

Deputy Clerk BDURR
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**Fountain Lakes Community Association, Inc
Amended and Restated Declaration of Covenants and Restrictions**

**Note: Substantial revision of the declaration. For present text see
existing declaration.**

2020

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF FOUNTAIN
LAKES HOMEOWNERS ASSOCIATION, INC**

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NOTE: SUBSTANTIAL REVISION OF THE DECLARATION. FOR PRESENT TEXT SEE EXISTING DECLARATION.

AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF FOUNTAIN LAKES

**Article 1
Background**

- 1.1 Whereas the Developer Kraus- Anderson formed the Fountain Lakes Homeowners Association, Inc. on August 28, 1987 as a perpetual not for profit Florida Corporation and turned over ownership and operation of the Fountain Lakes to the Fountain Lakes Homeowners Association, Inc. on (date). It is the intention that Fountain Lakes will be subject to this Master Declaration. Portions of the Property may be subject to Neighborhood Declarations, Deed Restrictions and/or Supplements as well as this Master Declaration. The Master Association is responsible for the administration of this Declaration.
- 1.2 Whereas the Fountain Lakes Homeowners Association, Inc. makes this new and completely revised Declaration of Protective Covenants and Restrictions on this _____ day of _____, 2020.

**Article 2
General Intent of Declarations**

- 2.1 The Fountain Lakes Homeowners Association, Inc. desires to provide for the preservation and enhancement of the value, desirability and attractiveness of the Property and, therefore, Declarant intends by this Declaration to impose upon the Property mutually beneficial covenants, conditions, restrictions and easements. Declarant desires to provide flexible and reasonable procedures for the overall management of the Property, and to establish a method for the administration, governance, maintenance, preservation, use and enjoyment of the Property, and maintenance and use of property dedicated to or owned by the Master Association.
- 2.2 These covenants, conditions and restrictions of this Declaration may only be amended by duly recording an instrument executed and acknowledged by an officer of the Association attesting that the amendment has been approved by a majority of the Members and Contributing Units assigned to the Members of the Association present and voting in person or by proxy at a members' meeting for which proper notice has been given and at which a quorum exists.
- 2.3 Any and all deeds conveying a lot, a Dwelling Unit, or any other portion of the Committed Property shall be conclusively presumed to have incorporated all of the terms and conditions of the applicable Fountains Lakes documents, including these Protective Covenants, whether or not the incorporation of the terms and conditions of the Fountain Lakes Documents is specifically set forth by reference in such deed, and acceptance by the Grantee of such deed shall be deemed to be acceptance by such grantee of all of the terms and conditions of the Fountain Lakes Documents including these Declarations and Covenants and the Bylaws.

**Article 3
Definitions**

The following word and phrases when used in these Declarations and Covenants shall have the following meanings unless the context clearly reflects another meaning:

- 3.1 **“Fountain Lakes Master Plat”** means the master plot plan so entitled graphically depicting the overall plan of development to be recorded in Lee County, Florida at such time the overall plan of development has been finalized.
- 3.2 **“Articles”** means the Articles of Incorporation of the Corporation a copy which is attached hereto as Exhibit 1.
- 3.3 **“Assessment”** means the assessment more particularly described in Article 7.
- 3.4 **“Benefit Assessment”** refers to those Assessments defined in Article 7.
- 3.5 **“By-Laws”** means the By-Laws of the Corporation, a copy of which is attached hereto and made a part hereof as Exhibit 2.

- 3.6 **“Committed Property”** means: (i) the portions of the Total Property legally described on Exhibit B; and (ii) that portion of the Uncommitted Property” (as hereinafter defined), if any, which may hereafter be Committed Property.
- 3.7 **“Common Assessment”** shall mean and refer to Assessments levied against all Owners to fund Common Expenses.
- 3.8 **“Common Expenses”** shall mean those expenses set out in Article 7.
- 3.9 **“Contributing Unit(s)”** means those Dwelling Units or Lots more particularly described in Paragraph 6.4
- 3.10 **“Corporation”** means Fountain Lakes Community Association, Inc., a Florida corporation not-for-profit
- 3.11 **“Corporation Common Areas”** means those portions of the Committed Property more particularly described in Paragraph 4.2(a).
- 3.12 **“Developer”** means Kraus-Anderson Incorporated, a Minnesota corporation, successors, grantees, and assigns. Notwithstanding the foregoing, an “Owner” (as hereinafter defined) shall not, solely by the purchase of a Dwelling Unit(s) or “Lot(s)” (as herein after defined) be deemed a successor; grantee or assign of the Developer or the rights of the Developer under these Protective Covenants or any other Fountain Lakes Documents unless such purchaser is specifically so designated as a successor, grantee or assign of such rights in the respective instrument of conveyance or any other instrument executed by the Developer. Developer may assign all (“Blanket Assignment”) or any portion (“Partial Assignment”) of its rights hereunder in connection with all or a portion of Fountain Lakes. In the event of a Blanket Assignment (to a successor, assignee or pledgee, the result of which is that Developer named herein shall no longer have any rights hereunder), such assignee shall be deemed Developer for all purposes hereunder. In the event of a Partial Assignment, the assignee shall not be deemed Developer, but may exercise only such rights of Developer as are specifically assigned to it. If any such. Blanket or Partial Assignment is given as security for a loan to Developer, such assignee shall exercise such rights of Developer only to the extent provided in the instrument of such assignment or by applicable law. Such assignee's rights will inure to the benefit of any purchaser at a foreclosure sale thereof; provided, however, that only a purchaser at a foreclosure of a Blanket Assignment shall have the right to become the Developer pursuant thereto.
- 3.13 **“Dwelling Unit”** means any residential dwelling unit intended as an abode for one family constructed on the Committed Property including, without limitation, an attached or detached single-family home, an attached townhouse dwelling, an attached duplex or other multiplex dwelling, or any apartment-type unit contained in any multi-unit residential building and whether any of the foregoing are subject to fee simple, cooperative, condominium, rental or other forms of ownership and/or possession.
- 3.14 **“Dwelling Unit Owner”** means the owner(s) of the fee simple title to a Dwelling Unit. If a unit has been conveyed by Contract for Deed vesting the beneficial interest in the grantee, with legal title remaining in the grantor as security for payment, such grantee shall be deemed the Dwelling Unit Owner.
- 3.15 **“Governors”** or **“Board”** means the Board of the Corporate entity known as the Fountain Lakes Homeowners Association, Inc.
- 3.16 **“Fountain Lakes”** means the multistage, planned community known as “Fountain Lakes” planned for development upon portions of the Total Property” and includes the Committed Property and such portions of the Uncommitted Property, if any, which subsequently become Committed Property by the recording of a Supplement.
- 3.17 **“Fountain Lakes Documents”** means in the aggregate these Protective Covenants, any Supplement , the Articles and the By-Laws and all of the instruments and documents referred to therein or referred to herein including, but not limited to, amendments to any of the foregoing, as applicable.
- 3.18 **“Common Expense Assessment”** means the Assessment more particularly described in Paragraph 7 hereof.
- 3.19 **“Individual Unit Assessment”** means the Assessment more particularly described in subparagraph 7.
- 3.20 **“Individual Unit Lot”** means a Lot upon which not more than one Dwelling Unit may exist at any time according to restrictions contained in the Fountain Lakes Documents or a Plat.
- 3.21 **“Institutional Mortgagee”** shall mean and refer to any lending institution owning a first mortgage covering a Lot or Dwelling Unit including any of the following institutions:
- a) Any Federal or state savings and loan or building and loan association, or any commercial bank or bank or real estate investment trust, or mortgage banking company or any subsidiary thereof; or any “secondary mortgage market institution” including the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation , and such other secondary mortgage market institution as the Board shall hereafter approved in writing which has acquired a first mortgage upon a Lot or Dwelling Unit; or any and all investors or lenders or the successors and assigns of such lenders (Lenders) which have loaned money to the Developer and which hold a mortgage upon any portion of the Committed Property securing such loans; or
 - b) Such other institutional lenders as the Board shall hereafter approve in writing as an institutional Mortgagee which have acquired a mortgage upon a Lot or a Dwelling Unit; or

c) The Corporation, if the Corporation, holds a mortgage on any portion of the Committed Property and the transferee of any mortgage encumbering the Committed Property which was originally held by the Developer;
or

d) Any life insurance company.

