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DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR  
THE FOUNTAINS

AN ADDITION TO THE CITY OF MCALESTER, PITTSBURG COUNTY, OKLAHOMA

KNOW ALL MEN BY THESE PRESENTS:

RECITALS

WHEREAS, A.R.M., Inc., an Arkansas corporation, hereafter referred to as the "Declarant", is the owner of certain land and improvements (a Subject Property) in Pittsburg County, Oklahoma, which property is more fully described on the attached "Exhibit A", incorporated herein and made a part hereof; and

WHEREAS, the Subject Property has been platted into a subdivision known as THE FOUNTAINS Addition (hereinafter "the Fountains"), which plat was filed on 6-3-04 and recorded at ~~Plat Book~~ Folio 95B, page 95B, at the office of the County Clerk of Pittsburg County, Oklahoma; and

WHEREAS, the Subject Property consists of contiguous platted lots which are being developed into single family residential dwellings consisting of separately owned tracts of real property which share a common front and scheme and which will also share a portion of each of the separately owned tracts as common areas for landscaping, parking and ingress and egress to and from the individual lots; and

WHEREAS, Declarant desires to submit the land and the improvements to be constructed thereon to Oklahoma's Real Estate Development Act (Title 60 O.S. 1971, ' ' 851-85, as amended)

NOW, THEREFORE, Declarant does hereby publish and declare that the land and its improvements are hereby subjected to the conditions, covenants, and restrictions herein set forth to be established upon the recording hereof, and that the covenants, conditions, restrictions, use limitations, obligations, and provisions hereof shall be deemed to run with the land described on "Exhibit A" and shall be for the use and benefit to the Declarant, its successors and assigns, and to any person or entity acquiring or owning an interest in the land and improvements, or any portion thereof, its grantees, successors, heirs, personal representatives, devisees and assigns.

ARTICLE I - DEDICATION

1.1 Definitions. Unless the context shall expressly provide otherwise:

"Association" or a Homeowners Association means THE FOUNTAINS AT THE FAIRWAYS HOA, INC., an Oklahoma non-profit corporation its successors and assigns, the Certificate of Incorporation and Bylaws of which shall govern the administration of this real estate development, the members of which shall be all of the owners of the Lots.

"Building" means the building improvement and any attached appurtenances thereunto constructed by Declarant on the Lots including the pad, frame, roof, siding, doors, windows, chimneys, plumbing and electrical systems. Plumbing and electrical systems are defined as that part of the systems that are inside the walls.

"Common Areas" means all portion of The Fountains including, but not limited to:

- (i) the Building,
- (ii) all portions of the Lots lying adjacent to and outside the walls of the Building such as landscaping, streets, driveways, sidewalks and parking areas,
- (iii) the garage area ("Common Garage") beneath the Unit erected on Lot One (1), and
- (iv) the area shown on the plat as Common Area "A".

Common Areas do not include the interiors of any Building which is defined to mean the walls and all improvements attached to the walls including any heating and air conditioning apparatus on the outside of the Buildings dedicated to use by an individual Unit.

"Common Expenses" means all expenditures estimated by the Board of Directors in its annual budget necessary to maintain, replace and repair the Common Areas, the Limited Common Areas and otherwise operate the Association for the ensuing fiscal year including any sums required to fund the reserve accounts required to be maintained by the Association.

"Declarant" shall mean and refer to A.R.M., Inc. an Arkansas corporation, and its successors and assigns.

"Limited Common Area" means the deck constructed by the Declarant on the back of each Unit which, although maintained by the Association, is reserved exclusively for use by the Unit Owner..

"Lot" means a portion of the subject land designated for separate ownership, and its dwelling improvements, the boundaries of which lot being the lot lines as shown on the recorded plat of the real estate described on Exhibit "A".

"Obligation(s)" shall mean all annual dues and special assessments attributable to an Owner of a Lot.

"Owner" means a person or persons, firm, corporation, partnership, trust, association or other legal entity, or any combination thereof, who owns one or more lots.

"Person" means a natural person, corporation, partnership, association, trust, other entity, or any combination thereof.

"Unit" means the Building and improvements constructed on a Lot.

## 1.2 Easements.

(A) Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be appurtenant to the Lot of that Owner, and all conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights as provided herein, as though set forth in said document in full, even though no specific reference to such easements or restrictions appears.

(B) Blanket Easements for Utilities. There is hereby created a blanket easement in, on, through, upon, across, over and under all of the publicly dedicated easements and rights-of-way, as shown on the recorded plat, for ingress and egress, installation, replacement, repair and maintenance of all utilities including, but not limited to, water, sewers, gas, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the electrical company, telephone company and/or any other company providing services to the Subject Property to erect and maintain the necessary poles and other necessary equipment on said easements.



