

PRELIMINARY DESIGN STATEMENT OF THE PLANNED UNIT DEVELOPMENT  
FOR  
PROPOSED COMMUNITY OF

RIVER BIRCH ESTATES

Proposal Submitted by Leon and Betty Corn, Owners / Developers

605.72

1.0 Design Statement

a. The title of the PUD is River Birch Estates.

b. Character of the PUD.

- b.1 Homes shall be situated on a single entrance off of Mustang Road, forming a single winding residential street with cul de sac turn around at the end.
- b.2. Proposed community shall be a gated community of Garden Homes with a code entrance for residents and a crash gate or special code access for emergency and city vehicles.
- b.3 Development shall include 40 homes, a single clubhouse, pool, guest parking, common areas adjacent to the clubhouse, and three landscaped islands placed within the street area.
- b.4 The street design and landscaping shall preserve as many existing mature trees as possible, as well as accommodate new plantings to create interest and a pleasing, tranquil atmosphere.
- b.5. The community shall consist of single family detached homes situated on a zero lot line on one property line, and a minimum 10' lot line on the opposite side. A 3' maintenance easement shall exist on the zero property line, to allow for painting or other maintenance to the neighboring house.
- b.6. The homes will be consistent with the philosophy of minimal homeowner maintenance including small front yards designed from a 15' setback and 12' easement on the street side, with a 4' sidewalk adjacent to the curb.

c. Acreage breakdown of land use and densities.

c.1 The maximum number of dwelling units within the PUD shall be 4.25 per acre.

c.2. The common area footage for the clubhouse lot, parking areas, and landscaping islands shall be approx. 15,850 square feet.

d. Gross area, lot area, and open space calculated to the nearest square foot.

d.1. Gross area of the PUD is 435,600 square feet

d.2. Lot areas consist of approximately 297,000 square feet, with an average lot area of 7,500 square feet

d.3 Each lot shall consist of approximately 1485 square feet of open space from the curb to the building lot line.

**e. Building types, sizes, and proposed architectural style.**

- e.1. The footprint square footage of any structure shall cover a maximum of 60 % of any residential lot within the PUD.
- e.2. Homes to be constructed with minimal homeowner maintenance designs, including hip roof, minimal exterior siding or painted surfaces
- e.3. Homes constructed on each Lot shall have not less than 1750 square feet of enclosed livable space, excluding basement, attic, garages, porches, patio areas, etc.

**f. Building façade materials shall be a minimum of 80% brick or stone.**

**g. General location and surrounding areas and uses.**

- g.1. This PUD consists of a 10-acre tract located ¼ mile north of Highway 66 on the east side of Mustang Road.
- g.2. The legal description is the North Half of the South Half of the Northwest Quarter of the Southwest Quarter of Section Fifteen, Township Twelve North, Range Five, W.M.
- g.3. Properties north, south, and east of the PUD are zoned agricultural. Property across Mustang Road to the west is zoned residential and is currently undeveloped. Property north of the PUD in the Agricultural zone, has a single family residence. Property adjacent to the PUD on the south has a church. Other adjacent land is currently undeveloped.

**h. Covenants and Restrictions (See attached covenants and restrictions)**

**i. Assurances that the City of Yukon shall be entitled to enforce covenants. (See attached covenants)**

**j. No special development regulations or variations to the subdivision regulations are a part of this application.**

**k. Existing and proposed streets, right-of-way standards, and street design concepts.  
(Provided by W.R. Peacock and Associates with engineering graphics)**

**l. Maintenance plan pertaining to common areas, landscaping, entry gates, and other amenities.**

- l.1. Homeowners Association shall be created for improving, operating and maintaining common facilities, clubhouse, parking and recreation areas, and open spaces landscaped and maintained by the Association.
- l.2. Homeowners Association shall maintain:
  - All front yard open spaces and landscaping of front yards
  - All common areas
  - All clubhouse areas
  - Entrance and electric gate system
- l.3. Homeowners Association shall oversee the protective restrictions and covenants to preserve the values and amenities of the community, with regard to architectural control, fencing, exterior maintenance of property, animals, drainage, vehicles, structures not part of the actual residence, external accessories, outbuildings, and assessment of Association fees.



PRELIMINARY DESIGN STATEMENT OF THE PLANNED UNIT DEVELOPMENT FOR  
PROPOSED COMMUNITY OF

**RIVER BIRCH ESTATES**

Proposal Submitted by Leon and Betty Corn, Owners / Developers  
DBA River Birch Estates, LLC.

**1.0 Introduction**

This Planned Unit Development consists of 10 acres and is located  $\frac{1}{4}$  mile north of Highway 66 on the east side of Mustang Road.

**2.0 Legal Description**

The legal description of this PUD is the North Half of the South Half of the Northwest Quarter of the Southwest Quarter of Section Fifteen, Township Twelve North, Range Five West of the Indian Meridian.

**3.0 Owner/Developer**

The owner/developer of this PUD is River Birch Estates, LLC.

