

**ARCHITECTURAL
&
GENERAL GUIDELINES
FOR
FOUNTAIN HILLS**

**Lots 97 thru 110
A Planned Subdivision
in
Lubbock, Texas**

PREAMBLE

Declarants are the owners and developers of certain residential Lots within a tract of land now commonly known and described as Fountain Hills (which lots are more particularly described within Exhibit "A" attached hereto). Declarants propose to establish and implement plans for residential living, aesthetic and quality-of-life considerations. The purposes of this Declaration are to: protect the Declarants and the Owners against inappropriate development and use of Lots within the Properties; assure compatibility of design of improvements within the Subdivision; secure and preserve sufficient setbacks and space between buildings so as to create an aesthetically pleasing environment; provide for landscaping and the maintenance thereof; and in general to encourage attractive, quality, permanent improvements that will promote the general welfare of the Declarants and the Owners. Declarants desire to impose these restrictions on Fountain Hills property now and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the quality and distinction of the project.

RESTRICTIVE COVENANTS

1. **Architectural Control Committee.** An Architectural Control Committee (hereinafter referred to as the ACC) is hereby created and charged with the following responsibilities:

A. Reviewing, approving, rejecting, or requiring changes in proposed improvements in Fountain Hills, which improvements are proposed to be built on or moved onto any Lot or Lots, including any additions or alterations of existing structures or other improvements.

B. Enforcing or helping with the enforcement of these restrictions.

The committee shall consist of four (4) persons who must be:

A. Twenty one (21) years of age or older.

B. Owner of record of property in Fountain Hills.

The initial members of the committee will be the developers, Carl Evan Mortensen and Debora Carlene Mortensen and two other people designated by the developers. The developers may designate other persons to serve in their places on the committee at any time and may, at their discretion, discontinue serving on the committee.

All requests for improvements to any Lot or Lots must be submitted in writing to the chairman of the committee prior to submittal to the City of Lubbock for a building permit and prior to any construction. The chairman shall notify the other members of the committee of such request and call a

meeting of the committee to make a decision concerning such request. The committee shall have seven (7) days in which to render a decision in writing concerning any request, and failure to do so will be presumed to be a decision in favor of such request. Three (3) members of the committee shall constitute a quorum for conducting business.

2. **Use and Occupancy.** All Lots and dwellings shall be used and occupied for single family residence purposes. No Lot or dwelling may be used for commercial, institutional for other nonresidential purpose if such use involves the attendance or entry of non-residents upon the Lot or otherwise diminishes the residential character of the Lot or neighborhood. This prohibition shall not apply to "garage sales" provided that no Owner shall conduct more than one (1) garage sale of no more than two (2) days duration during any six (6) month period, or, the use of any Residence by Declarants or any other builder as a model home or sales office, or the use of any Lot as a site for a construction office trailer or sales office trailer by Declarants or any Builder.

3. **Nuisance.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

4. **Development Activity.** Notwithstanding any other provision herein, Declarants and its successors and assigns, including Builders, shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of dwelling units on the Property.

5. **Temporary Structures.** No structure of a temporary character, including without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarants or any Builder to use trailers or outbuildings as sales offices, construction offices or material storage facilities.

6. **Signs.** No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Residence, fence or other improvement upon such Lot so as to be visible from public view except the following:

a. For Sale Signs. An Owner may erect one (1) sign not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground, advertising the property for sale.

b. Declarants Signs. Signs or billboards may be erected by the Declarants or any Builder

c. Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

7. **Campers, Trucks, Boats, and Recreational Vehicles.** No campers, vans, tractors, trucks larger than one (1) ton, boats, boat trailers, recreational vehicles and other types of nonpassenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within the garage located on such Lot and/or said vehicles and accessories are screened from view by a screening structure or fencing approved by the ACC, and said vehicles and accessories are in an operable condition. The ACC, as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle and/ or accessory is operable and adequately screened from public view. Upon an adverse determination by said ACC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph.

8. **Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats, or other household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred or kept for commercial purposes or for food. No more than three (3) pets will be permitted on each Lot. Pets must be restrained or confined on the homeowner's back lot inside the fenced area or within the house. It is the pet owner's

responsibility to keep the Lot clean and free of pet debris. All animals must be properly tagged for identification and vaccinated against rabies.

9. **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

10. **Sight Distance at Intersections.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and in a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

11. **Commercial or Institutional Use.** No Lot, and no building erected or maintained on any Lot shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes, except for construction offices, model homes and sales offices.

12. **Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings shall be erected, placed or constructed upon any Lot without the prior consent of the ACC.

13. **Fences.** A Fountain Hills subdivision perimeter brick fence shall be installed by Declarants. Owners of lots bordering this fence shall own and maintain this fence in original form and condition. They shall also maintain the grass area between fence and street. Except for the perimeter brick fence, no fence, wall or hedge shall be erected or maintained on any Lot nearer to the street than the building setback lines for the front and side yards. All fences must be constructed of cedar wood, brick or other material accepted by the ACC. Pickets on all cedar wood fences shall face the street.