(C) Owner's Nonexclusive Easement of Enjoyment; Limitations. Every Owner and his immediate family shall have a nonexclusive right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to the lot of such Owner, subject to the rights of the Association stated herein.

(D) Joint and Mutual Easement. Each Owner and said Owner's family and invitees shall have a nonexclusive right and easement over and across the common areas for the purposes of ingress and egress to that Owners Lot.

1.3 Use and Occupancy; Rights to Rent; Mortgagee Right to Rent; Leases Subject to Declaration. After the initial sale or transfer of a Lot or Lots by Declarant, all such Lots shall thereafter be used and occupied only for single family residence purposes by the Owner, by the Owner's family, the Owner's guests, or the Owner's tenants; however, Lots shall not be rented by the Owners for any period less than thirty (30) days; and further, any lease shall be in writing and shall be subject to the covenants and restrictions contained in this Declaration.

1.4 Mortgaging a Lot; Priority; Mortgage Subject to Declaration. An Owner shall have the right from time to time to mortgage or encumber his Lot and the interest appurtenant thereto, but the lien created thereby shall be subject to the terms and provisions of this Declaration, and any mortgagee or other lienholder who acquires a Lot through judicial foreclosure, public sale or other means shall be subject to the terms and conditions of this Declaration except as specifically excepted herefrom.

1.5 Compliance with Provisions of Declaration, Certificate of Incorporation and Bylaws. Each Owner shall comply strictly with the provisions of this Declaration, the Certificate of Incorporation, the Bylaws of the Association and the rules, regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure and refusal after written notice to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all attorney's fees incurred in connection therewith and interest on all of such amounts at the highest lawful rate, which action shall be maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved Owner.

1.6 Revocation or Amendment to Declaration. This Declaration shall not be revoked unless all of the Owners and all of the holders of any recorded mortgage or lien covering or affecting any or all of the Lots unanimously consent and agree to such revocation by instrument(s) duly recorded. Except as provided herein, this Declaration shall not be amended unless the Owners representing an aggregate ownership interest of eighty percent (80%), or more, of the Lots agree to such amendment by instrument(s) duly recorded. However, these Declarations may not be amended to remove or restrict any of the rights granted or reserved herein to Declarant without the express written consent of Declarant.

1.7 Ownership of a Lot; Deviation in location of Wall. Each Owner shall own his, her or their Lot in fee simple title and shall further own a perpetual easement as hereinafter described to use and enjoy the driveways, sidewalks and parking lot in the Common Areas subject, however, to the restrictions contained herein. Said fee simple ownership to include all rights and appurtenances normally associated with ownership of real property. All parties purchasing a Unit in this development recognizes and agrees that the wall of a Unit may or may not lie exactly on the Lot line shown on the plat. Further, that in the event the boundaries of a Lot and the actual wall are slightly different the wall as constructed shall be deemed to be the actual boundary of the Unit.

1.8 Reserved Parking. Each Owner shall be entitled to certain parking areas reserved for their exclusive use in front or adjacent to their Unit. The actual number and location of the reserved spaces shall be determined by the Board of Directors, however, all such reserved parking must be proportional so that each Unit Owner is entitled to the same general parking spaces.



## ARTICLE II - HOMEOWNERS ASSOCIATION

2.1 Mandatory Membership. An Owner of a Lot, upon becoming an Owner, shall mandatorily be a member of the Association and shall remain a member for the period of his ownership. The Association shall be governed by a Board of Directors as is provided in the Certificate of Incorporation and Bylaws of the Association. The Association may employ agents, servants and employees and any person or firm to act as Managing Agent at any agreed upon compensation.

2.2 Ownership of Common Areas. All Common Areas, if any, lying outside the boundary of a Lot, if any, shall be owned in fee simple by the Association.

2.3 Association's Maintenance and Responsibility. The Association shall be responsible only for the maintenance, operation and repair of the Common Areas and Limited Common Areas (as defined in Section 1.1 hereinabove), the areas appurtenant to statutory street right-of-ways along section line roads and any other areas shown on the plat as common right-of-way such as entrances and center medians.

2.4 Classes of Membership; Voting Rights. The Association and the Board of Directors shall have two (2) classes of voting membership as follows:

Class A. Class A Members shall be all those Owners of Lots with the exception of the Declarant. Each Class A member shall be entitled to one vote for each Lot owned. When more than one person holds an ownership interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercise as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B Member(s) shall be the Declarant, its successors and assigns. The Class B member/Director shall be entitled to five (5) votes for each Lot owned. The Class B votes shall cease when the Declarant owns no more lots in The Fountains.