**4.0 Site and Surrounding Areas**

This PUD property is presently zoned agricultural, and is developed with a single-family dwelling and out buildings. All surrounding properties are zoned and developed as follows:

4.1 Physical characteristics To be provided by W.R. Peacock, Associates, Engineers

**5.0 Concept**

The concept of this PUD is for an upscale gated community of Garden Homes.

5.1 Homes shall be situated on a single entrance off of Mustang Road, forming a single residential street with cul de sac turn around at the end.

5.2 Proposed community shall be a gated community with a code entrance for residents and guests, and a crash gate or special code access for emergency and city vehicles.

5.3 Developer shall request that the single street known as River Birch Drive be dedicated to the City of Yukon at the completion of the development phase.

5.4 Development shall include 38 homes, a single clubhouse, pool, guest parking, common areas adjacent to the clubhouse, and four 8' landscaped islands placed within the street area.

5.5 The street design and landscaping shall preserve and include as many existing mature trees as possible, as well as accommodate new plantings.

- 5.6 Community shall consist of single family detached homes situated on a zero lot line on one property line, and a minimum 10' lot line on the opposite side. Homeowner shall allow a 3' maintenance easement on the zero property line, to allow for painting or other maintenance to the neighboring house.
- 5.7 Individual lots to be in a width range of 55' to 75', and a depth range of 100' to 160'.
- 5.8 Homes to cover between 70 and 90 percent of the lot.
- 5.9 The homes will be consistent with the philosophy of minimal homeowner maintenance including small front yards designed from a 15' setback and 10' easement on the street side, with a 4' sidewalk adjacent to the curb.
- 5.10 Homes to be constructed with minimal homeowner maintenance designs, including hip roof, minimal exterior siding or painted surfaces, and brick or stone veneer.
- 5.11 The house constructed on each Lot shall have not less than 1750 Square feet of enclosed livable space, excluding basement, attic, carports, porches, patio areas, etc.
- 5.12 No house shall be designed which has windows or other openings that would allow anyone occupying said house to have a view of a Private Side Yard.
- 5.13 Private garden and patio areas on the Private Side Yard and back yard of each house shall be privately maintained and / or landscaped by the homeowner.
- 5.14 Homeowners Association shall be created for improving, operating and maintaining common facilities, clubhouse, parking and recreation areas, and open spaces landscaped and maintained by the Association.
- 5.15 Homeowners Association to maintain:  
All front yards and landscaping of front yards  
All common areas  
All clubhouse areas  
Entrance and electric gate
- 5.16 Homeowners Association shall oversee the protective restrictions and covenants to preserve the values and amenities of the community, with regard to architectural control, fencing, exterior maintenance of property, animals, drainage, vehicles, structures not part of the actual residence, external accessories, outbuildings, and assessment of Association fees.



# OFFICE OF THE CITY ATTORNEY

Yukon



Oklahoma

## MEMORANDUM

To: Planning Commission  
From: Michael D. Segler *[Signature]*  
Date: August 24, 2001  
Subject: Review of Declaration of Covenants and Restrictions

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I have reviewed a rough draft of what purports to be a rough draft of Declaration of Covenants and Restrictions of River Birch Estates, L.L.C., and offer the following comments and suggestions:

1. The declarant, River Birch Estates, L.L.C., needs to be the same as the owner of the property. I have this date received a copy of preliminary plat and final plat which indicates that the owner is Leon Corn. There is referenced in subparagraph (d) of the recitals of the Declaration a non-profit corporation, River Birch Estates Residential Community, Inc. The declarant needs to provide us a copy of the Certificate of Incorporation.

2. In subparagraph (e) of the Declaration, the declarant attempts to grant unto the City of Yukon the ability to enforce and provide compliance with the Covenants and Restrictions. However, this statement is in the recital portion of the Declaration and should also be contained as a separate section within the document. The right of the City of Yukon to enforce the covenants and restrictions, particularly with regard to maintenance of improvements, should also be noted on the plat and should be specifically addressed in any paragraph regarding amendments to the Declaration as being not subject to amendment.

3. In Section 1 of the Declaration, there are references to subdivisions not the subject of this application. It is noted, however, that I received a rough draft and expect this type of information to be in place. However, the final version, of course, would need to be referencing the subdivision in Yukon.

4. Article IV, Section 4.8 should provide for the right to impose a lien upon the real property of the member not paying the assessment, as well as grant unto the City of Yukon the right to collect for assessments related to maintenance required due to the homeowners' association failing to maintain improvements.

5. Article VIII, Section 8.4 is an incomplete sentence and should be addressed.

6. Section 8.14 has an inaccurate number for the minimum square feet and should also contain a reference to the living area, exclusive of garages.

7. Section 8.17 is inaccurate in that it does not reflect the PUD ordinance passed by the City of Yukon.

8. Section 10.7 is an incomplete statement and the version of the Declaration I received does not have a signature page.

Should you have any questions, do not hesitate to contact me.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

The North Half of the South Half of the Northwest Quarter of  
the Southwest Quarter of Section Fifteen, Township Twelve  
North, Range Five West of the Indian Meridian.