- 3.22 **“Land Mortgagee”** means The First Florida Bank, N.A. and its agencies; successors and assigns and any replacement lender, said Bank being the lender having loaned funds to Developer for its acquisition of certain portions of Fountain Lakes, as long as there shall remain outstanding any indebtedness of Developer or its successors secured by a mortgage in favor of said Bank or its assigns on all or a portion of Fountain Lakes; provided, however, that notwithstanding anything in this Section or elsewhere in these Protective Covenants to the contrary, the acquisition by the Bank of any or all of the Corporation’s under these protective Covenants (by virtue of assignment, pledge, succession or otherwise) shall not alter, waive or impair, by reason of “merger” or otherwise, any of the rights herein granted to the Land Mortgagee (even if same becomes the Developer). Land Mortgagee shall enjoy all rights as an Institutional Mortgagee, provided that the foregoing shall not limit any other rights specifically granted to Land Mortgagee therein.
- 3.23 **“Land Segment”** means a Multifamily Lot designated by Developer in writing as a Land Segment. Each Land Segment shall have that number of Property Units which are attributed and assigned to it by Developer in accordance with the provisions of Article 6.4 hereof.
- 3.24 **“Lot”** means a portion of the Committed Property upon which a Dwelling Unit(s) is permitted to be erected and is part of the Residential Property.
- 3.25 **“Lot Owner”** means the owner(s) of the fee simple title of a Lot.
- 3.26 **“Multifamily Lot”** means a Lot other than an Individual Family Lot.
- 3.27 **“Neighborhood Association(s)”** means a Florida Corporation not-for-profit: (i) responsible for administering one or more condominiums which may be created in Fountain Lakes; or (ii) responsible for operating non-condominium “Neighborhoods” and non-condominium “Dwelling Units” and/or “Lots” (as those terms are hereinafter defined), the owners of which are members of the Neighborhood Association.
- 3.28 **“Neighborhood”** means any portion of the Residential Property administered by a Neighborhood Association. Neighborhoods shall be used, kept and maintained in accordance with the intended use thereof by the designated Neighborhood Association in the manner provided for in these Protective Covenants and the Neighborhood Declaration for the benefit of the Developer, the Neighborhood Association, the Owners and their family members, guests, invitees and lessees and their family members, guests, and invitees. The expense of operating and maintaining the Neighborhoods shall be the obligation of the Neighborhood Association Members.
- 3.29 **“Neighborhood Declaration”** means: (i) the Declaration of Condominium by which a particular condominium in Fountain Lakes is submitted to the condominium form of ownership and all amendments thereto; and (ii) a land use document recorded amongst the Public Records of the County and all amendments thereto which establishes that the Owners of non-condominium Dwelling Units and/ or Lots within portions of the Committed Property are members of a Neighborhood Association and whereby certain Covenants and use Restrictions have been impressed upon portions of the Committed Property.
- 3.30 **“Neighborhood Assessment”** is an additional special assessment applicable to a particular neighborhood as defined in Article 7.
- 3.31 **“Operating Expenses”** means the expenses for which Owners are liable to the Corporation as described in these Protective Covenants and any other Fountain Lakes Documents and includes, but is not limited to, the cost and expenses incurred by the Corporation in administering, operating, reconstructing, maintaining, financing, repairing, replacing or improving the Corporation Common Areas or any portion thereof and improvements thereon and all costs and expenses incurred by the Corporation in carrying out its powers and duties hereunder or under any other Fountain Lakes Documents, the cost of any Pooled Reserves and any other expenses designated to be Operating Expenses by the Board.
- 3.32 **“Owners”** means all Dwelling Unit Owners and all Lot Owners, collectively.
- 3.33 **“Plat(s)”** means a written instrument filed for record in the Public Records of the County in the manner required by law whereby a portion of the Total Property is described and is subdivided into lots, blocks, parcels or tracts.
- 3.34 **“Property Plan”** means a description and graphic representation of a portion of committed property showing proposed improvements and permitted uses, which plan becomes a part of these Covenants when recorded.
- 3.35 **“Property Unit”** means the number of Dwelling Units which may be constructed on a particular Land Segment. Each Land Segment shall have such number of Property Units as may be assigned to it by Developer, in writing.
- 3.36 **“Protective Covenants”** means this instrument and any and all Supplements and amendments hereto.

- 3.37 **“Residential Property”** means the portions of the Committed Property designated as such in these Protective Covenants or a Supplement and, collectively, are the portions of Committed Property which may be developed with Dwelling Units as more fully set forth herein.
- 3.38 **“Special Assessment”** means the Assessment more particularly described in Article 7 hereof.
- 3.39 **“Supplement”** means a document and the exhibits thereto which when recorded amongst the Public Records of the County with respect to a portion of the Uncommitted Property shall commit such property to the provisions of these Protective Documents.
- 3.40 **“Total Property”** means the real property described on Exhibit A attached hereto and made a part hereof.
- 3.41 **“Uncommitted Property”** means the portions of the Total Property other than the Committed Property.
- 3.42 **“Undeveloped Multifamily Lot”** or **“Undeveloped Individual Unit Lot”** means a Lot to which no Dwelling Unit has been issued a final certificate of occupancy by the appropriate governmental authority.

Article 4 Land Use Classifications

- 4.1 The following provisions shall be applicable to the committed property which shall be transferred, demised, sold, conveyed and occupied subject to the terms of these Protective Covenants as follows:
- a) **Residential Property:** Residential property is that portion of the committed property upon which dwelling units may be constructed and shall be for residential use only. All portions of the committed property unless designated as Corporation Common Areas or designated as commercial areas or for other designated uses in an amendment to these Protective covenants or as Supplement shall constitute residential property. Residential property shall only include residential dwelling units and improvements associated with the residential purposes and uses including but not limited to street, drives, driveways, entrance ways, open spaces, parking spaces, lawn areas, swimming pools, other recreational facilities and other amenities or areas appurtenant to dwelling units. No retail, commercial or wholesale operations may be carried out on the residential property except for the construction, development and sale or rental of the residential property. Exceptions will be permitted only for utilities, dwelling unit or lot maintenance, and such other services as the Board shall by written consent deem appropriate.
 - b) In addition to these Protective Covenants and any applicable supplements. The residential property may be subject to applicable Neighborhood Declarations which shall designate the portions of the Committed Property subject thereto and further restrict the property being committed thereto including but not limited to i) the type of Dwelling Unit that may be constructed thereon; and ii) the establishments of such other amenities, benefits, covenants, easements, restrictions or provisions as the Neighborhood Association shall deem appropriate.
- 4.2 **Corporate Common Areas**
- a) Corporate Common Areas are those parcels and any other parcels or portions specified as Corporation Common Areas designated as Corporation Common Areas on the Property Plan, a revised property plan, any plat, these Protective Covenants, a Supplement or other area designated by the Master Association, and all easements conveyed or dedicated there as indicated on the Property Plan or other Plan or plat, these Protective Covenants or a Supplement as same are applicable to the property.
 - b) The administration, management, operation, maintenance of the Corporation Common areas shall be the responsibility of the Corporation as provided in these Protective Covenants, a Supplement or any other Fountain Lakes Documents except that the Corporation may assign such responsibility on whole or in part to a portion of the Corporate Common Areas to a Neighborhood Association by an instrument executed by the Corporation.
 - c) The Corporate Common areas are subject to a perpetual nonexclusive easement in favor of the Corporation, Neighborhood Associations, the Owners and their family members, guests, invitees, and lessees to use the Corporate Common areas for all proper and normal purposes including but not limited to ingress egress, and access for the furnishing of services, including utilities, and for such use of the facilities as for which the same are reasonably intended in accordance with these Protective Covenants, a Supplement of any other Fountain Lakes Documents.
 - d) Notwithstanding the foregoing, the Corporation and its nominees shall have the right to alter at their sole discretion the Corporation Common areas and construct, demolish, destroy, remove, modify,

alter, move, exchange, develop the Corporate Common areas and any improvements, easements, and use rights thereon or appurtenant thereto in a manner determined appropriate by The Fountain Lakes Community Association.