2.5 Interim Control of Association. Until such a time as fifty percent (50%) of the Lots are occupied by Owners, or the Declarant elects to turn over control of the Association to the then existing Lot Owners, whichever comes first, the Association shall be managed by one or more persons, who do not have to be Lot Owners, under contract with the Association. Once fifty percent of the Lots have been occupied control of the Association shall pass to a duly elected Board of Directors pursuant to the applicable provisions of the certificate of Incorporation and Bylaws.

### 2.6 Assessment for Annual Dues and Special Assessments.

(A) Obligation to Pay Dues. Except as stated in this Section 2.6, all Owners shall be obligated to pay the annual dues imposed by the Bylaws and the Board of Directors of the Association to meet the expenses of the Association.

(B) Initial Dues and Due Dates. Annual Dues and the quarterly Due Date(s) shall be initially set in the Bylaws of the Corporation. No dues shall be assessed or collected until the Lot is purchased by an Owner, who is not a Builder. Dues shall be paid quarterly in advance on the date specified in the Bylaws or as set by the Board of Directors. Annual Dues for the first year shall be prorated and collected by the closing agent or, if none, by the purchaser, at the time of transfer of title and promptly remitted to the Association or its agent. Annual Dues may be adjusted up or down by the membership or the Board of Directors as provided in the Certificate of Incorporation and Bylaws.

(C) Special Assessments for Capital Improvements; Assent; Notice. In addition to the annual - dues hereof, the Board of Directors may levy a special assessment (@Assessment@) applicable to that



year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement, including the necessary fixtures and personal property related thereto, provided that any such special assessment shall have the assent of 2/3rds of the Owners, voting in person or by proxy, at a meeting duly called for this purpose. Written notice of which shall be given to all members at least ten (10) days in advance, which shall set forth the purpose of the meeting. No special assessment may be levied upon the Declarant.

(D) Unsold Lots. Notwithstanding anything herein to the contrary, Declarant, including Builder transferees of Declarant, shall not be responsible for payment of annual dues or assessments for any unsold Lots. An unsold lot is any lot that has not yet been purchased as a residence by any Owner.

(E) Assessment Lien; Priority; Notice of Lien; Recording; Enforcement; Receiver; Mortgagee may pay Assessment All unpaid assessments and annual dues chargeable to any Lot, including any fees, late charges, fines or interest, shall constitute a lien on such Lot prior to all other liens except the following: (1) assessments, liens and charges for taxes past due and unpaid on the Lot, (2) judgments entered in a Court of Record prior to the due date of the annual dues or assessment date, (3) mortgage instruments of encumbrance duly recorded prior to the due date or date of such assessment, and (4) mechanic's and materialmen's liens arising from labor performed or material furnished upon a Lot prior to the due date or date of such assessment. To evidence such lien, the Board of Directors shall prepare a written notice of assessment lien setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot, such a notice shall be signed by one of the Board of Directors or by one of the officers of the Association, or a management agent of the Board of Directors, and shall be recorded in the office of the County Clerk of Pittsburg County, Oklahoma. Such lien for the annual dues or special assessment shall attach from the due date thereof and impart notice to third parties from the date of the recording thereof. Such lien may be enforced by the foreclosure of the defaulting Owner's Lot subsequent to the recording of a notice or claim thereof by the Association in like manner as a mechanics or materialmen's lien on real property. In any such proceedings the Owner shall be required to pay the costs, expenses and attorney's fees incurred for filing the lien and, in the event of foreclosure proceedings, the additional costs, expenses and attorney's fees incurred. The owner of the Lot being foreclosed shall be required to pay to the Association the yearly assessment for the Lot during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Association shall have the power to purchase a Lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. Any mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any unpaid annual dues or special assessments payable with respect to such Lot, and such payment shall not be deemed a waiver by the Association of default by the Lot Owner.

(F) Annual Dues and Assessments Collectible on Sale. Upon the sale or conveyance of a Lot, all unpaid annual dues or assessments, including interest and costs and reasonable attorney's fees incurred in collection, shall be first paid out of the sales price or by the purchaser in preference of any other assessments or charges of whatever nature, except the following:

Assessments, liens and charges for taxes past due and unpaid on the Lot;

Judgments entered in a Court of Record prior to the due date of annual dues or a special assessment;

Mortgage instruments of encumbrance duly recorded prior to the date of such assessments;

Mechanic's and materialmen's liens arising from labor performed or material furnished upon a Lot prior to the date of such assessment; and

In a voluntary conveyance of a Lot the grantee of the Lot shall be jointly and severally liable with



the grantor for all unpaid dues and assessments by the Association, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the management agent or Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a Lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.

