

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

CHAPEL CREEK SECTION VIII



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04/15/2016 11:56:04 AM
Bk:RE13095 Pg:389 Pgs:19 DECL
State of Oklahoma
County of Oklahoma
Oklahoma County Clerk
Carolynn Caudill

THIS DECLARATION, made on the date hereinafter set forth by COYLE ENTERPRISES, hereinafter referred to as “DECLARANT”.

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in Oklahoma City, Oklahoma County, State of Oklahoma, which is more particularly described as:

Chapel Creek Section VIII, being a part of the SW/4 of Section 19, Township 13, North, Range 4 West, I.M. as shown on the recorded plat thereof.

And Whereas, it is the purpose of this Declaration to cause said real property to be surveyed and platted, in stages, under the name of “CHAPEL CREEK” as a residential sub-division.

And Whereas, Declarant desires to provide for the preservation of the value, upkeep, maintenance, improvement and administration of the community and all improvements now and existing and to establish an entity and agency for such purpose and, in addition, to collect and disburse the assessments and charges hereinafter created.

And Whereas, there will be incorporated under the laws of the State of Oklahoma, as a non-profit corporation, an entity to be known as Chapel Creek Association, Inc., for the purpose of exercising the aforementioned functions.

NOW THEREFORE, Declarant hereby declares that all the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1

DEFINITIONS

Section 1. “Association” shall mean and refer to Chapel Creek Homeowners’ Association, its successors and assigns.

Section 2. “Owner” shall mean and refer to the record Owner, whether one or more person or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “Properties” shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 5. “Declarant” shall mean and refer to Coyle Enterprises Ltd., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 6. “Common Areas” shall mean all real property, whether improved or unimproved, owned, leased, or controlled by the Association for the common use and enjoyment of members of the Association.

Section 7. “Corner Lot” shall mean any lot, which abuts other than at its rear line upon more than one street or Common Area.

Section 8. “Street” shall mean any street, lane, drive, boulevard, court, circle, road, place, manor or terrace as shown on the recorded plat.

Section 9. “Member” shall mean and refer to every person and or entity that holds a membership in the Association, by owning a Lot.

Section 10. “Building Limit Line” shall mean the line so designated on the recorded plat.

Section 11. “Person” shall mean an individual, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 12. “Fences” shall mean the following where the context so indicates.

1. **“Adjoining Fences”** shall refer to two or more separate fences
Which adjoin and are exposed to the public view.
2. **“Public Fence”** is any fence adjacent to, abutting upon or bordering
Areas or common areas dedicated to the public or the Association.
3. **“Privacy Fence”** any fence that is site proof.

Section 13. “Frontage” or “Fronts” shall mean the direction or way the major elevation of the house or structure erected on a lot shall face.

Section 14. “Chapel Creek” and “Chapel Creek South” shall be one in the same, meaning the residential sub-division developed as a part of the SW/4 of Section Nineteen (19), Township Thirteen (13) North, Range Four (4) West of the I.M., Oklahoma City, Oklahoma County, Oklahoma.

ARTICLE II FUTURE INTENT

Section 1. Although this initial Declaration includes only the real property described in Article III hereof, it is the intention of the Declarant to cause additional Declarations to be filed with respect to the remainder of CHAPEL CREEK, which additional Declarations will be complementary in concept to this Declaration, and which future Declarations will provide for the addition of owners in such other areas as members of the Association. During its existence, the Association will include as members, every owner within **CHAPEL CREEK**. Each member of the Association will be subject to its Articles of Incorporation, By-Laws, rules and regulations as from time to time established and or amended.

Section 2. If within Twenty (20) years of the date of incorporation of the Association, the Declarant should develop additional lands within the SW/4 of Section Nineteen (19), such additional lands may be annexed to **CHAPEL CREEK** without the consent of the members.