4.3 The Corporate Common areas include the following areas and uses:

- a) Recreation areas which are those portions of the committed property where the use includes a recreation purpose such as any golf course, swimming pool, tennis court, pickle ball court, picnic area, cabana, snack bar, restaurant, craft or hobby area, library, social room, dance hall or any other facility utilized or intended for recreational or social purposes and amenities therewith or appurtenant thereto.
- b) Open Spaces means those portions of the Committed Property which shall be kept and maintained by the Corporation including, irrigated, landscaped, or paved in accordance with the improvements of the prior Developer or the Master or Neighborhood Associations.
- c) Drainage Areas means those portions of the Committed Property designated as Drainage Areas or Drainage Easements on a Property Plan , Plat or these Protective Covenants which shall be kept and maintained for irrigation, drainage, beautification purposes, and for the maintenance, construction, or repair of underground utility facilities including but not limited to power, telephone, sewer water, cable, gas, drainage, lighting. The Water Retention Maintenance Easements and the “Drainage Easements” shown on any Plat shall be used for the construction, repair and maintenance of drainage facilities including, but not limited to, lakes, pumps, pipes, inlets and outfall structures and all necessary appurtenances thereto. Notwithstanding the foregoing, the location of the drainage pattern may not be modified or relocated by any entity or individual without prior written consent of the Corporation. In the event of a dissolution or termination of the Corporation; the administration and maintenance of the Drainage Areas shall be transferred only to a not-for-profit corporation as dedicated to an appropriate governmental agency agreeing to accept such conveyance or dedication.
- d) Water Areas means those portions of the Committed Property designated as Water areas and the maintenance areas surrounding same (“Water Areas Maintenance Easement”) on a Property Plan, Plat or these Protective Covenants the boundaries of which are subject to minor changes. These water areas shall be kept and maintained by the Corporation as bodies of water together with adjacent shoreline in an ecologically sound condition for recreation, water retention, irrigation, drainage and water management purposes in compliance with applicable governmental and South Florida Water Management District requirements. Water Areas are not for public use but only the use of the Corporation, Neighborhood Associations, Owners, their guests, invitees and lessees and their family members. No boats of any type with any motor of any type are permitted excepting craft used for maintenance, repair, or authorized contractors. The Corporation, Neighborhood Associations shall not be obligated to provide lifeguard or other supervisory personnel for the Water Areas. Any individual using the water shall do so at their own risk and shall indemnify and hold harmless the Corporation, Neighborhood Association from any claim or loss arising from such use.
- e) Roadways means those portions of the Committed Property designated as Roadways on a Property Plan, Plat or these Protective Covenants, Plat and all improvements thereon including but not limited to entrance ways, walkways, street lights, which may be kept and maintained by the Corporation or its designees which designees may be a Neighborhood Association or member thereof as private roadways to provide ingress and egress between the Total Property by the Corporation, Neighborhood Associations, owners and their family members and guests and invitees, and all governmental and quasi-governmental agencies having valid jurisdiction over Fountain Lakes while engaged in their respective functions. Streetlights, walkways, and utility lines appurtenant to the roadway shall be installed as the Corporation or Corporation’s designees from time to time shall deem necessary.

4.4 Use of Common Areas. The Common Areas are for the use of the Corporation, Neighborhood Associations, Owners, family members or their guests.

- a) The Corporation or Neighborhood Associations may contract with third parties to operate facilities or conduct activities on the Common Areas or conduct any commercial activities without the express written approval of the Fountain Lakes Neighborhood Association or their designees or Committee.
- b) The Corporation and/or its Board shall have the authority to promulgate rules and regulations for the use, operation and enjoyment of the Common Areas or Residential Property of the community and

any improvements thereon including but not limited to fees, hours of use, insurance requirements for its use.

- c) In the event of a dispute over Use, the Board shall render a determination with respect to the use which shall be final on binding on all parties concerned.
- d) The Common Areas shall not be abandoned, partitioned, subdivided, transferred, or encumbered without approval by a majority vote of the owners. This shall not prohibit the Corporation from granting an easement on this property to any utility company serving portions of Fountain Lakes.
- e) Commercial Areas. No commercial area shall be established on Corporate Common Area without the approval of a majority vote by Board of Directors.
- f) Other property. The Corporation may enter into easement agreements or other use or possessory agreements whereby the Corporation may obtain the use or possession of certain real property on an exclusive or nonexclusive basis and not included within the Common Property for certain specified purposes and whereby the Corporation agrees to maintain and pay for the taxes, insurance, administration, upkeep and repair, maintenance and replacement of such property. The aforesaid expenses shall be an operating expense.

4.5 **Preservation of the Values and Amenities of Fountain Lakes.** In order to preserve the values and amenities of Fountain Lakes, No construction, which term shall include within its definition clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place on any Committed Property except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained. The approval of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matter whatever subsequently or additionally submitted for approval or consent.

4.6 **Mining or drilling.** There shall be no mining or drilling or quarrying or other mining activity undertaken for any reason within any portion of the Committed Property. Excepted from the foregoing shall be activities of the Corporation or their designees in dredging the water areas, creating land areas from water areas, creating excavating or maintaining drainage areas or other facilities or easements, and installing wells, pumps or sprinkler systems to the Committed Property. Further excepted is excavation for swimming pools or spas constructed on the Committed Property with the prior written consent of the Corporation before installation occurs.

4.7 **Alteration or Drainage.** No change in the condition of the soil or level of the land of any portion of the Committed Property shall be made which results in any permanent change in the flow or drainage of the surface water within Fountain Lakes without the prior written approval of the Board of the Fountain Lakes Neighborhood Association, Inc.

4.8 **Antennas, Flagpoles, Satellite Dishes.** No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or any device of any type intended for the transmission or reception of radio or television broadcasts or means of communication shall be erected, constructed, placed or installed or permitted to remain on any Dwelling unit or lot or any improvement or addition thereon unless expressly approved in writing by the Board of the Master Association. Except that this prohibition shall not apply to those antennae specifically covered by 47 CFR Part 1, Subpart S. Section 1.4000 as amended under the Federal Trade Commission Act of 1996 as amended. The Master Association shall be empowered to adapt rules governing the types of antennae, restrictions relating to safety, placement, location, type and look of the devices. The Master Association may adapt rules relating to limiting the location of antennae, satellite dishes or other communications structures relating to size, placement, visibility, coverage with landscaping. All antennae or other communication structures shall comply with all federal, state and local laws and zoning, land use and building regulations. A flagpole for display of the American Flag shall comply and consistent with F.S. 720.304 (2) (a-c). An approved flagpole shall not be used to mount an antenna. This section is to protect resident from unreasonable interference with television reception, electronic device and home appliance use.

4.9 **Litter.** In order to preserve the beauty of Fountain Lakes, no garbage, trash, refuse, or rubbish shall be deposited, dumped or kept upon any part of the Committed Property except in closed containers, dumpsters or other garbage

collection facilities deemed suitable by the Corporation and in proper-sized, closed plastic bags for curb side pickup as required. All containers, dumpsters and other garbage collection facilities shall be screened from view from outside the Lot upon which same are located and kept in a clean condition with no noxious or offensive odors emanating therefrom. No dumpster shall be placed curbside prior to the evening before trash pickup and shall be removed and replaced from the curb the following day.