**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF**

**RIVER BIRCH ESTATES, LLC**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS dated August 10, 2001, by River Birch Estates, L.L.C., and Oklahoma limited liability company, having a mailing address at 229 E. Meade Drive, Yukon, Oklahoma 73099 (the "Declarant"), with reference to the following:

- (a) Declarant is the owner of the following described real property (the "Property"), as defined herein:

The North Half of the South Half of the Northwest Quarter of the Southwest Quarter of Section Fifteen, Township Twelve North, Range Five West of the Indian Meridian.

- (b) Declarant desires to create a residential community on the Property with open spaces and other common facilities for the benefit of the said community
- (c) Declarant desires to provide for the preservation of the values and amenities in such community and for the maintenance and improvement of said open spaces and other common facilities now existing or hereafter erected thereon; and, to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, herein sometimes collectively referred to as the "covenants and restrictions", each and all of which are for the benefit of such Property and each owner thereof.
- (d) There has been incorporated under the laws of the State of Oklahoma, as a nonprofit corporation, River Birch Estates Residential Community, Inc., to which Declarant deems it desirable, for the foregoing purposes, to delegate and assign the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.
- (e) Declarant desires to provide for the continued compliance with the City of Yukon's approved PUD Development Plan, and, in the absence of such compliance by the River Birch Estates Residential Community, Inc., the City of Yukon may enforce such compliance as it deems necessary.

#1

Now, THEREFORE, Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants and restrictions hereinafter set forth, which shall run with such Property and shall be binding on all parties having or acquiring any right, title or interest therein or any part thereof, and shall inure to the benefit of each owner thereof and such owner's heirs, devisees, personal representatives, trustees, successors, and assigns, such covenants and restrictions being hereby imposed upon such Property and every part thereof as a servitude in favor of each and every other part thereof as the dominant tenement.

## ARTICLE 1

### DEFINITIONS

Section 1. The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings indicated for each:

③

- 1.1 "Architectural Committee" shall have the meaning specified in Section 5.1, below.
- 1.2 "Association" shall mean and refer to River Birch Estates Residential Community, Inc.
- 1.3 "Board" shall mean the Board of Directors of the Association.
- 1.4 "Building Area" shall mean areas which are not "Open Spaces," "Common Properties," or set backs, all as designated on the recorded subdivision plat of the Property or the Planned Unit Development Ordinances and in the case of set backs, this Declaration.
- 1.5 "By-Laws" shall mean the By-Laws of the Association which are or shall be adopted by the Board as such By-Laws may from time to time be amended.
- 1.6 "Certificate of Incorporation" shall mean the Certificate of Incorporation of the Association filed in the office of the Secretary of State of Oklahoma, as such Certificate of Incorporation may from time to time be amended.
- 1.7 "Common Properties" shall mean and refer to all areas not described as Lots 1 through 41 to include but not be limited to the common drives, entry, pool, clubhouse, street islands, and green belt areas.
- 1.8 "Declarant" shall mean River Birch Estates, LLC.
- 1.9 "Detached Structure" shall mean any covered or enclosed structure on a Lot not attached to the main residence which it serves, and shall include, but not be limited to, carports, garages, out buildings, tool sheds, kennels, cabanas, greenhouses, and any temporary structures.
- 1.10 "Lot" shall mean those tracts of land shown and identified as "Lots" on any recorded subdivision map of the Property with the exception of Common Properties as heretofore defined.
- 1.11 "Member", "Class A Member" and "Class B Member" shall mean those Persons so defined in Section 3.2, below.
- 1.12 "Occupancy" of any Lot shall mean that point in time when the first member of the Owner's family or anyone authorized by the Owner moves into the residential unit located thereon.
- 1.13 "Open Spaces" shall be those areas of land so designated upon any recorded subdivision map of the Property located within Lots but reserved for and intended to be devoted to the common use and enjoyment of the Owners of Lots. Said "Open Spaces" may from time to time have constructed upon them pathways, watering systems, plantings, and other similar amenities at the discretion of the Declarant or the Association.
- 1.14 "Owner" shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot, including contract sellers, but shall not include a mortgagee unless such mortgagee



has acquired title pursuant to foreclosure, power of sale, deed, or otherwise: nor shall such term include any other Person who has an interest merely as security for the performance of an obligation.

- 1.15 "Party Wall" shall have the meaning specified in Section 7.1, below.
- 1.16 "Person" shall mean as individual, corporation, partnership, association, trust or other legal entity, or any combination thereof.
- 1.17 "Planned Unit Development Ordinance" shall mean Ordinance Number 1088, Section 605 otherwise known as the Planned Unit Development Supplemental District, passed by the City of Yukon on August 21, 2001.
- 1.18 "Private Side Yard" shall mean the area between uses which may include any required side yard set back and maintenance easement of the house immediately adjacent.
- 1.19 "Property" shall mean the real property described in recital paragraph (a) of this Declaration.
- 1.20 "Rules" shall mean the rules of the Association adopted by the Board, as they may be in effect from time to time pursuant to the provisions hereof.
- 1.21 "Street" shall mean any street, cul-de-sac, alley, lane, drive, way, avenue, boulevard, court, circle, place, manor, terrace, or other road intended for automobile traffic, as shown on any recorded subdivision plat of the Property.
- 1.22 "Visible from Neighboring Property" shall mean, as to any given object, that such object is visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE 11

### PROPERTY RIGHTS IN THE OPEN SPACES AND COMMON PROPERTIES

Section 2.1 Members' Easements of Enjoyment. Subject to the provisions of Section 2.3, every Member shall have a right and easement of enjoyment in and to the Open Spaces and Common Properties which easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot.