ARTICLE III PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The real property which is, and shall be held, transferred, sold, conveyed and occupied, subject to the Declaration is located in the City of Oklahoma City, Oklahoma County, State of Oklahoma, and is more particularly described as follows:

Chapel Creek Section VIII Oklahoma City, Oklahoma

A tract of Land located in the Southwest Quarter (SW/4) of Section Nineteen (19), Township Thirteen North (T-13-N), Range Four West (R-4-W), of the Indian Meridian (I.M.), Oklahoma City, Oklahoma County, Oklahoma and more particularly described as follows:

Commencing at the Southeast corner of said SW/4; thence N89°35'44"W along the South line of said SW/4 a distance of 765.66 feet; thence N00°24'16"E a distance of 448.07 feet to a point on the North line of CHAPEL CREEK SECTION VII, according to the recorded plat thereof and POINT OF BEGINNING; thence along the North line of said Plat the following Thirteen (13) courses:

- (1) N76°18'44"W a distance of 122.50 feet; thence
- (2) N13°41'16"E a distance of 58.01 feet; thence
- (3) N58°41'16"E a distance of 35.36 feet; thence
- (4) N13°41'16"E a distance of 50.00 feet; thence
- (5) N31°18'44"W a distance of 35.36 feet; thence
- (6) N13°41'16"E a distance of 120.00 feet; thence
- (7) N76°18'44"W a distance of 50.00 feet; thence
- (8) S13°41'16"W a distance of 17.50 feet; thence
- (9) N89°35'44"W a distance of 396.11 feet; thence
- (10) S46°11'46"W a distance of 42.21 feet; thence
- (11) N49°37'26"W a distance of 121.89 feet to a point on a curve to the left; thence
- (12) 20.77 feet along the arc of said curve having a radius of 731.50 feet, subtended by a chord of 20.76 feet which bears N39°33'46"E; thence
- (13) N51°15'02"W a distance of 272.96 feet to a point on the East line of CHAPEL CREEK SECTION VI, according to the recorded plat thereof; thence along the East line of said Plat the following Four courses:

- (1) N37°58'43"E a distance of 6.17 feet to a point on a curve to the left; thence
- (2) 229.22 feet along the arc of said curve having a radius of 458.50 feet, subtended by a chord of 226.84 feet which bears N23°39'23"E; thence
- (3) N09°20'03"E a distance of 99.01 feet; thence
- (4) N01°58'33"W a distance of 43.71 feet to a point on the South line of CHAPEL CREEK SECTION IV, according the recorded plat thereof; thence along the South line of said Plat the following Three (3) courses:

- (1) S89°40'21"E a distance of 83.77 feet; thence
- (2) S00°19'39"W a distance of 28.41 feet; thence
- (3) S89°32'16"E a distance of 806.64 feet; thence

S00°27'44"W a distance of 139.89 feet; thence

S13°41'16"W a distance of 621.33 feet to a point on a curve to the left; thence 97.86 feet along the arc of said curve having a radius of 175.00 feet, subtended by a chord of 96.59 feet which bears S73°34'35"E; thence S00°24'16"W a distance of 50.00 feet to a point on a curve to the right; thence 109.03 feet along the arc of said curve having a radius of 225.00 feet, subtended by a chord of 107.97 feet which bears N75°42'47"W; thence S13°41'16"W a distance of 59.43 feet to the POINT OF BEGINNING.

Said tract contains 522,695 Square Feet or 11.999 Acres more or less.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership: Every Owner of a Lot, **which is subject to assessment**, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot, which is subject to assessment.

Section 2. Voting Rights: The Association shall have two classes of voting Membership.

Class A The Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B The Class B Member(s) shall be the Declarant and shall be entitled to Six (6) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership, or
- (b) March 31, 2022.

ARTICLE V

ASSOCIATION AND MEMBERSHIP

Section 1. Every person who is a record owner of a fee or undivided interest in any single-family residential Lot covered by this Declaration and any future Declaration covering all or any part of the Association, including contract Sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership for each lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment, by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE VI

USE AND MANAGEMENT

Section 1. The Association shall maintain the Common Areas located within CHAPEL CREEK and the right-of-way along the east side of County Line Road. The Common Areas include but are not limited to, all islands/medians in the street right-of-way, the

entry and concrete fence along County Line Road and all areas within CHAPEL CREEK which are not platted, but will be platted in the future as common areas.

ARTICLE VII CLASSES OF MEMBERS AND VOTING RIGHTS

Section 1. Voting Classes. The Association shall have two (2) classes of voting membership as follows:

Class A. Class A members shall be those Owners of single Family residential Lots with the exception of the **DECLARANT**. Class members, when a class vote is required, shall vote as a class. Each class A member shall be entitled to one vote for each Lot in which he holds the interest required for membership by Article IV. When more than one person holds interest in any Lot, all such persons shall be members. 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 Lot.