- 4.10 **Radio Equipment.** No amateur radio transmission equipment shall be operated or permitted to be operated in the Committed Property without the prior written consent of the Board.
- 4.11 **Subdivision or Partition.** No lot shall be subdivided without the prior written consent of the Corporation.
- 4.12 **Corporation Common Areas.** Nothing shall be stored, constructed, within or removed from the Common areas other than with the express written approval of the Corporation.
- 4.13 **Insurance rates.** Nothing shall be done or kept on the Corporate Common Areas which will increase the rate of insurance on any property insured by the Corporation or a Neighborhood Association without the written consent of the Board.
- 4.14 **Casualty Destruction Improvements.** In the event a dwelling or other improvement is damaged or destroyed by casualty, hazard or other loss, the owner thereof or the Master or Neighborhood Association administering same shall either commence repair or rebuilding of the damaged items within a reasonable time after such incident and diligently continue such rebuilding. If the dwelling or improvement will not be repaired, the owner must promptly clear the damaged items from the property and landscape and grass over such residential property in a manner approved by the Architectural Review Committee of the Corporation. No reconstruction of a destroyed Dwelling Unit and other improvement shall be undertaken without prior written approval of the Corporation and their designees. Any reconstructed Dwelling or improvement shall only be replaced with one of similar type and size and be of similar kind, quality and value of the damaged dwelling or improvement. Dues are owed on any Dwelling Unit whether or not reconstructed.
- 4.15 **Water Area Use.** Manned or unmanned Boats and any other vehicle using a gas, diesel or other form of combustion engine, or electric engine are prohibited upon any Water Area. The Corporation shall have the authority to adapt further rules governing the use of Water Areas from time to time.
- 4.16 **Water Area Maintenance Easement.** Any fence, wall, paving, planting, or other improvement on a lot which is placed within a Water Maintenance Easement including but not limited to easements for the maintenance or ingress and egress shall be removed if required by the Corporation the cost of which to include Attorney's Fees and Costs to be borne by the Owner as an individual expense Assessment. No fence may be placed on any property that blocks or impairs the view of a resident living on any lake. Additional fence restrictions can be found in the Community Wide Standards.
- 4.17 **Pets.** No Pitbulls, livestock or poultry shall be kept or raised upon any portion of the committed property. Pets are prohibited from all Common Areas except as specifically designated. An Owner by the purchase of his lot or Dwelling Unit agrees to indemnify and hold harmless the Corporation or Neighborhood Association against any loss or liability of any kind arising from him or her having an animal in Fountain Lakes. No Neighborhood Association rule relating to pets may be less stringent than any rule regarding pets approved by the Fountain Lakes Neighborhood Association, Inc. or its Board.
- 4.18 **Signs.** No sign, advertising or notice of any type shall be permitted on the Common Areas and any private property unless specifically permitted by prior written consent of the Board or their designee.
- 4.19 **Mailboxes.** All mailboxes must have a white cross post design, with white rural style mailbox approximately 18Lx9Hx7w, and installed at the United States Postal Service required height of 41-45 inches from the road surface. Posts and other members may be made of wood or plastic and have caps or no caps. Diagonal supports if used may be of the straight or scrolled design. The Board recognizes that Postal Regulations for apartments and multi-family condominium may deviate from this design and must meet the requirements set forth by the USPS, where the

aforementioned Community Standards will not apply. The Board in keeping with powers conveyed in the Covenants and Bylaws of the Association retains all rights to modify and compel compliance with these standards.

4.20 **Garbage, Oil Containers, Gas Tanks, Air Conditioners Solar Panels, Pool Equipment.**

- a) All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool equipment and housing must be underground or placed in a walled in of fully enclosed landscaped area so that such are not visible from any roadway or adjacent dwelling unit. All landscaping shall be maintained by the Dwelling owner.
- b) Wall and window air conditioning units shall be permitted only with the prior written consent of the Corporation or their designee.
- c) Solar collectors other than those installed by the Developer shall only be permitted with prior written approval of the Corporation.
- d) An Architectural Review Form must be filed and approved by the Master Association for the placement or use of any item in this section.

4.21 **Maintenance of Premises.** In order to maintain the standard of Fountain Lakes, no weed, underbrush or other unsightly growth shall be permitted to grow or remain upon any portion of the Committed Property and no refuse or unsightly objects shall be allowed to be placed, left, stored or permitted to remain anywhere thereon. All lawns, landscaping and sprinkler systems shall be kept in good, clean, neat working condition. The Committed Property and Dwelling Units or other buildings shall be kept in good, clean neat and attractive condition in a finished and painted condition. An Architectural Review Form must be filed and approved by the Master Association when an Owner makes any home modification. Owners must use the approved color palette approved by the Board of Governors for any repainting or reroofing of the Dwelling. Each owner of an individual lot whose property abuts a road right of way or green area bordering any lake or other body of water, which right of way is granted to the Corporation, agrees to maintain, mow, trim, maintain all plantings, between their property line and road, lake or other body of water. Failure to maintain these areas shall subject the lot owner to fines and the right of the Corporation to enter on the land and perform the needed correction or improvement at the lot owner's expense after 15 days' notice to the owner. The Board may act as the Architectural Review Committee (hereinafter ARC) or may appoint a separate committee as provided below.

- a) Appointment of Committee Members. The Board of Directors of the Fountain Lakes Homeowners' Association may appoint a Committee to be known as the Architectural Review Committee (ARC). Such committee shall consist of 3 members who shall serve at the pleasure of the Board.
- b) Approval of committee: How evidenced: Whenever in this article approval of the ARC is required, such approval shall be in writing. In the event the ARC fails to approve or disapprove within 45 days after receipt of a request to do so, approval will be deemed to have been given, and compliance with this article conclusively presumed.
- c) The ARC shall recommend from time to time to the Board of Directors of the Association the creation or modification and amendments to the architectural review and planning criteria. Any modifications thereto shall be consistent with this Declaration and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a duly called meeting at which a quorum is present. Notice of adoptions or modification shall be made available to the members and shall be posted for viewing. However, receipt of notice of a Board meeting concerning a change or modification of the Architectural Review and Planning Criteria shall not affect the validity of such change or modification.
- d) The ARC may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental which must be signed by at least two (2) members of the ARC. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Lot, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal

authority. The Board of Directors may overrule and void any variance granted by the ARC if such action is taken within twenty (20) days from the date the variance is granted.

- e) Nonliability of ARC Members. Neither the ARC nor any member thereof, now its duly authorized ARC representative, shall be liable to the Association or any Owner or any other person or entity for any loss, damage, or injury arising out of or in any way connected with the performance or nonperformance of the ARC's duties hereunder, unless due to the willful misconduct or bad faith of a member, and only that member shall be liable therefore. The ARC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Development. The ARC shall take into consideration the aesthetic aspects of the architectural designs, placement or buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

4.22 **Lighting.** All exterior lighting of structures or landscaping shall be accomplished in accordance with plans approved in writing by the Community Association. Except as may be initially installed or approved by the Community Association, no spotlights, floodlights, or similar high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon or upon any Common Areas or any part thereof without the approval of the Master Association Board or its Designee. Other types of low intensity lighting, including normal and customary Christmas or other holiday decorations, which do not unreasonably disturb other owners or occupants of the Community, shall be allowed. The Board shall from time to time set time restrictions for the erection and display of holiday lighting and decorations.

4.23 **Temporary Factory-Built or Existing Structures.** No structure of any kind of what is commonly known as "factory-built", "modular", or "mobile home" type construction shall be erected without the prior written permission of the Board. No tent, trailer or temporary structure other than those used by Corporation for construction and sales activities shall be permitted unless its size, appearance and temporary location on the Lot have first been approved by the Board, Except for the structures permitted on the Corporation Common Areas, as provided or therein, no structure of a temporary character including, but not limited to, trailer, tent, shack, shed, barn, or outbuilding shall be parked or erected on the Committed Property at any time.

4.24 **Landscape.** An Architectural Review Form must be filed and approved by the Corporation for any landscaping change. A copy of the plot plan must accompany all changes to Landscape. Hand drawn plans are permissible. Trees and shrubbery may not be planted over property lines, storm sewers, utility lines or swales. No exotic, invasive or poisonous trees or shrubbery are allowed. All dead trees shall be removed within 60 days. Homes adjacent to lake banks require a 25-foot setback from the high-water line for any plantings.

4.25 **Parking.** Only such vehicles as are permitted to park without limitation on Neighborhood Association properties by Neighborhood Association rules or are consented to by the Corporation shall be permitted to park on Corporation Common Areas.

- a) No boats or Commercial Vehicles may be kept on Committed Property except as provided by Neighborhood Association rules or are consented in regulations promulgated by the Corporation.
- b) No Owner or his family, guests or invitees or lessees or their guests or invitees shall be permitted to keep any vehicle on Committed Property which shall be deemed a nuisance or in violation of the Rules.
- c) The Corporation and Neighborhood Associations shall not be responsible for the theft to any vehicles parked anywhere on the Committed property.
- d) The Board of Directors may promulgate rules and designate certain portions of the Common Areas which may be relocated from time to time for the parking of trucks, buses, commercial vehicles, recreational vehicles, mobile homes, trailers, boats, campers and trailers.
- e) No overnight parking is permitted on any Common Area unless approved by the Board or its Designee.
- f) No commercial vehicle of any kind shall be permitted to parked on a residential lot for period of more than 12 hours unless such vehicle is necessary and being used in the actual construction or repair of a structure or for grounds maintenance.

