



Brazos County, Texas

**Declaration of Covenants, Conditions, and Restrictions  
For The Traditions**

February 2004

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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE TRADITIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE TRADITIONS ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by BRYAN/TRADITIONS L.P., a Texas limited partnership ("Declarant").

WITNESSETH:

**WHEREAS**, Declarant is the owner of certain real property located in Brazos County, Texas, as more particularly described in Exhibit "A" ("Initial Property"), and Declarant desires to subject the Initial Property to the provisions of this Declaration and to provide a flexible and reasonable method for the administration and maintenance of the Initial Property; and

**WHEREAS**, as hereinafter provided in this Declaration, Declarant has retained and reserved the right to submit additional real property ("Additional Property") to the provisions of this Declaration, at a later time and from time to time, as part of The Traditions Community, as hereinafter defined, on such terms and conditions as Declarant may specify.

**NOW, THEREFORE**, Declarant hereby declares that the Initial Property and any Additional Property (collectively, the "Property") shall be held, transferred, sold, conveyed, leased, occupied and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the Property, and which shall be binding on all parties having any right, title or interest in the Property or any portion thereof, and their respective heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner thereof and where specifically provided herein, shall benefit such other parties or properties as Declarant shall now or hereafter determine.

**ARTICLE I**

**DEFINITIONS**

1.01 Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

- (a) "Additional Property" shall mean and refer to all or any portion of the real property contained in Exhibit "B" attached hereto (not currently submitted to this Declaration) and all improvements thereon, together with such other additional property and all improvements thereon, and such other real property as Declarant shall acquire from time to time, which Declarant specifically subjects to the terms of this Declaration by amendment hereto recorded in the official records of Brazos County, Texas, as more fully described in Section 2.02.

(b) "Architectural Guidelines" shall mean and refer to the guidelines and standards for architecture, design, construction, landscaping and exterior items on Lots and Homes adopted pursuant to Section 10.02 as they may be amended.

(c) "Architectural Review Board" or "ARB" shall mean and refer to the committee which shall be appointed by the Association's Board of Directors to approve exterior and structural improvements, additions, changes and other matters within the Property, all as provided in Article X hereof.

(d) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of The Traditions Homeowners Association, Inc., as amended from time to time.

(e) "Assessment" shall mean and refer to an Owner's share of the Common Expenses or other charges made by the Association from time to time assessed against an Owner, the Lots, Homes or Neighborhood Associations in accordance with Article IX of this Declaration for the purposes and in the manner herein provided.

(f) "Association" shall mean and refer to The Traditions Homeowners Association, Inc., a Texas nonprofit corporation to be established by Declarant, its successors and assigns.

(g) "Benefited Neighborhood" shall mean and refer to a particular Neighborhood having Limited Common Areas.

(h) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

(i) "By-Laws" shall mean and refer to the By-Laws of the Association.

(j) "Class B Control Period Expiration Date" shall mean the earlier of (i) the date upon which all Homes and/or Lots in the Community, as ultimately planned and as fully developed, have been conveyed by Declarant (and all other Persons, if any, holding the rights of Declarant) to Owners; or (ii) when, in its discretion, Declarant so determines and declares in an instrument recorded in the official records of Brazos County, Texas.

(k) "Class A Member" shall mean and refer to all Owners except the Class B Member, if any.

(l) "Class B Member" shall mean and refer to Declarant.

(m) "Common Area(s)" shall mean and refer to all real and personal property now or hereafter designated in writing by Declarant as Common Areas and conveyed to the Association or designated as such and held by Declarant for the benefit of the Association. Such real property may include but shall not be limited to roads, rights-of-way, buffers, medians or other property owned by others or dedicated to a public body but which the Association is required to or may elect to maintain, driveways, walkways, rights-of-ways, open spaces (landscaped and natural), recreational facilities and such

other common areas which have been or may be designated by Declarant as constituting Common Areas within the Property, together with any improvements thereon. Declarant, after the execution of this Declaration, may designate additional real property located within the Property as Common Areas by the filing in the official records of Brazos County, Texas, a supplement to the Declaration so designating such additional real property as Common Areas. Specifically excluded from the Common Areas is the Golf Club Property. Nothing contained herein shall limit the type of personal property which may be owned by the Association as Common Areas.