Section 2.2 Title to Common Properties. Concurrently with signing this Declaration, Declarant will convey to the Association all of the Common Properties free and clear of all liens and encumbrances on the date hereof.

2.2.1 Title to Open Space. The legal title to the Open Space on each Lot shall pass with the title to the Lot of which it is a part, subject to the easement described in Section 2.1. The Association will retain title to any physical improvements which it makes to Open Spaces and the Association shall have the responsibility for maintaining any such physical improvements to the Open Spaces.

2.2.2 Encroachments Into Open Spaces. At the discretion of Declarant or the Architectural Committee, an Open Space on a particular Lot may be encroached upon by the house to be located on the Lot, if necessary to allow a portion of a meritorious house plan to be built thereon which may not fit within the prescribed buildable areas; provided, however, (a) the authority



of the Declarant or the Architectural Committee to permit any such encroachment shall apply to original construction only and shall not be applicable to or used to permit encroachments by any additions to an existing house, and (b) no buildings of any kind shall be constructed more than ten (10) feet into an Open Space as indicated on the final plat. While fences approved by the Architectural Committee (pursuant to paragraph 4.1 of this Declaration may be allowed within the Open Space area, no fence or other structure shall interrupt the pedestrian traffic circulation. In the event an encroachment is allowed into the Open Space, the area thus occupied shall cease to be Open Space, and shall become part of the "buildable area" and thus a responsibility of the Owner and not of the Association. Any easement of enjoyment which previously existed in the area which becomes new "buildable area" shall cease. Conversely, in the event that approved permanent walls or fences are built inside of a line shown on a plat of the Property that separates Open Space(s) from Buildable Area, the area which is outside said walls or fences shall become the responsibility of the Association for purposes of maintenance. Notwithstanding the forgoing language in Section 2.2.2, no structure shall be allowed to encroach upon any drainage or utility easement or required set back.

Section 2.3 Limitations Upon Owner's Easements. The rights and easements of enjoyment created in Section 2.1 shall be subject to the following:

2.3.1 Suspension of Rights. The right of the Association, as provided in its Certificate of Incorporation and By-Laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published Rules; and

2.3.2 Conveyance to Public Authority. The right of the owner of the legal title to the Common Properties to convey to any public agency, authority, or utility, easements for drainage or underground utility purposes across any part of the Common Properties, provided that (a) the proposed design and location of each such drainage and underground utility shall be first submitted in writing to and approved by the Architectural Committee, (b) the Architectural Committee must approve such design and location in writing, (c) the Architectural Committee may condition its approval on satisfaction of such requirements as it may deem advisable, and (d) the Architectural Committee shall, at a minimum, require restoration of the Common Properties to the condition before installation of utility lines, and other facilities in such easement (s); and

2.3.3. Landscaping and Maintenance. The landscaping and maintenance of Open Space and Common Properties shall be the responsibility of the Association. Further, the Association or the Declarant shall have a right and easement of use to construct certain asphalt or concrete pathways; to plant and care for trees, shrubs and other flora; to install and maintain gazebos, pavilions or other structures in and upon Open Spaces and Common Properties which in the reasonable opinion of the Board and the Architectural Committee, will enhance their use or appearance and such easement of use shall be appurtenant to and pass with the title to every Lot.

[NOTE: Only landscape maintenance and mowing will be provided for each individual Lot. Sprinkler systems will be the individual responsibility of each Lot Owner.]

Section 2.4 Delegation of Use. Any Owner may, in accordance with the By-Laws, delegate such Owner's right of enjoyment of the Common Properties to the members of such Owner's family, such Owner's tenants or contract purchasers who reside on such Owner's Lot.

## ARTICLE 111

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 3.1 Membership. The Declarant shall become a member ("Member") of the Association effective as of the date of this Declaration. Every other Owner of a Lot except the Owner(s) of Lots which are exempt from assessment as specified in Section 4.10 below, shall become a Member of the Association effective as of the date the Owner Purchases his, her or its Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Membership provides for the use and enjoyment of all facilities provided for in this declaration prior to occupancy, provided that membership assessments have been paid. An Owner whose Lot is exempt from assessment as specified in Section 4.10 below shall not be or become a Member by virtue of his, her or its ownership of such Lot.

Section 3.2 Voting Rights The Association shall have two classes of voting membership:

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

Class B. "Class B Member" shall be the Declarant which shall be entitled to three (3) votes for each Lot of which the Declarant is the Owner.