14. **Antennae, Satellite Dishes and Solar Collectors.** No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view at a point in the center of the public right-of-way directly in front of the house erected on such Lot.

15. **Exterior Finish.** Exterior walls and trim shall be finished with brick, stone, wood, stucco or other material accepted by the ACC.

16. **Chimneys.** All chimneys must be made of the same material as the principal finish material of the exterior walls of the Dwelling.

17. **Clothes Hanging Devices.** Clothes hanging devices exterior to a Dwelling shall not be permitted unless they are enclosed and blocked from the view from public rights-of-way.

18. **Window Treatment.** No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

19. **Limitation on Square Feet.** All residential dwellings must have a minimum of twenty four hundred (2400) square feet on the ground floor, exclusive of open porches and/or garages.

20. **Two-Car Garage.** Each Unit shall have a fully enclosed garage capable of accommodating not less than two (2) automobiles. All garages shall be constructed of materials of a like nature to their residences and in particular the roof shall comply with the restrictions herein. All garages shall be rear or side entry garages.

21. **Landscaping.**

a. **Trees.** All lots upon which residences are constructed shall have minimum landscaping within the front setback area of each Lot of at least two (2) trees planted and maintained alive. Each tree, at the time it is planted, which will be within a reasonable time not to exceed six (6) months from the date of original occupancy, shall be at least three (3) inches in caliper as measured one (1) foot from the ground level of said tree.

b. **General.** The owner of each Lot, within six (6) months of the date of occupancy of Residence, shall establish fully sodded grass on all yards visible from the street. The owner shall maintain the yards in a sanitary and attractive manner and shall edge the street curbs that run along the property line. Grass, weeds and vegetation on each Lot must be kept mowed at regular intervals so as to maintain the Property in a neat and attractive manner. No owner shall permit weeds or grass to grow to a height of greater than six (6") inches upon his Property.

22. Building Location. Every Residence erected upon any Lot shall be located so that it will front the street upon which said Lot faces. No building or any part of any building or any porch or an extension of said building shall be located to the front property line within twenty-five (25') feet for lots 102, 103, 104 and 105. The remaining Lots shall have a twenty (20) feet setback. Likewise, no building or buildings shall be located closer than five (5') feet to any side property line; and provided further that no building or buildings located on any corner lots shall be located closer to a side street than within ten (10') feet of said property line. Cul-de-sac houses may be built within fifteen (15') feet of the 100 foot diameter cul-de-sac property line. For purposes of this covenant, eaves, steps and open porches shall not be considered as a part of the building; however, this shall not be construed to permit any portion of the building on the Lot to encroach upon another Lot. No Dwelling on any Lot may be located closer than five (5') feet to the rear Lot line, and no garage entrance may be located closer than twenty (20') feet to the rear Lot line.

23. Roofing Design and Material. All roofs must be at least 7/12 pitch. All roofing design and materials utilized on any structure on a Lot must be approved by the ACC. Any composition shingles must be three dimensional Class A composition shingles with a minimum 35-year guaranty and weight of not less than 300 pounds per square or better.

24. New Construction. Except for children's playhouses, doghouses, greenhouses and gazebos placed at locations on a Lot that are not visible from any street, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon.

25. Air Conditioning Apparatus. No air conditioning apparatus shall be installed on the ground in front of a Residence or on the roof of any Residence. No window air conditioning apparatus or evaporative coolers shall be utilized in any Residence.

26. Mailboxes. Each Dwelling House must have a mailbox adjacent to the street which the house faces and must meet United States Postal Service regulations regarding location and specifications. Each mailbox must be enclosed in a brick pedestal which is to be approved by the ACC.

27. Construction Time Limits. The construction of the residential dwelling shall commence within one year of purchase of Lot and shall be completed within two years of purchase of Lot.

28. Homeowners Association. Every Lot owner is a member of the Fountain Hills Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot. Please see Property Owners Association Bylaws.

29. Mineral Rights. No mineral rights go with any of these Lots.

30. Term of Covenants. These restrictive covenants shall remain in force and effect for a period of forty (40) years from the date of this instrument, after which time they shall be automatically extended for successive periods of ten (10) years. These restrictions may be amended in whole or in part during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot owners. Any amendment must be recorded.

The Declarants, or the owner of any Lot or Lots, shall have the right to enforce by any proceeding at law, or in equity, all restrictions, covenants, conditions and reservations now or hereafter imposed hereby. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court with competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby.

WITNESS our hands this _____ day of _____

FOUNTAIN HILLS, LP

**By: MORTENSEN PROPERTIES, INC., a
Texas Corporation, General Partner**

By: _____
TYSEN MORTENSEN, Vice President

**STATE OF TEXAS §
COUNTY OF LUBBOCK §
 §**

This instrument was acknowledged before me this _____ day of April, 2014, by TYSEN MORTENSEN, Vice President of MORTENSEN PROPERTIES, INC., a Texas corporation, General Partner of FOUNTAIN HILLS, LP, in the capacity therein stated.

Notary Public, State of Texas