(G) Mortgaging a Lot; Priority; Mortgage Subject to Declaration; Mortgagee in Title-Unpaid Assessments. An Owner shall have the right from time to time to mortgage or encumber his Lot and the interests appurtenant thereto, but the lien created thereby shall be subject to the terms and provisions of this Declaration, and any mortgagee or other lienholder who acquires a Lot through judicial foreclosure, public sale or other means shall be subject to the terms and conditions of this Declaration except as specifically excepted herefrom. Where the holder of a first mortgage of record or other purchaser obtains title to the Lot as a result of foreclosure of the first mortgage or deed in lieu of foreclosure, such acquirer of title shall not be liable for the annual dues or assessments chargeable to such Lot which became due prior to acquisition of title to such Lot by such acquirer.

(H) Non-Exemption from Payment; Board Responsibility to Collect; Interest, Costs, and Attorney Fees; Suit; Notice to Mortgagee. The amount of annual dues and assessments assessed against each Lot shall be the personal and individual debt of the Owner thereof. No Owner may exempt himself from this liability by waiver of the use of enjoyment of any of the Common Areas or by abandonment of his Lot. The Board of Directors shall have the responsibility to take prompt action to collect any unpaid dues or assessments which remain unpaid more than fifteen (15) days from the due date for payment thereof. In the event of a default by an Owner in the payment of the assessment, such Owner shall be obligated to pay interest at the rate of eighteen percent (18%), or such higher rate (provided the same shall not be usurious) as the Board of Directors may from time to time determine, per annum on the amount of the assessment from the due date thereof, together with all expenses, including attorney's fees, incurred to collect such dues or assessments together with late charges as provided by the Bylaws of the Association. Suit to recover a money judgment for obligations may be instigated in Pittsburg County, Oklahoma, and may be maintainable without foreclosing or waiving the lien securing same additionally, in the event that the mortgage on a Lot should so provide, a default in the payment of an obligation shall be a default in such mortgage and if required by the mortgagee by written notice to the Association, the Board of Directors shall give notice of any default in payment of an assessment to the mortgagee.

## 2.7 Insurance.

(A) Public Liability Insurance. Comprehensive public liability insurance covering Common Area A and the Common Garage shall be purchased by the Association and shall be maintained in full force and effect at all times. Such insurance shall be obtained from reputable insurance companies authorized to do business in the State of Oklahoma having a financial rating by Best's Insurance Reports of Class VI or better. The amount of coverage shall be determined by the Board from time to time so as to provide such coverage as the Board may deem prudent, provided, however, that the minimum amounts of coverage shall be \$1,000,000 for any one accident or occurrence, and \$1,000,000 for property damage. The premiums shall be paid from the assessments levied and collected pursuant of this Declaration. Such policy shall name all Owners as insureds, and shall also name, as additional insureds, such persons or entities, including the Association, the Board, and any agents or employees of the Board, as the Board may deem necessary or required in order to insure the Association, the Board, the Owners and their respective agents, guests and invitees, against liability to the public, the Owners, their guests, tenants, family members and invitees, or any other persons, whomsoever in connection with any damage or injury occurring on the Property or resulting or arising as a result of the ownership or use of the Property or any part thereof. Provided, however, such insurance shall not insure against loss caused by injuries to Owners or invitees of Owners in such Owner's Unit or members of their households occurring in their own Unit or within the fenced portion of any Limited Common Area. Such policy shall



contain a severability of interest endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Homeowners Association or other Owners and such other endorsements as the Board may deem appropriate.

(B) **Fire and Extended Coverage Insurance.** A blanket fire and hazard insurance policy covering the Units shall be purchased by the Association and shall be maintained in force at all times, the premium thereon to be paid from the assessments levied against each of the Owners in accordance with this Declaration. Such insurance shall be obtained from reputable insurance companies authorized to do business in the State of Oklahoma having a financial rating by Best's Insurance Reports of class VI or better and shall insure against loss from fire and such other hazards as the Board may deem appropriate, and shall insure all structures and improvements upon the Property and all personal property owned by the Association or jointly by all the Owners as tenants in common for not less than one hundred percent (100%) of the full insurable replacement cost value thereof (as determined annually by the Board in conjunction with the insurance company issuing such policy). Such policy shall contain vandalism and malicious mischief coverage, together with such other coverage, endorsements, and adjustment clauses as the Board deems appropriate. Such policy shall name the Association as insured, as trustee for the benefit of all the Owners. Such policy shall name the respective mortgagees of the Owners, as their respective interests may appear, and shall provide for the issuance of certificates or such endorsements evidencing the insurance as may be required by any insured or an insured's mortgagee. The Board may select such deductible which, in its opinion, are consistent with good business practices in connection with the purchase of such policy.