## ARTICLE 1V

### ASSESSMENTS

Section 4.1 Covenant for Assessments. The Declarant, for each Lot owned within the Property, hereby covenant, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual maintenance assessments, and (2) special assessments for capital improvements, both of which assessments are to be established and collected as hereinafter provided. Such assessments shall be charges against and shall be continuing liens upon the property against which each such assessment is made, paramount and superior to any homestead or other exemption provided by law, and shall also be the personal obligation of the Person who was the Owner of such property at the time when the assessment became due, all as is more particularly provided in Sections 4.8 and 4.9 below.

Section 4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement and maintenance of the Open Spaces and Common Properties and to pay expenses incurred by the Association in accordance with its By-Laws.

Section 4.3. Annual Maintenance Assessment. The maximum annual maintenance assessments for each Lot, except Lots excepted under Section 4.10 below, shall be Six Hundred and No/100 Dollars (\$600.00) per year until adjusted by the Board pursuant to this Declaration. The maximum permissible maintenance assessment increase shall be no more than five percent (5%) of the maximum permissible maintenance assessment for the



previous year without a vote of the membership of the Association. The maximum permissible maintenance assessment may be increased above the five percent (5%) limitation specified in the preceding sentence only by an affirmative vote, in person or by proxy, of two-thirds (2/3rds) of all Lot Owners at a meeting called for the purpose of considering such increase. The Board may fix the annual maintenance assessment against each Lot at any amount not in excess of the maximum permissible maintenance assessment applicable to the particular year, without the necessity of a vote of the membership of the Association.

#### Section 4.4 Special Assessments.

4.4.1 Purposes. In addition to the annual maintenance assessments authorized above, the Association may levy in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of capital improvements upon the Open Spaces and Common Properties, including fixtures and personal property related thereto.

4.4.2 Creation of Special Assessment. All special assessments shall be established as a percentage of the actual annual maintenance assessment established for the same year, to be levied in addition thereto, and such percentage shall be the same for all assessed Lots, provided that special assessments shall never exceed fifty percent (50%) of the actual annual maintenance assessment for the same year and must receive the assent of either (a) as to proposed special assessments which do not exceed twenty-five percent (25%) of the actual annual maintenance assessment, two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for that purpose, (b) nine-tenths (9/10) of such votes as to proposed special assessments in excess of such twenty-five percent (25%).

Section 4.5 Notice and Quorum for Any Action Authorized Under Section 4.4.2. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.4.2, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### Section 4.6 Date of Commencement of assessments: Due Dates.

4.6.1 Annual Maintenance Assessments. The annual maintenance assessments provided for herein shall commence as to all Owners who are Members on January 1, 2002. The initial annual maintenance assessments shall be made for the balance of 2002 and shall become due and payable on February 1, 2002, and the annual maintenance assessments for any year after 2002, shall become due and payable on the first day of February of said year, provided, however, that the Board may provide for the payment of such assessments in installments. The amount of the annual maintenance assessment which may be levied for 2002 shall be an amount which bears the same relationship to the annual maintenance assessment determined in accordance with Section 4.3 hereof as the remaining number of months in 2002 bears to twelve (12). The same reduction in the amount of the annual maintenance assessment shall apply to the first such assessment levied against any Lot which becomes subject to assessment at a time other than the beginning of any assessment period.



4.6.2 Special Assessments. As to all Owners who are Members, the due date of any special assessment established as provided for in Section 4.4 hereof shall be fixed in the resolution of the Members authorizing such assessment, which may also authorize the payment of such assessment in installments.

4.6.3 Maintenance and Special Assessments: Commencement as to Each Owner. As to any Owner other than the Declarant, liability for both annual maintenance assessments and special assessments shall begin when the Owner becomes a Member as provided in Section 3.1 above. Declarant shall become liable for assessments upon the commencement thereof as provided in Section 4.6.1 and 4.6.2 above, as to all Lots still owned by Declarant, but subject to the credits provided in Section 4.7 below.

Section 4.7 Credit for Expenditures. Notwithstanding the foregoing, monies expended by the Declarant during any assessment period in improving, maintaining and operating the Open Spaces and Common Properties shall be applied as credits to the sums otherwise owed by the Declarant to the Association hereunder as annual maintenance or special assessments for the same period, upon the receipt by the Association of satisfactory evidence thereof for the Declarant. If the amounts so expended by the Declarant in any assessment period exceed the assessments against the Declarant for that period, the difference shall be carried over and applied as a credit (s) in the succeeding period or periods.

#4 Section 4.8 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose a lien against the delinquent Owner's real property, and there shall be added to the amount of the delinquent assessment all attorneys' fees and other costs of collection. Any judgment thereafter obtained against the delinquent Owner shall include interest on the assessments above provided, attorneys' fees incurred by the Association and the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Open Spaces or Common Properties or by the abandonment of such Owner's Lot. The Association shall grant unto the City of Yukon the right to collect for assessments related to maintenance required due to the Association's failure to maintain improvements.