- g) No vehicle shall be used as a domicile or residence, whether temporary or permanent, within any Neighborhood or Common Area.
- h) Operable and currently licensed automobiles may be kept or parked on paved driveways, paved parking pads, in houses or enclosed garages, or on the street as approved by the Neighborhood Association. Trucks and vans will be considered automobiles and may be parked on driveways if the vehicle has a passenger seat in the back and whose primary purpose is the transportation of passengers and their personal goods. If the vehicle does not have a back-passenger seat or is used for the transportation of good, then it shall be considered a truck. All other vehicles (all motorized and non-motorized vehicles except automobiles) including without limitation the following: inoperable vehicles, commercial trucks including pickup trucks. Vans, recreational vehicles, all-terrain vehicles, ambulances, hearses, motorcycles, motorbikes, scooters, watercraft, boats, aircraft, house trailers, camping trailers, other trailers and tractors must be kept within an enclosed garage or storage building. Notwithstanding the foregoing prohibition, guests of the owner of a lot visiting for less than 15 days in any 30-day period may park their vehicles on unenclosed paved areas of the lot.

4.26 **Nuisances.** Nuisances: Nothing may or shall be done on Committed Property which may be or may become a nuisance. No obnoxious, unpleasant, unsightly, loud, or offensive activity shall be carried on, nor may anything be done which can be reasonably construed to constitute a nuisance, public or private in nature. Any questions about the interpretation of this section shall be decided by the Corporation or their Designee, whose decision shall be final.

4.27 **Repairs.** No maintenance or repairs of vehicles shall be performed on any portion of the Corporate Common areas except in case of emergency. Any repair must be completed within two hours.

4.28 **Compliance with Documents.** Each Owner and any other individual within Fountain Lakes shall be bound and abide by the Fountain Lakes Declarations, Covenants, and rules. The conduct of any individual shall be considered the conduct of the owner responsible for such individual's presence within Fountain Lakes. Such owner shall be liable to the Corporation and/or the Neighborhood Association for the cost of any maintenance, repair, damage, insurance cost or deductible or copay, or replacement of any real or personal property located on the Corporate Common Areas rendered necessary by his or her act, neglect, carelessness which shall be paid by the Owner as an individual expense Assessment. Failure of the Owner to notify their invitees or lessees shall not serve as a defense to enforcement or liability of the Owner and Owner shall remain responsible for their guests, invitees, delegates, lessees, tenants, at all times.

4.29 **Dwelling Units; Residential Use.**

All single family homes can only be leased or rented to single families, and that all lessees must provide proof of family relationship and that all lessees have read and will abide by the Community Association Covenants and Restrictions. Furthermore, all lessees shall register with the Neighborhood HOA or COA, and provide current contact information. It is also agreed that no single family home shall be rented for a term of less than 30 days and each unit shall be rented no more than four times in a single calendar year. Any home, condominium or villa rented in violation of this established standard shall conclusively be determined to be violating this Covenant. Violation of lease and rental restrictions, will be treated the same as all other covenant violations and applicable fines in keeping with the maximum allowed by law, may be assigned, and shall be made by an assessment against the property.

Each Dwelling Unit whether single family home, apartment or condominium unit shall be used as a single-family residence and for no other purpose. No business or commercial activity shall be conducted in or from any Dwelling Unit, nor may the address or location of the Unit be publicly advertised as the location of any business or commercial activity. Notwithstanding, however, neither the listing on any occupational license or the listing within any telephone directory of the Dwelling Unit serving as a business address shall be dispositive of the property being used as for commercial or business purposes. Any owner may use his/her residence for incidental commercial purposes so long as

- a) property is not used for manufacturing. construction or installation of materials sold or advertised to be sold whether retail or wholesale customers:

- b) the nature of the business activity does not invite or permit suppliers, customers or vendors to visit or frequent the Dwelling Unit. even on isolated occasions:
- c) the business activity within the Dwelling Unit is limited to telephone calls and written correspondence in and from the Dwelling Unit: and
- d) no employees or contractors. other than those who regularly reside within the Dwelling Unit may perform any work or other services to the business at the Dwelling Unit. This restriction shall further not be construed to prohibit any owner from maintaining a personal or professional library. from keeping personal business or professional records in his Dwelling Unit, or from handling personal. business or professional telephone calls and written correspondence in and from his Dwelling Unit. Such uses are expressly declared customarily incident to residential use. Notwithstanding the foregoing, this section shall not prohibit the owner/operator of a bona fide apartment complex from using an apartment unit as a leasing or rental office.

- 4.30 **Method of Obtaining Corporate Approval.** Two (2) Complete Sets of plans and specifications for the proposed improvement or modification shall be submitted to the Corporation or their Designee for review. The plans shall include the proposed location, grade, elevation, shape, dimension, exterior color plan, approximate cost and nature, type, and color of all materials to be used. The Corporation or its designees shall have absolute authority to enforce this provision and seeks such additional documentation as needed to evaluate any proposed plan submitted for review.
- 4.31 **Pools.** In-ground only pools are permitted. An ARC form must be filed and approved by the Corporation prior to construction. No above ground pools are permitted. Inflatable toddler pools under 12 inches are acceptable as long as they are NOT visible from the road or lake and used on a temporary basis.
- 4.32 **Playground equipment.** An Architectural Review Form must be filed and approved by the Master Association. A playground is allowed in backyards only as long as they are not visible from the lake view. Swing set with slide, Monkey bars, and Playhouse with swing set are permissible. No tree houses are permitted. No Trampolines are permitted.
- 4.33 **No Implied Waiver.** The failure of the Corporation to object to an Owner's or other party's failure to comply with the covenants or restrictions contained herein or any other Fountain Lakes Documents (including the Rules now or hereafter promulgated) shall in no event be deemed a waiver by the Corporation or of any other party having an interest therein of its right to object to same and to seek compliance there within accordance with the provisions of the Fountain Lakes Documents.

Article 5 Easements

- 5.1 **Grant and Reservation of Easements.** Developer has granted to the Corporation and the other persons and entities hereinafter set forth and reserves unto itself and its nominees the right on behalf of itself and the Corporation to grant the following exclusive and nonexclusive easements on, upon, over, across, through and under the Committed Property as deemed to be in the best interests of and proper for Fountain Lakes, including, but not limited to, easements in favor , the Corporation, and the Neighborhood Association(s), any designees of the foregoing, the Owners, their family members, guests, invitees and lessees and their family members, guests and invitees and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified.
- 5.2 **Utility and Governmental Services Easement.** A non-exclusive easement(s) to provide tor installation, service, repair and maintenance of the power, electric transmission, television cable, tight, telephone. communication, securily, gas, water, sewer, garbage, drainage and other utilities and governmental service including police and fire protection, and postal service including rights of ingress, egress and access for persons and equipment necessary for such purposes for the benefit of the Corporation and all appropriate utility companies, agencies, franchises or governmental agencies.
- 5.3 **Right-of-Way.** A non-exclusive perpetual easement(s) over and upon the Roadways to provide ingress. egress and access to and from, through and between the Committed Property and publicly dedicated. streets and from

portions of the Committed Property to other portions of the Committed Property in favor of the Corporation, the Neighborhood Associations, and all agents, employees, lessees, invitees or other designees of the Developer or the Corporation or the Neighborhood Association, the Owners, their family members, guests, invitees and lessees and their family members, guests, and invitees, and all governmental and quasi-governmental agencies and service entities having jurisdiction over Fountain Lakes while engaged in their respective functions, but not to the general public.