(C) **Use of Proceeds.** All insurance proceeds available under paragraph (B) of this Section 2.6 shall be paid to the Association and held for the benefit of the Owners, mortgagees, and such other persons, as their respective interests shall appear, and shall be paid out in accordance with the requirements of this Declaration.

(D) **Director and Officer Insurance.** If available, the Association shall purchase and maintain a policy or policies of liability insurance insuring the Board, the officers and employees of the Association against any claims, losses, liabilities, damages or causes of action arising out of or in connection with or resulting from any act done or omission to act by any such person or entities.

(E) **Additional Insurance.** The Association, may, at its option, purchase and maintain in force at all times, demolition insurance in adequate amounts to cover demolition in the event of destruction of the buildings, or any of them, and the decision by Owners not to rebuild. The premium therefor shall be paid from the assessments levied against all Owners in accordance with this Declaration.

(F) **Authority of Board.** Each of the Owners, and every other person named as an insured in connection with any of the policies, as purchased by the Association, hereby irrevocably delegates to the Board all authority as may be necessary to negotiate loss settlements with the appropriate insurance carriers on behalf of the persons named as insureds. The Board shall have the sole and exclusive authority and right to negotiate any such loss settlements; provided, however, that any execution of a loss claim form and release form in connection with the settlement of a loss claim shall be binding on all Owners and upon any other person named as an insured on any such policy or policies only upon the execution thereof by a majority of the members of the Board.

(G) **Annual Review of Insurance.** The Board shall review annually the limits of coverage of the policies of insurance purchased by the Association.

(H) **Notice of Cancellation.** After the written request made by a holder of a first mortgage on a Unit to do so, the Board shall give notice to such holder 10 days prior to the cancellation of any policy of insurance purchased by the Association.

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(I) **Owner's Insurance.** Each Owner shall be required to purchase an insurance policy providing loss and liability coverage for that Owners entire Lot as shown on the plat for The Fountains including grounds outside the Unit walls including coverage for damage, destruction or loss of and to the Owner's personal property and, further, naming the Homeowners Association as a third party beneficiary. Under no circumstance shall the Association be liable for the damage to or destruction of personal property located in the Property and owned individually by any Unit Owner.

(J) **Repair and Restoration.** Except as hereinafter provided, damage to or destruction of any or all of the Units shall be promptly repaired and restored by the Association, using the proceeds of insurance, on the building or Buildings damaged or destroyed for that purpose, and all Owners shall be liable for assessments for any deficiency; provided, however, that upon the occurrence of the substantially total destruction of all the Buildings and sixty (60%) percent of the Owners elect in writing not to proceed with the repair or restoration of the property destroyed then in that event, the Property, or so much thereof as shall remain, shall be subject to partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all Owners on a pro rata basis after first paying, out of the respective shares of Owners, to the extent sufficient for that purpose, all liens on the Lot of each Owner. Except upon the substantially total destruction of all the Buildings or upon the written election of sixty percent (60%) of the Owners and holders of mortgages covering Lots comprising sixty percent (60%) of the interest in the Common Elements not to proceed with reconstruction, all hazard insurance proceeds shall be used exclusively for the repair, replacement, or reconstruction of the buildings. The Board, their agents, and employees shall have an easement to enter Units to make repairs to Common Elements, or when repairs reasonably appear to be necessary for public safety or to prevent damage to property other than the Unit. The Association shall represent the Owners in connection with the adjustment of any losses.

(K) **Obligation of the Board.** Upon the partial destruction of one or more of the Units, the Board shall obtain bids from at least two reputable contractors and shall call a meeting of the Owners to consider whether reconstruction of the damage should be undertaken. Unless 75% of the Owners elect in writing not to proceed with reconstruction, the Board shall award the contract for the reconstruction to the lowest bidder; provided, however, that the Board shall not be required or authorized to award such contract until it has sufficient monies, whether from insurance or the collection of special assessments levied in accordance herewith, with which to pay the cost of reconstruction as reflected by the bid to be accepted by the Board. The Board, upon awarding said contract, shall thereafter be authorized to disburse monies to the contractor in accordance with said contract out of the insurance proceeds held by the Board and the special assessments levied and collected by the Board. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of such reconstruction at the earliest possible date. All such reconstruction shall be in accordance with the plans of construction of the Property.

(L) **Notice to Mortgagee.** After written request made by a holder, insurer, or guarantor of a first mortgage on a Lot to do so, the Board shall give notice to such holder of any substantial damage or loss to the property.

2.8 **Eminent Domain.** If part of a Common Area is acquired by eminent domain, the award must be paid to the Association. The Association shall represent the Lot Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or part thereof. Each Lot Owner appoints the Association as attorney-in-fact for such purposes.