Section 4.9 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon any Lot being assessed. Sale or transfer of any Lot shall not affect the assessment lien, provided that the sale or transfer of any Lot pursuant to mortgage foreclosure, power of sale or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer, but further provided that no sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.10 Exempt Property. All Common Properties; all properties dedicated to and accepted by a local public authority and devoted to public use; and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Oklahoma shall be exempt from the assessments created herein; provided, however, that no land or improvements devoted to dwelling use shall be exempt from such assessments.

Section 4.11 Duties of the Board. With respect to assessments, the Board shall:

4.11.1 Commencement Date. Fix the commencement date for annual assessments against all Lots then owned by the Declarant and against all Lots then owned and occupied by other Owners, and send written notice thereof to all Owners, including Owners of unoccupied Lots, at least thirty (30) days before such commencement date; and

4.11.2 Roster of Lots. Cause the Association to prepare and maintain a roster of Lots, the Owners thereof, the assessments applicable thereto, if any, and the status of the payment thereof, which shall be kept in the office of the Association and which shall be open to inspection by any Owner; and

4.11.3 Certificate Regarding Compliance. Upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, stating whether said assessment has been paid, or, if being paid in installments, whether payments are current. Such certificate shall be conclusive evidence of payment of any assessment or installment thereof which is therein stated to have been paid.

Section 4.12. Borrowing by Association. The Association shall not mortgage any real property or fixtures. The Association shall not borrow money or encumber any of its other assets without prior written approval of two-thirds (2/3) of the Lot Owners.

## ARTICLE V

### ARCHITECTURAL CONTROL

Section 5.1. Review. No building, fence, wall, walk, driveway or other structure or improvement, including landscaping projects, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, including, but not limited to, repainting a different color, be made until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the "Architectural Committee" which shall, as used herein, mean the Board of Directors or a committee composed of three (3) or more representatives appointed by the Board. All approvals shall be in writing, and may be qualified upon the satisfaction of specified conditions. In the event the Architectural Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any case, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully satisfied.

Section 5.2. No Fees. No fee shall ever be charged by the Architectural Committee or by the Association for the review specified in Section 5.1 or for any waiver or consent provided for herein.

Section 5.3. Proceeding with Work. Upon receipt of approval as provided in Section 5.1, whether in writing or automatically by lapse of time, the Declarant or Owner (whichever received the approval) shall, as soon as is practicable, satisfy all conditions of such approval, if any, and proceed with the approved work. Unless such work commences within one (1) year from the date of approval, such approval shall be deemed revoked, and the Owner must again seek approval pursuant to all of the provisions of Section 5.1.

## ARTICLE VI

### EXTERIOR MAINTENANCE

Section 6.1. Responsibility. Each Owner shall be responsible for the exterior and interior maintenance excluding mowing and trimming upon each Lot, and said Owner shall keep the roofs, gutters, downspouts, sprinkler systems, lawns and plantings within the Lot in good repair and condition at all times.

Section 6.2. Board's Right - Special Assessment. In the event any Owner in the opinion of the Board has failed to maintain the exterior of the Building on such Owner's Lot, as aforesaid, the Board shall give the Owner notice in writing of the deficiencies. The Owner shall have thirty (30) days within which to cure the deficiencies. If the Owner fails to



cure the deficiencies within thirty (30) days, the Board shall be authorized to have the work performed at the expense of the Owner. There shall be added to the actual costs of the work fifteen percent (15%) to cover the administrative expense of the Board. In such event, at the conclusion of the performance of the work, the Board shall notify the Owner of the cost of performing the work and if the Owner does not pay within fifteen (15) days, said cost shall be deemed an unpaid special assessment under Article IV hereof and shall be a lien on such Owner's Lot and subject to all collection rights therein provided.

Section 6.3 Access at Reasonable Hours. For the sole purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day, except Sunday or a legal holiday.

## ARTICLE VII

### PARTY WALLS

Section 7.1 General Rules of Law to Apply. In some instances, walls which are built as a part of the original construction of the houses upon the Property and placed on a dividing line between Lots will be common walls and those so constructed shall constitute a "Party Wall", and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 7.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Party Wall in proportion to such use.

Section 7.3 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 7.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his, her or its negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements, and the entire responsibility for damage in the meantime resulting from the lack of such protection.

Section 7.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

## ARTICLE VIII

### GENERAL RESTRICTIONS

Section 8.1 Land Classification. All Lots within the Property are hereby classified as single-family lots, i.e., each Lot shall be used exclusively for single family residential purposes and for the exclusive use and benefit of the Owner thereof. No gainful occupation, profession, business, trade or other nonresidential activity shall be conducted on any Lot or in any residence or Detached Structure located thereon. Nothing herein shall be deemed to prevent the leasing of any Lot from time to time by the Owner thereof, subject to all the terms and provisions hereof, and to the Rules.

Section 8.2 Signs, Billboards and Detached Structures. No signs or billboards will be permitted upon the Open Spaces or Common Properties or upon any Lot except signs may be placed on Lots advertising the sale or rental of a Lot or Lots which do not exceed five (5) square feet in area; provided, however, this restriction shall not apply to the



right of the Declarant to construct entrance gateways, and permanent signs identifying the development. Detached Structures other than the garages erected as part of the original construction shall not be allowed on any Lot without prior written approval of the Architectural Committee.