- 5.4 **Right of the Corporation to Enter Upon the Committed Property.** The Corporation and its agents, employees or their designees shall be granted an easement for ingress, egress and access in favor of the Corporation to enter upon any lot, Dwelling Unit (Reasonable notice to owner shall be established and the owner, or owner's representative, shall have the right to be present if possible), Corporate Common Area or in the neighborhoods for purpose of inspecting any construction, proposed construction, improvement, or fulfilling the rights duties and responsibilities of ownership, administration, maintenance and repair of either such Owner, Neighborhood Association or the Corporation as applicable but not limited to the Corporations obligation to maintain and repair Water Area Maintenance Easements. Such easement shall include an easement in favor of the Corporation to enter on the Corporate Common Areas now or hereafter to use, repair, maintain and replace the same for purposes for which they were initially designed or dedicated or for any redesign which may occur. Nothing herein shall be interpreted to impose on the Corporation any obligation to maintain, repair, construct any Dwelling Unit or other improvement which an Owner is required to maintain, construct or repair.
- 5.5 **Drainage.** A non-exclusive easement shall exist in favor of the Corporation, and their employees, or other designees, the Neighborhood Associations and the Owners for the use of Drainage Areas established through Fountain Lakes and an easement for ingress, egress, and access to enter any portion of the Committed Property in order to construct, maintain and/or repair any Drainage Areas and facilities thereon and appurtenances thereto. No structure, landscaping or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through Drainage Areas or otherwise interfere with any easement provided for in this Article.
- 5.6 **Water Management Easement.** A nonexclusive easement shall exist in favor of the Developer, the Corporation and their employees or other designees, the Neighborhood Associations, and the Owners to enter upon the Water Areas Maintenance Easement established throughout Fountain Lakes. No structure, landscaping, or other material shall be placed or permitted to remain on the Water Area Maintenance Easement which may damage or interfere with the installation or maintenance of utilities or otherwise interfere with the Corporation's right to use the Water Areas Maintenance Easement for its intended purpose of Water Areas maintenance. Neighborhood Declarations may contain tougher restrictions created by Developer on the use by the Owners subject to such Neighborhood Declarations of the Water Areas Maintenance Easement contiguous to such neighborhood not inconsistent with the terms hereof.
- 5.7 **Easements for Encroachments.** An easement for encroachment in favor of the Corporation, the Neighborhood Association, the Owners and all persons entitled to use that portion of the Committed Property in the event any portion of the improvements located on any portion of the Committed Property now or hereafter encroaches upon any of the remaining portions of the Committed Property as a result of minor inaccuracies in survey, plat, construction or reconstruction due to settlement or movement. Any easement or encroachment shall include an easement for the maintenance and use of the encroaching improvements in favor of the Corporation, the Neighborhood Associations, the Owners, and all their designees.
- a) The Corporation shall have the right to execute without further authorization, such grants and authorizations as may from time to time become necessary or desirable to grant easements over and upon the Committed Property or portions thereof in accordance the Supplements or these Protective Covenants. Such easements may be for the use and benefit of the persons or entities who are not members of the Corporation and for portions of Fountain Lakes which are not committed property hereunder.
- 5.8. **Assignments.** The easements reserved hereunder for the Corporation may be assigned in whole or in part to any town, county or state governmental agency, or any duly licenses or franchised public utility or other designees of the Corporation.

Article 6 Membership and Voting Rights

- 6.1 **Members.** The Members of the Corporation shall be comprised of the “Initial Member” or the “Owner Members” which collectively may be called hereinafter “Members”. The rights of the Members regarding voting shall be set forth in these Protective Covenants, the Article and the Bylaws.
- 6.2 **Voting rights.** The votes of Members in a Neighborhood Association, and a “Segment Owner” as that term is defined in 6.4(a) shall be cast at meeting of the Members. Each Member shall cast their vote either in person or by proxy on their own behalf in a one vote per unit system. Block voting by a Neighborhood President shall not be permitted. Members votes shall be cast by the individual member or the holder of the Member proxy at any Meeting. Members not in a Neighborhood Association shall have their votes cast at meetings of the Members by such Member or such members Written proxy, as set forth more fully in this Article.
- 6.3. **Board of Governors.** The Corporation shall be governed by a Board which shall be appointed or elected as set forth in the Bylaws and Declarations and Covenants. The Board of the Corporation shall have the authority to designate Committees which shall consist of at least two members from the Board. Meetings of these Committees are open to the Members and the Committee members shall not vote by proxy or secret ballot. The conclusions and recommendations of the Committees shall be reported to the Board.
- 6.4 **Notice.** Notice of any Board, Annual or Special Meeting of the Corporation shall be provided to each member in a manner consistent with Florida Statutes 720.
- a) Board Meeting Notice to the Members will be provided and all Board Meetings are open to members of the Homeowners Association except (i) any meeting between the Board and its Attorney with respect to any pending litigation and (ii) meetings of the Board that held for the purpose of discussing personnel matters which shall be closed.

Article 7 Assessments

- 7.1 **“Common Assessment”** shall mean and refer to Assessments levied against all Owners to fund Common Expenses as described in Section 7.6 of this Declaration.
- 7.2 **“Common Expenses”** shall mean and include the actual and estimated expenses incurred by the Master Association for maintenance, operation and other services required or authorized to be performed by the Master Association which is attributable to the Area of Common Responsibility, including any reasonable reserves, all as may be found to be necessary or appropriate by the Board pursuant to this Master Declaration, the By-Laws, and the Articles of Incorporation of the Master Association. Common Expenses shall specifically include, but not be limited to, costs and expenses of maintenance, repair and operation of any portions of the Surface Water Management System if the same is to be maintained by the Master Association. Common Expenses and costs and expenses which, pursuant to this Declaration, are the subject of Benefit Assessments or Neighborhood Assessments.
- 7.3 **Creation of Assessments.** There are hereby created Assessments for expenses for the Master Association as may from time to time be authorized by the Board. There shall be four (4) types of Assessments:
- a) Common Assessments for Common Expenses.
 - b) Neighborhood Assessments as described in Section below.
 - c) Special Assessments as described in Section below; and
 - d) Benefit Assessments as described in Section below.
- 7.4 **Common Assessments.** Common Assessments shall be allocated as follows: One (1) Assessment Unit per Lot subject to assessment pursuant to this Declaration. All Assessments, together with interest at a rate not to exceed the highest rate allowed by applicable usury law as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the property (and improvements) to which they pertain and shall be a lien upon such property against which each assessment is made. Such lien to be effective as of the date of the original recording of this Declaration. Each such Assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who owned such property

at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable to the time of conveyance, except as otherwise provided in this Article. Without the written consent of the Master Association, no change shall be made concerning the manner or computation of Assessments.

- 7.5 **Information.** The Corporation shall, upon the written request of any Owner, furnish, within ten (10) days after such written request, to any Person liable for any type of Assessment a certificate in writing signed by an officer of the Master Association or Designees setting forth whether such Assessment has been paid as to his/her particular property. With respect to all Persons other than the Owner of that property, such certificate may be relied upon as conclusive evidence of payment to the Master Association of such Assessment therein stated to have been paid. The Master Association may require the advance payment of a processing fee not to exceed three month's Common Assessment on the property for the issuance of each such certificate. No Person may waive or otherwise exempt himself from liability for Assessments, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of his property. The obligation to pay Assessments is a separate and independent covenant on the part of each Person liable for the payment of Assessments, and the Corporation has the right to require an unconditional personal continuing guarantee from a principal of an entity that owns a Dwelling Unit or Lot. Assessments will be due and payable during any period of suspension of voting rights or use of all or portions of the Common Areas. The owner of any property subject to Assessment, by acceptance of a deed therefore whether or not it shall be expressed in any such deed, shall be deemed to covenant and agree to pay the Assessments and such obligations shall be binding on all subsequent purchasers of such property. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of any alleged act or omission of the Declarant, Master Association or Board to take some action or perform some function required to be taken or performed by the Declarant, Master Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Master Association, or from any action taken by the Declarant in connection with the development of the Community or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. Every Contributing Unit shall be assessed for Operating Expenses as otherwise provided in these Covenants.
- 7.6 **Purpose of Assessments.** The Assessments levied by the Master Association shall be used for the purpose of covering operating expenses and taxes and promoting the proper maintenance, replacement, repair and management of the Corporate Properties and in particular for operation of the Master Association and exercising its rights and fulfilling its obligations under the Declaration and all documents and agreements executed in connection herewith. Specific items will include but are not limited to taxes and tax liens placed on any Common Areas, Utilities of any type including water and sewer, gas, electric, telephone, street lights roadway and building and common area maintenance, repair, and reconstruction, Insurance of any type, operational expenses, damage to common areas caused by Owners or their guests, compliance with all laws, ordinances and regulations, as shall be determined necessary by The Board of the Master Association.
- 7.7 **Computation of Common Assessments.** It shall be the duty of the Board annually to prepare a budget covering the estimated Common Expenses, if any, of the Master Association during the coming year ("Annual Budget"). It shall be the duty of the Board to prepare the Annual Budget and mail the same to all Members 14 days prior to any meeting considering adoption of the budget. Any budget adopted by the Master Association may include a capital contribution establishing a reserve fund, in accordance with a reserve budget separately prepared, and shall separately list general and specific expenses, if any. The Master Association shall be under no obligation to establish a reserve fund.
- 7.8 **Budget Disapproval.** Common Assessments to be levied for the coming year against each property subject to Assessment based on the Annual Budget divided by the number of Assessment Units. Each Neighborhood Association and each Owner by acceptance of the deed or other instrument of conveyance of a Dwelling Unit or Lot whether so expressed in such deed or instrument shall be obligated and consents to pay the Corporation all Assessments in accordance with the Fountain Lakes documents. The Neighborhood Associations shall collect the assessments for the Dwelling Units or lots it administers and promptly remit same to the Corporation when such assessments are due. Each Neighborhood Association shall be liable to the Corporation for the payment of levied individual unit assessments, Special Assessments, Neighborhood Assessments in accordance with the total number