2.9 **Association Rights to Use and To Grant Easements.** The Association, in its sole discretion, may from time to time grant easements and rights of way on, across, under and over the Common Areas to any municipal corporation or public utility company, or other entity providing water,



sewer, gas, electricity, telephone, cable television, or other similar service to the real estate development.

2.10 Prohibition of Employment or Other Pecuniary Gain. No part of the assessments or net earnings of the Association shall inure to the benefit of any Lot Owner or individual, except to the extent that Lot Owners receive the benefits from the maintenance, repair, operations, additions, alterations and improvement responsibility of the Association. No Lot Owner may receive compensation, directly or indirectly, for services rendered as an officer, director or employee of the Association.

2.11 Registration of Mailing Address of Lot Owners; Association Address. Each Owner shall register his mailing address with the Association, and notices or demands intended to be served upon an Owner shall be sent by mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Secretary of the Board of Directors of the Association or served upon the service agent of the Association.

### ARTICLE III - PROPERTY RESTRICTIONS

3.1 Single Family Residences. All Lots herein shall be occupied as single family residences only. No residence may be owned or occupied for any commercial purpose.

3.2 Improvements and Alterations; Plans and Specifications; Approval. Except for construction by the Declarant, no building, fence, wall or other improvements or structure, including mail boxes, shall be commenced, erected, placed, moved or maintained upon the subject land, nor shall any exterior addition to or change in any improvement located on the subject land, be made until the complete plans and specifications showing the precise and exact nature, kind, shape, height, set-back, materials, color and location of the same shall have been submitted in duplicate to and approved in writing (by the Declarant as more fully described below) as to harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the improvements. Declarant may waive this requirement, at its option, by written authorization upon the terms and conditions set forth in said writing.

3.3 Minimum Square Footage. Unless otherwise stated herein, no residence shall contain less than One thousand Eight Hundred (1,800) square feet of living area. The first floor of any two story residence must contain a minimum of Nine Hundred (900) square feet of living area.

3.4 Exterior Requirements. The exterior of any residence shall be at least fifty percent (50%) brick, stone or stucco, and fifty percent (50%) may be of frame or other material which will blend together with the brick, stone or stucco. It is the intention of this restriction to allow panels of materials other than brick, stone or stucco to be used, but in no event shall a continuing wall consisting of fifty percent (50%) of the exterior of the residence be built of any material other than brick, stone or stucco. This restriction is intended to encourage the use on the principal exterior of residences of masonry construction, but may be modified to allow the use of other materials to blend with the environment to eliminate repetition of design. In no event shall out buildings be of a material other than the residence. Chimney materials must be brick, stone or stucco to the top of the first floor plate except where the chimney is on the interior, in which case it need not be brick, stone or stucco.

3.5 Roofs. Roofs shall be of shakes, clay, tile or composition roofing approved by the Declarant.

3.6 Fences. Fences are not allowed except as constructed by the Declarant or allowed by the Association.

3.7 Approvals; Copy of Plans and Specifications Deposited; Lapse of Time Paramount to Approval. Upon approval by the Declarant of any plans and specifications submitted pursuant to these



provisions, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of Declarant, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. In the event the Declarant fails to approve or disapprove any plans and specifications which may be submitted to it within sixty (60) days after submission, then approval will not be required, and this paragraph shall be deemed to have been fully complied with.

3.8 Construction; Limitations, Deviations from Plans and Specifications. Construction or alterations in accordance with plans and specifications approved by the Declarant shall be commenced within six (6) months following the date upon which the same are approved by the Declarant (whether by affirmative action or by forbearance from action), and shall be substantially completed within twelve (12) months following the date of commencement, or within such longer period as the Declarant shall specify. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Declarant shall be conclusively deemed to have lapsed, and compliance with the provisions of this paragraph shall again be required. There shall be no deviations from plans and specifications approved by the Declarant without the prior consent in writing of the Declarant. Approval for use on any Lot of any particular plans and specifications or design shall not be construed as a waiver of the right of the Declarant to disapprove such plans and specifications, or any Areas or features thereof, in the event such plans and specifications are subsequently submitted for use upon any other Lot or Lots.

3.9 Certificate of Compliance. Upon the completion of the construction or alteration of any building, fence, wall or other improvements or structure in accordance with plans and specifications approved by the Declarant, the Declarant shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facie evidence that the building, fence, wall, or other improvements or structure referenced in such certificate has been approved by the Declarant and constructed or installed in full compliance with the provisions of this Article.