Section 8.3 Lot Upkeep. Each Owner of a Lot shall keep the Lot in presentable condition or the Association may, at its discretion, mow such area, trim trees, repair fences, remove trash or refuse and, if necessary levy an assessment upon such Lot for the cost involved, which shall constitute a lien upon such Lot to the same extent as is provided elsewhere herein with respect to other assessments; provided, however, that the lien specified in this section shall exist regardless of whether the assessments described in Article IV above have yet commenced or whether the Owner of the Lot concerned is yet a Member.

#5 Section 8.4 Drainage. Drainage as originally established shall be maintained by the Owner in conformance with the City of Yukon's drainage plans

Section 8.5 Animals. No animals, fish, reptiles, or fowl, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot, and then only if kept solely as household pets and not kept, bred or raised for commercial purposes. No pet or pets shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. Upon the request of any Owner, the Board shall determine, in its sole discretion, whether for the purposes of this Section, a particular animal, fish, reptile or fowl shall be considered to be a house or yard pet, or a nuisance, or whether the number of pets on any Lot is unreasonable; provided, however, that horses, mules, donkeys, cattle, pigs, goats and sheep shall not be considered as house or yard pets hereunder.

No pets without leashes are permitted on the Common Properties. No unattended pets are allowed in the pool area or clubhouse area.

Section 8.6 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become a nuisance or annoyance to the neighborhood.

Section 8.7 Boats and Trailers; Cars; Temporary Residences. Boats, trailers, motor homes, trucks in excess of 1/2 tons and other vehicles which are not normally used as daily transportation may be kept on a Lot, provided that they are totally concealed in the garage. No such boat, trailer, motor home or truck in excess of 1/2 ton may be parked on any street and/or driveway within the Property. Under no condition may a Detached Structure or a trailer of any type be occupied, temporarily or permanently, as a residence. Vehicles normally used as everyday transportation may not be parked in the street and members are encouraged to park said vehicles in their garages.

Section 8.8 Clothes Drying Facilities. No outside clothes drying or airing facility shall be Visible From Neighboring Property.

Section 8.9 Tree houses, Platforms and Antennae. No tree houses, platforms in trees, play towers, or other similar structures or equipment, or satellite dishes, radio or television antennae shall be Visible From Neighboring Property.

Section 8.10 Building Coverage. All buildings on the Property shall comply with the maximum building coverage and minimum open space per lot limitations as specified in the Planned Unit Development Ordinances.

Section 8.11 Uniform House Numbering and Uniform Mailboxes. All house numbering and mailboxes shall be uniform in design and size and approved by the Architectural Committee.

Section 8.12 Utilities. The Owner of each Lot shall provide the required facilities to receive electric service, cable television service and telephone service leading from the sources of supply to any improvements erected on such Lot by means of underground service conductors installed, owned and maintained by the Owner in accordance with plans and specifications furnished by the suppliers of such services through or from overhead wiring facilities so long as underground distribution systems are available.

Section 8.13 Vehicles. Vehicles shall be restricted to streets, driveways and garages, and no vehicles shall be allowed at any time in the Open Spaces or Common Properties except tricycles may be operated on pathways by small children. No vehicle shall be parked on any yard, nor shall any vehicle be repaired, dismantled, rebuilt or re-serviced on any Lot or Common Area.

No unused vehicle shall be kept on any portion of any Lot or Common Area, except wholly enclosed in a garage. For purposes of these Declarations, an unused vehicle is one that has not been driven under its own propulsion for one (1) week or longer. The Association may notify an Owner of the presence of an unused vehicle within the Owner's Lot and may request the removal of the unused vehicle. If the Owner has not removed the unused vehicle within seventy-two (72) hours of the Owner's receipt of said notice, the Association's Board of Directors may cause the same to be removed and stored at a separate location, all at the Owner's expense. If the owner of the vehicle removed is also an Owner, then the cost of removing and storing the unused vehicle shall be added to the Owner's annual Lot assessment, and said obligation may be enforced through the Association's lien and foreclosure rights.

#6 Section 8.14 Minimum House Size. The house constructed on each Lot shall have not less than 1,750 square feet of enclosed livable space, exclusive of basements, attics, carports, garages, balconies, porches, patio areas and any other similar facilities.

Section 8.15 Roof Material. In order to maintain consistency in appearance, quality and life-safety features, the roof covering for all houses and improvements on any part of the Property shall be Prestique I Roofing, (40 year shingles, Class A fire rated, approximately 365 pounds per 100 square feet,) and "Weathered wood" color, or equivalent, as determined by the Architectural Committee.

Section 8.16 Side Yard Privacy. No house shall be designed which has windows or other openings that would allow anyone occupying said house to have a view of a Private Side Yard.