of contributing units contained within such Neighborhood Association. In the event the Neighborhood Association fails to collect their pro rata share of the Contributing Units for their Neighborhood Association, such Neighborhood Association shall be required to advance the sum on behalf of the delinquent contributing unit owner(s). In the event payment is not remitted, the Corporation and its Board of Directors shall have all remedies available at law including fines, suspension of use privileges, liens, and foreclosure proceedings to collect the sums due.

- 7.9 **Special Assessments.** In addition to Common Assessments, Special Assessments shall be allocated in the same manner as (a) Common Assessments, if the same relate to Area of Common Responsibility or operations of the Corporation, or Neighborhood Assessments, if the same relates to Neighborhood Common Area. The Master Association by resolution of the Board of Directors may levy Special Assessments, provided any such Special Assessment which would exceed the then current Common Assessments or Neighborhood Assessments for a Lot during such year shall require the approval of a majority of the votes to be cast by the Master Association, if related to Areas of Common Responsibility, or the Members within a particular Neighborhood if related only to a specific neighborhood. Such Special Assessment shall be for the purpose of defraying, in whole or in part, the cost of any acquisition, construction or reconstruction, capital replacements or any unexpected or unbudgeted expense or repair.
- 7.10 **Benefit Assessments.** The Board of Directors of the Corporation may impose a Benefit Assessment against an Owner and his or her Lot, if the use or treatment of a Lot or conduct of the Owner, his family or lessees increases the costs to the Corporation above that which would result from compliance by the Owner with this Declaration or a Supplemental Declaration. The amount of such Benefit Assessment shall be equal to such cost increase together with a reasonable allocation of overhead incurred by the Corporation and may be enforced in the manner provided for any other Assessment. Any charge for individual services provided to Owners, in whole or in part, whether provided on a mandatory or optional basis, such as by way of example and not limitation services provided pursuant to a Bulk Agreement shall, if not included in the Common Assessments, be charged as a Benefit Assessment. The Corporation may levy a Benefit Assessment against any Owner individually and against such Owner's Lot to reimburse the Corporation for costs incurred in bringing the Owner's Lot into compliance with the provisions of this Declaration and any Supplemental Declaration or Neighborhood Supplement together with a reasonable allocation of overhead incurred by the Corporation. Fines are considered Benefit Assessments and may be levied after notice to the Member and an opportunity for a hearing. Amounts owed to the Corporation for fees, if not paid in accordance with the account policies established by the Corporation, be considered a Benefit Assessment. The costs of remedial maintenance undertaken by the Corporation (together with a reasonable allocation of overhead) to remedy deficient maintenance by a Neighborhood Association shall be assessed equally against all Lots within the Neighborhood as a Benefit Assessment. Reasons for Benefit Assessments against Lots shall also include, but shall not be limited to, remedial action undertaken for such Lot, costs and legal fees incurred or anticipated to be incurred by the Master Association (together with a reasonable allocation of overhead) to enforce the Declaration against a Dwelling Unit or Neighborhood Association. Nothing in this section shall preclude the Master Board from also imposing any fines as permitted by F.S. 720.
- 7.11 **Insurance.** The premiums on the policy or policies of insurance which the Corporation and Board in its sole discretion determines to obtain; provided, however, that the Corporation shall obtain and maintain at least the following insurance coverage: Property insurance in an amount equal to the current full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all improvements now or hereafter located upon the Corporation Common Areas, including fixtures, personal property and equipment thereon, such insurance to afford protection against such risks as shall customarily be covered with respect to areas similar to the Corporate Common Areas in developments similar to Fountain Lakes in construction, location and use, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, cost of demolition, vandalism, malicious mischief, windstorm, and water damage.
- a) A comprehensive policy of public liability insurance and, if appropriate, owners, landlord and tenant policies naming the Corporation as named insureds thereof insuring against any and all claims or demands made by any person or persons whomsoever for injuries received in connection with, or arising from, the operating, maintenance and use of the Corporation Common Areas (including the Roadways) including any portion thereof which may be leased to an operator or other third party and

any improvements located thereon ; any action of the Corporation and for any other risks insured against by such policies with limits of not less than Three Million Dollars (\$3,000,000.00) for damages incurred or claimed for any one person and not less than Five Million Dollars (\$5,000,000.00) for damages incurred or claimed for any one occurrence and for One Million Dollars(\$1,000,000.00) property damage per occurrence with no separate limits stated for the number of claims. Such coverage shall include as appropriate ,without limitation , protection against liability for non-owned and hired automobiles, liability for property of others, contractual and all written contract insurance, host liquor liability, workers compensation and such other risks as' are customarily covered with respect to areas similar to the Corporation Common Areas in developments similar to Fountain Lakes in construction, location and use. The insurance purchased shall contain a "severability of Interest Endorsement," or equivalent coverage, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of either the Corporation, any Neighborhood Association, the Developer or any Owner or deny the claim of the Developer, the Corporation, any Neighborhood Association or any Owner because of negligent acts of the other. Such insurance shall also provide, where possible, for waiver of subrogation with respect to all Owners f or any damage caused to improvements on the Corporation Common Areas by such Owners not arising from the willful misconduct. Adequate fidelity or insurance coverage to protect against dishonest acts on the part of officers, Governors, and employees of the Corporation and all others who handle or are responsible for handling funds of the Corporation or to whom such responsibility is delegated.

- 7.12 **Lien for Assessments.** Upon recording of a lien on any property and or Dwelling Unit subject to assessments, there shall exist a perfected lien for unpaid and future Assessments prior and superior to all liens placed of record after the date of this or any prior Declaration. The lien of the Master Association, when delinquent, may be enforced in the same manner as a mortgage lien (e.g. foreclosure). The Corporation acting on behalf of its Members, shall have the power to bid for the property at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which any property is owned by the Master Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no Assessments shall be levied on it; and (iii) each other property subject to Assessment, shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have charged the property owned by the Master Association, has it not been acquired by the Master Association as a result of foreclosure. In the event of the Corporation filing a lien, foreclosure or other legal action to recover unpaid assessment, the Corporation shall be entitled to recover all Attorney's Fees and costs from the Dwelling Unit or property owner. Suit to recover a money judgment for unpaid Assessments, costs and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.
- 7.13 **Assessment Payment.** The individual unit Assessment shall be payable quarterly on the first day of January, April, July and October of each year unless otherwise modified by the Board. When a Contributing Unit comes into existence during a period with respect to which an Assessment has already been made, the New Contributing Unit shall be deemed assessed the amount of such Assessment thereof which was assessed against Contributing Units in existence at the time of the such Assessment prorated from the date the new Contributing Unit come into existence through the end of the period in question. If the payment of such Assessment was due at the time the new Contributing Unit came into existence or prior thereto, the prorated amount is immediately due and payable.
- 7.14 **Working Capital Contribution.** Upon the transfer of title and/or the resale of Dwelling Units or Lots by Owners, the transferring Owner shall remit to the Corporation a resale contribution of not less than \$300 for Condominiums and \$500 for single family homes, or such other amounts as set by the Board of the Corporation. The resale contributions paid upon resale of a Dwelling Unit or Lot by an Owner shall be set by the Board of Directors, in its discretion. The resale contributions upon the re-sale of each Dwelling Unit or Lot by an Owner shall, notwithstanding anything to the contrary in this Declaration, be collected by the Master Association and shall, be used for costs and expenses incurred by Fountain Lakes Homeowner Association, Inc. for Common Areas and for the acquisition of maintenance and operating equipment for the Corporation as determined by the Board of Directors. The resale capital contribution, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the purchaser of the Unit and shall also be a charge against the Unit secured by a continuing lien upon the Unit. Said lien may be foreclosed in the same manner as provide herein for an assessment lien. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Unit by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of

possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from foreclosure of a lien, or death of the transferee, nor to a transfer of title to the transferor's Spouse, Mother, Father, Brother, Sister, Son or Daughter.