Class B. The Class B member (s) shall be the **DECLARANT**. The Class B Member (s) shall be entitled to Six (6) votes for each Lot in which it holds the interest required for membership by Article IV. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs first:

- (a) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership; or
- (b) On March 31, 2022.

Section 2. Association Voting. The members of the Association may vote upon the following:

- (a) Increases in the annual assessments (pursuant to the requirements of Article VIII, Section 3 hereof):
- (b) Special assessments for capital improvements to be assessed against a particular Class (pursuant to the requirements of Article VIII, Section 4 hereof):
- (c) The merger consolidation, liquidation or dissolution of the Association:
- (d) A budget, which allows the Association to properly fulfill its obligation as set Forth-in Article VI as well as complete other projects adopted by the Association:
- (e) Amendments to the Budget:

Section 3. Coyle Enterprises Ltd., (the Declarant) shall form the Chapel Creek Association, Inc., which will be a non-profit corporation, for the purpose of unifying and organizing the homeowners in the various Phases and or Sections of CHAPEL CREEK. Membership in the Association shall be mandatory for all homeowners in CHAPEL CREEK. The obligation to pay Homeowners Association Dues for a particular lot will begin when the home is completed and the first record owner has closed on the completed home. The Declarant shall have no obligation to pay Homeowners Association Dues on any lots, which it owns.

- A. In the above connection, the Declarant shall establish such charter, by-laws, or Rules and regulations, affecting the Association as it, in its discretion, deems Necessary for the future Government of the Association.
- B. The owner of each lot, shall be entitled to one membership for each lot of which They are owners of public record.
- C. For so long as the Declarant is subsidizing the Association, The Declarant shall be Entitled to make all decisions for the Association without the necessity for having annual Association meetings.
- D. Once the Association is receiving sufficient dues from the members that the That the Declarant so desires, the Declarant shall turn the operation of the association over to the membership of the Association. The members shall be Obligated to accept the responsibility of operating the Association when the Declarant decides to turn the Association over to the members.
- E. For so long as the Declarant is developing any section of CHAPEL CREEK the Declarant shall be deemed to have a significant financial investment in Chapel Creek. As a result of the Declarant's financial investment it has commitment To see that CHAPEL CREEK retains its reputation as a quality development. For This reason, the Declarant shall have the right to override any decision of the Association that the Declarant, in its discretion, deems imprudent for the interest Of CHAPEL CREEK and the Association shall be obligated to abide by the Declarant's decision. This right shall be part of the By-Laws of the Association And shall not be subject to amendment.
- F. The CHAPEL CREEK ASSOCIATION INC., will not own any common areas Which would require upkeep and maintenance by the Association, except all areas Designated as Common Areas on the plats of the various sections in CHAPEL CREEK. The purpose of the CHAPEL CREEK ASSOCIATION INC., is:
 - a. To maintain the landscaping, lighting, the entry and the right-of-way along North County Line Road, Hefner Road, common areas, any future entry or any future common areas in CHAPEL CREEK.
 - b. To respond to violations of restrictions contained within this document, i.e. Declaration of Covenants, Conditions and Restrictions for Chapel Creek.
 - c. To construct and maintain other amenities as might be agreed upon by the members of the Chapel Creek Association, in accordance with the provisions of this instrument.

- d. To consider and address the issue of neighborhood security, e.g. a neighborhood watch program, a Security Patrol to the extent funds might be available.

ARTICLES VIII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges, and such special assessments for capital improvements to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made, pursuant and superior to any homestead or other exemption provided by law, which lien may be enforced by the Association and may be foreclosed in any manner provided by the laws of the State of Oklahoma for the foreclosure of mortgages and deeds of trust, with or without the power of sale. Each such assessment, together with interest, costs, and reasonable attorney's 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. The personal obligation shall not pass to his successors in title unless expressly assumed by them, but nevertheless, the Lien above mentioned arising by reason of such assessment shall continue to be a charge and Lien upon the Land as provided.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the landscaped areas of public rights-of-way and common areas located within the platted boundaries of the properties. The maintenance shall include but not be limited to Labor, equipment, materials, insurance, management, and supervision thereof, and any utility services.

Section 3. Maximum Annual Assessment: Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be as follows.