#7 Section 8.17 Set Back Requirements. The minimum width of the side yard shall be zero to ten (10) feet provided that there is a minimum separation between structures on adjacent lots of ten (10) feet. For a residence on a corner lot, the minimum setback on the street side of the lot shall be fifteen (15) feet. A minimum rear yard of ten (10) feet shall be provided on every residential lot. Off-street parking shall be provided on each residential lot with sufficient room for two vehicles without said vehicles crossing a sidewalk. Each house shall be set back at least fifteen (15) feet at the front of the lot.

Section 8.18 Miscellaneous Construction Requirements. All exterior colors are to be approved in writing and in advance by the Architectural Committee. All exterior brick are to be consistent in size and color as specified by the Declarant and the Association.

Section 8.19 Basketball Goals, Etc. No basketball goals or skateboard bicycle or roller skate ramps may be constructed on any Lot or Common Area.

Section 8.20 External Accessories. External accessory structures including but not limited to, exterior wind generators, antennae, radio or television transmission or reception towers, and discs, satellite reception antennae, etc., shall not be constructed, used or maintained on any Lot. Provided that nothing in this Section shall prohibit the construction of wood structures to be used as children's swings or climbing sets. Provided further that Direct Digital TV system antennas not exceeding four feet (4') in diameter, may be used on a Lot so long as the are not visible from the Frontage of the Lot on which they are located. Declarant may, but is not required to waive, any requirement of this Section 8.20.

Section 8.21 Outbuildings. Outbuildings may be constructed on Lots as accessories to a constructed home, provided, however, that every outbuilding erected on any Lot shall, unless Declarant and/or the Architectural Committee otherwise consents in writing, correspond in style, architecture and color to the residence to which it is appurtenant. No



outbuilding shall exceed one hundred (100) square feet in size. No Lot may have more than one out building constructed or placed upon it.

All outbuildings erected on any Lot shall be approved or disapproved, in advance of construction, by Declarant and/or the Architectural Committee within thirty (30) days after submission by an Owner of the proposed outbuilding. The term "Outbuildings" as used in these Declarations shall mean any covered or enclosed structure on a Lot not a part of the residence which it serves, and shall include but not be limited to tool sheds, storage sheds, workshops, kennels, cabanas, greenhouses, pergolas, kiosks, and any temporary structure. No out building shall be erected on any part of any Lot in front of the setback line. No garage or outbuilding shall be used as a residence or living quarters.

## ARTICLE IX

### INSURANCE

Section 9.1 Owner's Responsibility. Each Owner shall be responsible for purchasing fire, hazard, and extended coverage insurance upon the buildings constructed upon the Owner's Lot in an amount equal to at least eighty percent (80%) of the fair market value of the Lot, as improved.

Section 9.2 Association's Responsibility. The Association has the responsibility for obtaining fire and hazard insurance upon the clubhouse, pool and furnishings; and the Association may, if it chooses, acquire public liability insurance on the Open Spaces and the Common Properties.

Section 9.3 Certificate of Insurance. The Association shall have the right to request insurance certificates from the Owner's insurance companies from time to time to verify the existence of the insurance required under Section 9.1.

## ARTICLE X

### GENERAL PROVISIONS

Section 10.1 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#2 Section 10.2 Enforcement by the City of Yukon. In the event of failure by the Association or by any Owner to enforce any covenants or restrictions herein contained, the City of Yukon shall have the right to enforce and provide compliance with the covenants and restrictions, particularly with regard to maintenance of improvements.

#2 Section 10.3 Term and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the then Owners of ninety percent (90%) of the Lots, and thereafter by an instrument signed by the then Owners of seventy-five percent (75%) of the Lots. Section 10.2 above, however, regarding enforcement by the City of Yukon, may not be subject to amendment at any time.

Section 10.4 Rearranging, Re-Subdivision or Replatting. No other rearranging, re-subdividing or replatting of the Property, or change of lot lines, shall occur, except with the written consent of the Owners of ninety percent (90%) of the Lots.

Section 10.5 Mergers. Upon a merger or consolidation of the Association with another association as provided in its Certificate of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a



surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, modification or addition to the covenants established by this Declaration with the Property.

Section 10.6 Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall not affect the remaining provisions which shall remain in full force and effect.

Section 10.7 Non-Discrimination. No provision of this document shall be used, construed or interpreted so as to discriminate against any Person whatsoever because of race, creed, color, sex or national origin.

# 8

Section 10.8 Right to Assign. The Declarant by an appropriate instrument or instruments may assign or convey to any Person or Persons any or all of the rights, reservations, easements and privileges herein reserved by Declarant, and upon such assignment or conveyance being made, its assignees or grantees may at their option, exercise, transfer or assign such rights, reservations, easements and privileges or any one or more of them, at any time or times in the same way and manner as though directly reserved by them or it in this instrument.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this \_\_\_\_ day of August, 2001.

RIVER BIRCH ESTATES, LLC.

\_\_\_\_\_  
Leon C. Corn, Manager

\_\_\_\_\_  
Betty J. Corn, Secretary

STATE OF OKLAHOMA    )  
                                  )    ss:  
COUNTY OF CANADIAN    )

This instrument was acknowledged before me on \_\_\_\_\_  
2001, by Leon C. Corn, as Manager of River Birch Estates, LLC,

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
(SEAL)