3.10 Enforcement; Right to Correct Violations. In the event any building, fence, wall or other improvements or structure shall be commenced, erected, placed, moved or maintained upon any Lot, otherwise than in accordance with the provisions and requirements of these provisions, then the same shall be considered to have been undertaken in violation of these provisions and without the approval of the Declarant required herein. Upon written notice from the Declarant, such building, fence, wall or other structure or improvements shall be promptly removed. In the event the same is not removed, or the violation is not otherwise terminated, within fifteen (15) days after notice of such violation is delivered to the Owner of the Lot upon which such violation exists, then Declarant shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to remove or otherwise terminate such violation, and the costs thereof shall be assessed against Owner and the Lot upon which such violation occurred. A statement for the amount thereof shall be rendered to the Owner of said lot, at which time the assessment shall become due and payable and a continuing lien upon said Lot and an obligation of the Owners, and may be enforced as a judgment lien. The Declarant shall have the further right, through its agents, employees or committees, to enter upon and inspect any Lot at any reasonable daylight hour for the purpose of ascertaining whether any violation of the provisions of this paragraph or any of the other provisions or requirements of this Declaration, exists on such Lot.

3.11 Common Garage. A common garage has been constructed beneath Unit One (1) on Lot One (1) for use by all members of the Association. The garage is intended for storage of one (1) golf cart per Lot. Electricity for the garage is separately metered and shall be paid by the Association. Any conflict regarding use of the garage by two or more members shall be resolved by the Board of Directors who may make and enforce rules and regulations regarding the use of the Common Garage if necessary.

#### ARTICLE IV - PROHIBITED USES

4.1 Offensive or Noxious Use; Nuisance Activity. The Owner of any Lot shall not use or



allow the use of such Lot for any purpose which will be noxious, offensive or detrimental to the use of the other Lots or which will create or emit any objectionable, offensive or noxious odors, dust, gases, fumes or other such material or which will in any manner violate any applicable zoning ordinance or other regulations enacted by any duly constituted governmental authority. No noxious or offensive activity shall be carried on, nor shall anything be done therein which may be or may become an annoyance or nuisance.

4.2 Mineral Drilling. No drilling or puncturing of the surface for oil, gas or other minerals or hydrocarbons within the subject lands shall be permitted.

4.3 Livestock. The keeping of any poultry, cattle, horses or other livestock of any kind or character is prohibited within the Project.

4.4 Refuse Storage; Growth; Lawns. The storage of trash, ashes, or other refuse, except in normal receptacles, is prohibited. Weeds, underbrush or other unsightly growths shall not be permitted to grow or remain in the Project. No trash, ashes or other refuse may be thrown in any other Owner's Lot. Lawns and shrubbery shall be kept mowed and trimmed by the Homeowners Association.

4.5 Signs and Billboards; Declarant's Right. No signs or billboards, except "for sale" or "for rent" signs, shall be permitted on any Lot without the prior written consent of the Declarant; provided, this prohibition shall not apply to the Declarant in the initial sale of such Lot.

4.6 Vehicle Parking and Storage. No trucks, campers, recreational vehicles, motor homes or large commercial vehicles, nor any vehicle in the process of being repaired or otherwise presently inoperable, shall be stored or parked within the subject lands. No overnight parking of any vehicle on the street or Lot, other than a concrete driveway, is permitted except as allowed by the Board of Directors.

4.7 View From Street or Lot. All clotheslines, garbage cans, equipment, coolers, or storage piles shall be located as not to be visible from any other Lot within the Project.

4.8 Tanks. No elevated tanks of any kind shall be erected, placed or permitted on any Lot.

4.9 Radio or Television Device. No radio or television transmitting or receiving device shall be allowed on any Lot or structure with an exposed antenna that exceeds five (5) feet in height and/or 24 inches in diameter.

4.10 Wind Powered Generators. No wind powered generators shall be allowed on the subject lands.

4.11 Temporary Structure. No trailer, tent or shack shall be erected, placed or permitted, nor shall any structure of a temporary character be used at anytime as a residence without the prior written consent of the Declarant.

4.12 Household Pets; Care and Restraint; Limit on Number. No animal shall be kept except household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary conditions. No savage or dangerous animal shall be kept. No more than two household pets may be kept without written permission of the Association. No pets may be permitted to run loose within the Project.

4.13 Basketball goals. Basketball goals are not allowed.

## ARTICLE V - DECLARANT=S RESERVATIONS

In addition to the reservations stated throughout this Declaration and notwithstanding anything herein to the contrary Declarant hereby reserves the rights contained in this Article.

5.1 Special Amendment. Declarant hereby reserves and is granted the right and power to record a Special Amendment to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities and/or (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to make, execute, and record special amendments. No special amendment made by Declarant shall affect or impair the lien of any first mortgage upon a Lot or any warranties made by an Owner or first mortgagee in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee the first mortgage on such Owner's Lot.

5.2 Declarant Business Office; Models. Declarant and any Builder active in the Addition may maintain a business and sales office, models, and other sales facilities necessary or required until all of the Lots are sold.