Type of Member	Amount Per Year
Class A	\$240.00
Class B	\$ 0.00

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be

increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the Membership.

- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-third (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the special assessments authorized above, the Association may levy in any assessment year, as to any or all classes of Members, a Special Assessment 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; provided that any such assessment as to any class shall have the assent of at least Sixty percent (60%) of the Members of such class of members, pursuant to votes cast in person or by proxy, at a meeting solely called for this purpose, written notice of which shall be sent to all members not less than thirty days (30) nor more than Sixty (60), days in advance of the meeting setting forth the purpose of the meeting. Provided further, that the maximum amount of any special assessment, which may be assessed against any Member of any class in any assessment year, shall not exceed an amount equal to twice the annual dues assessed against said Member for the same year.

Section 5. Notice and Quorum for Action Authorized Under Section 3: Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment: Annual assessments must be fixed at a uniform rate for all Lots and may be collected on an annual basis, or more frequently as determined by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments: Due Dates: The annual assessments provided for herein shall commence as to all Lots on the first day of the month following acceptance of dedication of the street right-of-way by the City of Oklahoma City. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual

assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Effect of Non-Payment of Assessments and Remedies.

Any assessments, which are not paid when due, shall become delinquent. If the assessment is not paid within thirty days (30), after its due date, the assessment shall bear interest from its due date at an annual rate equal to the floating rate of interest for mortgage loans from time to time announced by the Federal Housing Administration, and the Association may bring action at law against the property as provided by the laws of the State of Oklahoma for the foreclosure of a mortgage or deed of trust, with or without power of sale; and interest, costs and reasonable attorney's fees of such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided herein.

ARTICLE IX

ARCHITECTURAL CONTROL

Section 1. Review: No building, fence, walk, driveway, wall or other structure or improvement shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location 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 Committee," which shall, as used herein, mean either (a) the Declarant, so long as Declarant is an owner, or (b) by a majority of an Architectural Committee composed of R.N. Coyle, Nolan Coyle and Carter Foree or their duly authorized representative or representatives or successors. In the case of the death or resignation of any member or members of said committee, the Declarant shall have the authority to appoint successor members to the above named committee to fill any vacancy or vacancies created by the death or resignation of any of the aforesaid members and said newly appointed member or members, shall have the same authority hereunder as their predecessors to approve or

disapprove such design or location as above set forth. With respect to all such submissions, the judgment of the Architectural Committee shall be conclusive. All approvals shall be in writing, and may be qualified upon the satisfaction of specified conditions, provided, however, that in the event the Architectural Committee fails to approve or disapprove any such design or location within thirty (30) days after the required plans and specifications have been submitted to it, approval will not be required and this condition will be deemed to have been fully satisfied.

Section 2. Fees: No fee shall ever be charged by the Architectural Committee or by the Association for the review specified in Section 1 or for any waiver or consent provided for herein.

Section 3. Proceeding with Work: Upon receipt of approval as provided in Section 1, the Owner shall, as soon as is practicable, satisfy all conditions thereof and proceed with the approved work. Unless such work commences within one (1) year from the date of approval, such approval shall be deemed revoked, and the Owner must again seek approval pursuant to all of the provisions of Section 1 of this Article.

ARTICLE X

LAND CLASSIFICATION, PERMITTED USES, AND RESTRICTIONS

Section 1. Land Classification: All Lots within the existing property are hereby classified as single-family Lots, i.e., each such Lot shall be used exclusively for single-family residential purposes and for the exclusive use and benefit of the Owner thereof; provided, however, that with the written approval of the Developer, one (1) or more Lots or one (1) Lot and a part of a second Lot may be combined in to a Plot. In no case, however, shall a residence ever be built upon a tract consisting of less than an entire Lot, nor more than one (1) residence on any Lot or Plot. No gainful occupation, profession, business, trade or other nonresidential activity shall be conducted on any Lot or in any residence or detached structure located thereon. Nothing therein shall be deemed to prevent the leasing of any Lot from time to time by the Owner thereof subject to all the terms and provisions hereof, and to the rules.

Section 2. Building Restrictions:

- (a) Minimum Residence Size.** No residence which contains less than 1,800 square feet, exclusive of basements, open porches, attached carports, attached garages, and detached structures shall be built on any Lot.

