD  
920 S MAIN STREET #170  
GRAPEVINE TX 76051

**\* WARNING - THIS IS PART OF THE OFFICIAL RECORD - DO NOT DESTROY**

INDEXED - TARRANT COUNTY TEXAS  
SUZANNE HENDERSON - COUNTY CLERK  
OFFICIAL RECEIPT  
T0: FOSSIL ESTATES PARTNERS, LTD

RECEIPT NO.                      REGISTER                      RECD-BY PRINTED DATE    TIME  
199060576                      DR91                      T025567                      11/23/98                      13:58

INSTRUMENT                      FEECD                      INDEXED                      TIME  
1 D198274076                      WD                      981123                      13:58                      CK 1274

TOTAL DOCUMENTS: 01                      FEES:    \$31.00  
TOTAL PAGES: 14

BY: \_\_\_\_\_(signature on original document)

**ANY PROVISION WHICH RESTRICTS THE SALE RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.**

**EXECUTED this 23rd day of November 1998**

Fossil Estates Partners, Ltd, Owner of 24 Lots

By: General Partner: Real Capital Corporation, a Texas corporation

By: \_\_\_\_\_(signature on original document)  
Richard A. Myers, President

STATE OF TEXAS                      }  
COUNTY OF DENTON                      }

This Declaration of Restrictions, Covenants and Conditions of Fossil Creek Estates was acknowledged before me on the 23rd day of November 1998, by Richard A. Myers, President of Realty Capital Corporation, a Texas corporation, General Partner of Fossil Estates Partners, Ltd., a Texas limited partnership on behalf of said partnership.

\_\_\_\_\_(signature on original document)

SUZANNA LOFTIS/NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS/ my commission expires: 7-21-01

Bearer's Stamp: Notary's printed name: SUZANNA LOFTIS, NOTARY PUBLIC, STATE OF TEXAS/Comm.Exp.07-21-2001

**EXECUTED this 23rd day of November, 1998**

Maverick Homes, Inc., Owner of 9 Lots.

By:  PRESID.  
Lee Hughes, President

STATE OF TEXAS }  
COUNTY OF DENTON }

This Declaration of Restrictions, Covenants and Conditions of Fossil Creek Estates was acknowledged before me on the 23rd day of November, 1998, by Lee Hughes, President of Maverick Homes, Inc., a Texas Corporation, on behalf of said Corporation.

(signature on original document)

SUZANNA LOFTIS/NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS/My commission expires: 7-21-01

Bearer's Stamp: Notary's printed name: SUZANNA LOFTIS, NOTARY PUBLIC, STATE OF TEXAS/Comm.Exp.07-21-2001

**AFTER RECORDING, RETURN TO:**

Fossil Estates Monticello, Ltd.  
Attn: Richard A. Myers  
920 South Main Street, Suite 170  
Grapevine, Texas 76051