5.3 Amendment as to Unsold Lots; Waiver. Declarant hereby reserves the right to revoke or amend these Declarations, by written instrument filed of record in the County Clerk=s office, to remove or amend the restrictions set forth herein on any Lot owned by Declarant. The Declarant shall have the power to grant to any Owner a waiver, variance, or exception of and from any of the provisions of this Declaration.

5.4 Signs. Declarant, and any Builder active in the Addition, reserves the right to erect such signs as it deems necessary for the sale and marketing of the property and Lots described herein.

5.5 Additional Property. Declarant reserves the right to dedicate any adjacent property now owned or subsequently acquired by Declarant or its successors or assigns to the Homeowner=s Association established herein, at Declarant=s option. If Declarant chooses to dedicate future property to the Association said dedication shall be controlled by Declaration of Covenants, Conditions and Restrictions filed for that subdivision, and not these Declarations. Any Common Areas designated on the plats of said adjacent properties shall be deeded to the Homeowner=s Association and accepted by them as if fully described herein.

5.6 Transfer of reserved rights. After Declarant has sold all Lots owned by him any and all rights reserved herein shall be transferred to and become vested in the Homeowners Association, with the exception of those rights granted or reserved to the Builders in the Addition so long as said Builders still own Lots or homes for sale in the Addition.

## ARTICLE VI - MISCELLANEOUS

6.1 Severance. If any of the provisions of this Declaration or any paragraph, sentence,



clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provisions, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

6.2 Failure to Enforce Not Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

6.3 Captions. The captions herein are inserted only as a matter of convenience, and for reference, and in no way define, limit or describe the scope of this Declaration or exhibits nor the intent of any provisions hereof.

6.4 Gender. Whenever the context so requires, the use of the masculine gender in this Declaration shall be deemed to refer to the feminine or neuter gender and the use of the singular shall be deemed to refer to the plural, and vice versa.

6.5 Covenants to Run With the Land. The covenants, conditions and restrictions of this Declaration shall run with and bind the project and shall inure to the benefit of and be enforceable by the Declarant or any Owner, their respective legal representatives, heirs, successors and assigns.

6.6 Declarant Easement. Declarant has an easement as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Declarant's rights reserved herein.

6.7 Enforcement at Law or In Equity; Notice to Mortgagee of Uncured Default. Any Owner or Declarant, so long as Declarant has a record interest in the covered property, shall have the right to enforce by proceedings at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. Failure to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6.8 Attorneys Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and costs of such suit.

6.9 City of McAlester a Beneficiary. In order that the public interest may be protected, the City of McAlester shall be a beneficiary of any of the covenants herein pertaining to location of uses and access. The City of McAlester may enforce compliance therewith.

IN WITNESS WHEREOF, the undersigned, being the owner of all the lots in The Fountains have executed these presents the 19th day of June, 2004.

PROPERTY OWNED

DECLARANT

All Lots and Blocks of  
THE FOUNTAINS ADDITION

A.R.M., Inc., an Arkansas corporation

  
\_\_\_\_\_  
Carl Voss, President



ACKNOWLEDGMENT

STATE OF OKLAHOMA )  
COUNTY OF PITTSBURG )

ss.

This instrument was acknowledged before me on  
Voss, President of A.R.M., Inc., an Arkansas corporation

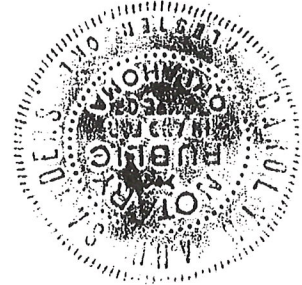
June 09<sup>th</sup>, 04 by Carl

Carolyn Ann Sanders  
Notary Public

My commission expires:

March 14<sup>th</sup>, 2006  
SEAL

My commission no. 061849



STATE OF OKLAHOMA  
PITTSBURG COUNTY  
FILED OR RECORDED  
2004 JUN -9 A 9:35

DEBBIE BURCH  
COUNTY CLERK



0013082645



**EXHIBIT "A"**  
**THE FOUNTAINS ADDITION**

A tract of land located in Section Seventeen (17), Township Five (5) North, Range Fifteen (15) East, City of McAlester, Pittsburg County, Oklahoma, being more particularly described as follows:

**BEGINNING** at a point 152.85 feet south of the northwest corner of Lot Eighty-nine (89) in Townsite Addition No. 4, Pittsburg County, State of Oklahoma, thence N 89°09'44" E, a distance of 128.00 feet, thence S 01°14'03" E, a distance of 216.00 feet, thence S 89°09'44" W, a distance of 128.00 feet, thence N 01°14'03" W, a distance of 216.00 feet to the Point of Beginning, said described tract containing .6 acres, more or less.