- (b) **Maximum Residence Height.** No residence which contains more than two (2) stories shall be built on any Lot, provided, however, that the ground floor of the main structure of any two-story residence shall contain not less than 1,200 square feet.
- (c) **Materials.** The principal exterior material of the first floor of any residence shall be at least seventy percent (70%) brick, stone, or stucco and each detached structure, with the exception of a greenhouse, shall be constructed of the same materials as the residence to which it is appurtenant. Wood of durable variety may be used on the second floor exterior of any residence. Roofs may be of wood shingles or shakes; slate, clay or concrete tile; built-up with stone covering; or “approved” composition shingles. “Approved” composition shingles shall be limited to those which a UL Class “A” fire rating, UL wind resistance rating against winds up to 60 MPH, a manufacturer’s limited warranty for not less than twenty-five (25) years, must be laminated, and must be weather wood in color. Each structure shall have a minimum 7:12 pitch roof.
- (d) **Foundations.** Foundations shall be designed so as to prohibit exposure of formed concrete above natural grade from the street.
- (e) **Garages.** Garages or carports must be at least two (2) cars wide and may be attached to, detached from or built within a residence. Converting a garage to a living space shall not be allowed. The width of the driveway in so far as its capacity to park cars side by side shall not exceed the number of cars to be parked in the garage i.e., the width of the driveway cannot be for three cars if the garage is a two car garage.
- (f) **Building Limit Lines.** No building structure or part thereof, except as hereinafter provided, shall be erected or maintained on any Lot beyond the front building limit line. If a garage faces the street it cannot be built on the fifteen-foot (15’) building limit line. If a portion of the front of the house is built on the fifteen-foot (15’) building limit line then the garage may be recessed back of the fifteen-foot (15’) building limit line. If a portion of the home is not built on the fifteen-foot (15’) building limit line then the garage will have a twenty-foot (20’) building limit line. Garages that swing in (garages doors not facing the street) may be build on the fifteen foot (15’) building limit line. Further, no building structure or part thereof shall be erected nearer than five (5) feet to a side Lot line except that cornices, spouting, chimneys and ornamental projections may extend two (2) feet nearer such side Lot line; such limitations being herein called the “Side Building Limit Lines.”
- (g) **Signs, Billboards and Detached Structures.** No signs or billboards will be permitted upon any Lot except signs advertising the sale or rental of a Lot or

Lots which do not exceed five (5) square feet in area; provided, however, that this restriction shall not apply to the Declarant.

No Detached Structures shall be allowed on any Lot which (a) except for greenhouses, does not correspond in style and architecture to the residence to which it is appurtenant, or (b) is more than one (1) story in height.

For the purpose of this restriction, small tool or storage sheds of less than 121 square foot floor area and 6 foot 6 inch eave height may be maintained within rear yard areas provided such rear yard is enclosed with an approved 6-foot high sight-proof fence. The storage building must be built of the same type building and roofing material that is used in the home. Storage buildings do not have to be bricked.

- (h) **Grading and Excavation.** No building or other structure shall be constructed or maintained upon any Lot, which would in anyway impede natural drainage. No grading, scraping, excavation or other rearranging or puncturing of the surface of any Lot shall be commenced which will or may tend to interfere with, encroach upon or alter, disturb or damage any surface or subsurface utility line, pipe, wire or easement, or which will or may tend to disturb the minimum or maximum subsurface depth requirement of any utility line, pipe, wire or easement. Any such interference, encroachment, alteration, disturbance or damage due to the negligence of an Owner or his agents, contractors, or representatives will be the responsibility of such Owner, and the owner of the line, pipe, wire or easement may effect all necessary repairs and charge the cost of the same to such Owner.
- (i) **Moving Existing Buildings Onto a Lot Prohibited.** No existing, erected house or Detached Structure may be moved onto any Lot from another location.
- (j) **Construction Period.** Upon commencement of excavation for the construction of a residence, the work must thereafter be continuous, unless the Architectural Committee in writing approves a delay. If a delay of more than ninety (90) days occurs without the Architectural Committee's Consent, which will not be unreasonably withheld, the Declarant (unless the Declarant is no longer an Owner and then the Association) may, but shall not be obligated to, complete such construction, at the Owner's sole cost and expense. No construction shall occur on any Sunday or on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving or Christmas Day.
- (k) **Utilities:** The Owner of each Lot shall provide the required facilities to receive electric service and telephone service leading from the sources of supply to any improvements erected on such Lot by means of underground service conductors installed, owned and maintained by the Owner in accordance with plans and specifications furnished by the suppliers of such

services. No Owner shall demand or require the furnishing of such services through or from overhead wiring facilities so long as underground distribution systems are available. If gas is used in the residence then the gas line must be stubbed out within the first third of the home.