- 7.15 **Maintenance Repair and Replacement of the Corporate Common Areas.** Any and all expense necessary to:
- a) Maintain and preserve the landscaped, green and open and natural portion of the Corporate Common Areas including but not limited to expenses such a grass cutting, tree trimming, irrigation, fertilization, spraying and the like.
 - b) Maintain, operate, preserve and protect any lakes, waterways or other bodies of water located within the water drainage areas including but not limited to all costs of chemically treating the water, controlling water levels, and maintaining and operating any improvements and amenities established within such areas.
 - c) Maintain, administer, operate, repair and replace any and all buildings, structures, recreation facilities or other improvements, personal property, fixture and equipment upon the Corporate Common Areas in a manner consistent with the intended use thereof and in accordance of the covenants and restrictions contained herein , and in conformity with all applicable Federal, state, county or municipal laws, statutes, ordinance orders rulings and regulations;
 - d) Maintain, repair and replace all signs on the Corporate Common Area.
 - e) Maintain and repair and replace any equipment used by the Master Association.
 - f) Maintain, repair and replace all roadways.
 - g) Maintain, repair and replace and operate any lights, streetlights, sidewalks within the Committed Property.
- 7.16 **Damage to Corporate Common Areas.** The foregoing maintenance and repairs or replacement within the Corporate Common areas arising out of the or caused by the willful or negligent act of the Owners, its tenants, licensees, agents, family members, guest, invitees and not covered or paid by Association insurance shall be assessed as a cost to the owner as individual expense assessment.
- 7.17 **Administration and Operational Expenses.** The costs of administration of the Corporation in the performance of its functions and duties under the Fountain Lakes Documents including but not limited to the costs of secretarial, bookkeeping, property management, employee salaries. Legal and accounting fees, contracting expenses shall be paid by the owners as an operating expense. In addition, the Corporation may retain a management company or contractors to assist in the operation of the Corporate Common areas, and to assist in the performance of certain obligations of the Corporation under the Fountain Lakes Documents and the fees and costs shall be deemed to be an operating expense.
- 7.18 **Compliance with Laws.** The Corporation shall take such action as is necessary to ensure all structure and improvements of the Corporate Common Areas a rein compliance with all governmental authorities whether Federal, State or local. This shall include but not be limited to drainage, setbacks, sanitary conditions, fire, and these costs shall be an operating expense.
- 7.19 **Refusal.** Funds needed due to the failure or refusal of the Contributing Unit Owners to pay assessments shall be deemed to and Operating Expense and may properly be the subject of a special assessment.
- 7.20 **Extraordinary items.** Extraordinary items of expense such as expenses for casualty losses and other extraordinary circumstances shall also be the subject of a special assessment.
- 7.21 **Capital Improvements.** Amounts need for Capital Improvements in excess of \$100,000 must be approved by the affirmative vote of a majority of all votes to be cast individually by the unit owners.
- 7.22 **Reserves.** The costs of reserves for depreciation and deferred maintenance of the Corporate Common Areas and facilities and improvements thereon in an amount determined by the Board shall be an operating expense. The Reserves shall be deposited in a separate account to maintain the funds. The reserves shall be the exclusive property of the Corporation and no owner shall have a right to said funds. The Board by majority vote shall determine the need and use of the Reserves for each fiscal year.

- 7.23 **Lawful Use.** The Committed Property shall be subject to the Corporation and each Owner shall confirm to and observe all laws, ordinances rules and regulation of the U.S., State, County and Master Association.
- 7.24 **Incorporation of Fountain Lakes Documents.** Any and all Deeds conveying a lot, a dwelling unit or any other portion of the Committed Property shall be conclusively presumed to have incorporated all of the terms and conditions of the applicable Fountain Lakes documents and acceptance of the deed shall be deemed to be acceptance by the grantee of all terms and conditions of the Fountain Lakes Declarations and Covenants, By Laws, Rules, and any amendments thereto.
- 7.25 **Enforcement.** The covenants and restrictions herein or contained in any other Fountain Lakes Documents may be enforced by the Corporation, the Neighborhood Association or the Board of Directors against any owner, and any institutional Mortgagees in any judicial or equitable proceeding seeking any remedy including damages, injunctive relief or other form of relief against any person, firm or entity violating or attempting to violate any covenant, rule, restriction or provision thereunder. The failure of any party to enforce any rules against any entity shall not be considered a waiver of any rule or provision.

Article 8 Neighborhood Associations

- 8.1 **Enforcement of Covenants by Corporation.** If any Neighborhood Association fails to enforce any provisions of its Neighborhood Covenants. or to perform any of its duties and responsibilities thereunder, The Corporation may in its sole discretion, enforce such Neighborhood Covenants, and perform such duties and responsibilities, including any and all maintenance provisions and shall be entitled to recover the costs and expenses (including attorney's fees) of such enforcement or maintenance pursuant to the provisions of this Article.
- 8.2 **Entry Rights.** Each Neighborhood Association and each owner shall permit Corporation, or any designee or authorized agent or employee of Corporation to enter upon a Neighborhood Common Area or the owner's Lot at reasonable times, to carry out the provisions of this Declaration. and the entry shall not constitute a trespass. This provision shall not be construed as authorizing entry by Corporation into the interior of any Dwelling Unit that is owned by a person other than Corporation except in an emergency.
- 8.3 **Maintenance of Neighborhood Common Areas.** The Community Association may contract with any Neighborhood Association to provide for the maintenance and management of its Neighborhood Common Areas.
- 8.4 **Neighborhood Covenants.** The Corporation reserves the right and the power without the consent of any other person being required:
- a) To amend the specific provisions of this Declaration as they apply to one or more Neighborhoods. without amending those provisions with respect to all Neighborhoods: and
 - b) To supplement this Declaration by recording separate covenants, conditions, restrictions and other provisions applying to any specific Neighborhood and Dwelling Units.
- 8.5 **Priority of Neighborhood Covenants.** The documents establishing or governing a Neighborhood Association shall not be inconsistent with this Declaration or its recorded exhibits. except they may establish restrictions on subjects related to the use and occupancy of the property within the Neighborhood, such as pets, parking, architectural controls, leasing and guest occupancy that are more restrictive than those set forth in the Governing Documents. The Documents of the Corporation shall control over in any inconsistent or less restrictive Neighborhood Declarations and Covenants.

Article 9 Security: Non-Liability of Community Association

- 9.1 All persons, owners, and their invitees are responsible for their own security and the security of their own property. The Community Association shall not be considered a guarantor or provider of security for the Neighborhood.
- 9.2 The Community Association shall not be liable in any way for loss or damage or injury resulting from a lack of security or lack of effectiveness of security measures undertaken. The Community Association makes no representations or warranties whether express or implied including any warranty of merchantability and fitness for any particular purpose relating to the fire protection or burglary systems installed, and any other security systems recommended or installed, or any security measures taken in the community.
- 9.3 Neither the members, or the Officers or Directors of the Master Association shall be liable for the debts of the Master Association.

Article 10
Disclaimer Association Liability

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING: IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF. THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.

ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECT WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN. AS USED HEREIN "ASSOCIATION" SHALL INCLUDE WITH ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.