- (l) **Sidewalks.** Sidewalks shall be constructed on each Lot. Sidewalks shall be seven foot (7') behind the curb and four foot (4') wide. The homeowner shall be responsible for the maintenance of the sidewalk after any warranties have expired.
- (m) **Mail Boxes.** Mail Boxes shall be constructed of brick or stone and shall be maintained by the homeowner.
- (n) **Real Estate Sales, Management and Construction Offices** may with the prior written consent of the Declarant, be erected, maintained and operated on any Lot or in any building structure now or hereafter erected on any Lot provided the offices are used solely in connection with the development of the Property or the construction of improvements on the Property, or the management, rental or sale of any part of the Property, or of improvements now or hereafter erected thereon and shall be removed upon completion of sales or construction as the case may be.

Section 3. General Restrictions:

- (a) **Animals.** No animals, fish, reptiles, or fowl, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot, and then only if kept solely as household pets and or kept, bred or raised for commercial purposes. No pet or pets shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. Upon the request of any Owner, the Board shall determine, in its sole discretion, whether for the purposes of this Section a particular animal, fish, reptile or fowl shall be considered to be a house or yard pet, or a nuisance, or whether the number of pets on any Lot is unreasonable, provided, however, that horses, mules, donkeys, cattle, pigs, goats and sheep shall not be considered as house or yard pets hereunder.
- (b) **Storage of Building Materials.** No building material of any kind or character shall be placed or stored upon the property line of the Lot upon which the improvements are to be erected and shall not be placed in the streets or between the curb and the property line.
- (c) **Vacant Lots.** No trash, ashes or other refuse may be thrown or dumped on any vacant Lot. Each Owner of a vacant Lot is required to keep such Lot in presentable condition or the Association may, at its discretion, mow such Lot, trim trees, remove trash or refuse and, if necessary, and regardless of whether annual maintenance assessments have by then commenced, levy an

assessment upon such Lot for the cost involved, which shall constitute a lien upon such Lot to the same extent as if provided elsewhere herein with respect to other assessments.

- (d) **Nuisance.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become a nuisance or annoyance to the neighborhood.
- (e) **Storage Tanks.** No tank for the storage of oil, water, or other fluids, or any other substance regardless of nature, may be maintained above the ground and outside an authorized structure on any of the Lots without the consent in writing of the Architectural Committee.
- (f) **Boats, Trailers and Vehicles: Temporary Residences.** Boats, trailers, motor homes, or other recreational vehicles may be kept on the premises provided they are concealed within the residence garage. Automobiles and pickup trucks may be parked in the driveway. Commercial vehicles, except for pickup trucks, are prohibited. Under no conditions may a trailer of any type be occupied, temporarily or permanently, as a residence except during the construction period and then only by a workman or watchman. No garage or outbuilding on any Lot shall be used as a residence or living quarters except by servants engaged on the premises. Any vehicle that is not driven daily may not be parked in the driveway or in front of the residence overnight. If a residence has a two-car garage then it cannot have more than two vehicles parked in the driveway overnight, a residence with a three-car garage can have no more than three vehicles parked in the driveway overnight. Garages may not be converted to any other use.
- (g) **Maintenance of Lawns and Plantings on Lots.** Each Owner shall keep all shrubs, trees, grass and plantings of every kind on his Lot, to the curb lines, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Each Owner shall replace any plantings, which have been installed on his lot that may die with equal or like plantings. Each owner shall replace any trees in the street right-of-way, installed by the Declarant or Builder that may die with trees only of the exact species as those originally installed by the Declarant or Builder. Each owner shall replace any trees in the street right-of-way, installed by the Declarant or Builder that may die with trees only of the exact species and caliper, measured six (6) inches from the ground level as those originally installed by the Declarant or Builder.
- (h) **Repair of Buildings and Improvements.** No building or improvement upon any Lot shall be permitted to fall into disrepair, but shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

- (i) **Garbage, Trash Containers and Collections.** All garbage so disposable shall be disposed of in a kitchen sink appliance installed for the purpose by each Owner in his residence. All other refuse, including lawn and garden clippings and trash, shall be kept in containers. In no event shall such containers be maintained so as to be Visible From Streets or Neighboring Property except to make them available for collection, and then only for the shortest time reasonably necessary to effect such collection.
- (j) **Clothes Drying Facilities.** No outside clothes drying or airing facility shall be Visible from Streets or Neighboring Property.
- (k) **Tree houses, Platforms and Antennae.** No tree houses, platforms in trees, play towers or other similar structures, or radio or television antennae shall be Visible from Neighboring Property.
- (l) **Fences.** All fencing of the following types must be approved by the Declarant in advance of its installation.
 - (a) Public Fence
 - (b) Any fence proposed to extend beyond the front of any building structure.
 - (c) Adjoining Fence
 - (d) Any Fence over Six (6') in height.
 - (e) All fences fronting the street.
 - (f) All corner Lots.
 - (g) **Lots Nineteen, and Twenty, Block Thirty Five (35), and Lot One (1), Block Thirty Eight (38) Shall not have a privacy fence along the rear of the Lot. Fencing is encouraged, but must be approved by the Declarant.**
- (m) **Easements.** The Declarant reserves the right to locate, construct, erect, and maintain, or cause to be located, constructed, erected and maintained in and on the plat as easements, sewer, and other pipelines, conduits, poles, wires and other methods of conducting or performing any quasi-public utility or function above or beneath the surface of the ground, with the right of access at any time to the same for the purpose of repair and maintenance.
- (n) **Antennae.** No TV, radio, citizens band radio, ham radio or any type of antennae, satellite dish, tower or aerial will not be permitted on the outside of any building, structure or any portion of any Lot without the written approval of the Declarant.
- (o) **Basketball Goals.** Permanently installed Basketball goals are not permitted. Basketballs goals if used must be portable and kept in the garage when not in use.
- (p) maintenance is needed to pay for one-half (1/2) of the charge and the CHAPEL CREEK ASSOCIATION to pay for the other one-half (1/2) of the charge.
- (q) **Window Units.** No window unit (s) shall be placed in any windows or walls for the purpose of heating or cooling.

Section 4. Variances: As to any Lot, the limitations and restrictions of Sections 1 through 3 of this Article may be waived or modified by the Declarant, to the extent permitted by law, upon written application made in advance by the Owner seeking a variance, as to which the judgment of the Declarant shall be conclusive; provided, however, that if the Declarant fails to approve or disapprove such application within thirty (30) days after its receipt, the application shall be deemed approved.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement: The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any suit brought hereunder, the plaintiff(s) shall be entitled to recover reasonable attorneys' fees, together with the costs of the action.

Section 2. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision, which shall remain in full force and effect.

Section 3. Amendment: The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Additions to Existing Property: Additional lands may become subject to this Declaration in the following manner:

- (a) Additions in Accordance with a General Plan of Development.** The Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional contiguous properties in future stages of the development, provided that such additions are in accord with a General Plan of Development (herein called "General Plan") prepared prior to the sale of any Lot and made available to every purchaser at the Declarant's or Association's office prior to such sale.

The additions authorized under this and the succeeding subsection, shall be made by filing of record a Supplementary Declaration of Covenants and

Restrictions (herein called "Supplementary Declaration") with respect to the additional property, which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any of the added properties, provided, they are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants and restrictions established by this Declaration within the Existing Property.

- (b) **Other Additions.** Upon approval in writing of the Association pursuant to a vote of its Members as provided in its Articles of Incorporation, the Owner of any contiguous property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions, as described in subsection 4(a) hereof.
- (c) **Mergers.** Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, 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 a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within The Properties together with the Covenants and Restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, modification or addition to the covenants established by this Declaration or any Supplementary Declaration within the Properties.
- (d) **Right to Assign.** The Declarant by appropriate instrument may assign or convey to any person any or all of the rights, reservations, easements and privileges herein reserved by it, and upon assignment or conveyance being made, its assignees or grantees may at their option, exercise, transfer or assign such rights, reservations, easements, and privileges or any one or more of them, at any time or times in the same way and manner as though directly reserved by them or it in this instrument.