(n) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, if any, pursuant to the provisions of this Declaration.

(o) "Community" or "The Traditions Community" shall mean and refer to the Property and all improvements located or constructed thereon.

(p) "Cottages" shall mean the buildings containing condominium units, that are now or hereafter created by the Golf Club Owner pursuant to that certain Declaration of Condominium for The Founder Cottages at The Traditions, as now or hereafter filed for record in the official records of Brazos County, Texas.

(q) "Covenant to Share Costs" shall mean and refer to the Declaration of Easements and Covenant to Share Costs which Declarant will record in the official records of Brazos County, Texas, creating easements for the benefit of the Association, the Golf Club, and/or the present and future owners of the subject real property and providing for the sharing of the costs of maintaining property described in that document.

(r) "Declarant" shall mean and refer to Bryan/Traditions L.P., a Texas limited partnership, its successors and assigns.

(s) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for The Traditions and all amendments and supplements thereof filed for record in the official records of Brazos County, Texas.

(t) "Golf Club" shall mean and refer to the private golf club created by Golf Club Owner to be developed and operated on the Golf Club Property.

(u) "Golf Club Dues" shall mean and refer to dues, membership fees and other expenses and fees of Golf Club membership as set forth in the Golf Club Plan.

(v) "Golf Club Owner" shall mean The Traditions Club By Melrose, LLC, a Texas limited liability company or any successor-in-title to the Golf Club Property.

(w) "Golf Club Plan" shall mean and refer to The Traditions Club Membership Plan and all exhibits attached thereto, as amended from time to time.



(x) "Golf Club Property" shall mean and refer to the privately owned land and improvements adjacent to or in the vicinity of the Community which are known as The Traditions Club, including, without limitation, the eighteen (18) hole golf course, practice areas, driving range, pitching and putting area, practice bunkers; and the proposed tennis courts, swimming pool, clubhouse, lakes, and such other properties, improvements and related amenities owned or leased by the Golf Club Owner in connection therewith, and such constructed, acquired, leased or designated as "Golf Club Property" by the Golf Club Owner.

(y) "Golf Club Users" shall mean the Golf Club Owner and its employees, independent contractors, agents and all members, guests and invitees of the Golf Club Owner.

(z) "Governing Documents" shall mean and refer to this Declaration, the By-Laws, the Articles, the Architectural Guidelines, and rules and regulations promulgated by the Board, all as they may be amended.

(aa) "Home" shall mean a residential home and appurtenances thereto constructed on a Lot within the Community. The term "Home" shall also include the Cottages. The term "Home" includes any interest in land, improvements, or other property appurtenant to the Home.

(bb) "Limited Common Areas" shall mean and refer to all real property including any improvements, amenities, fixtures and facilities thereon, owned by, leased to, or the use of which has been granted to the Association as set forth in this Declaration or in an amendment thereto specifically designated as Limited Common Areas, to which the access and use thereof is limited to and for the primary, exclusive use and enjoyment in common by the Owners of the Lots in a particular Neighborhood, and to the family, tenants, agents, guests or invitees of each such Owner. The expenses incurred by the Association for the maintenance, operation, repair and upkeep of the Limited Common Areas for a Benefited Neighborhood shall be a Neighborhood Expense assessed to the Owners of the Benefited Neighborhood. Specifically excluded from the Limited Common Areas is the Golf Club Property.

(cc) "Lot" shall mean and refer to any platted lot shown on a Plat.

(dd) "Member" shall mean and refer to a Person subject to membership in the Association pursuant to Article IV.

(ee) "Mortgage" shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot or Home.

(ff) "Mortgagee" shall mean and refer to the holder of a Mortgage.

(gg) "Neighborhood" shall mean and refer to any portion of the Property in which Common Areas or Limited Common Areas are owned by either the Owners

residing in such Neighborhood as tenants-in-common, by a Neighborhood Association composed of such Owners, or as otherwise designated as a Neighborhood by amendment to this Declaration.

(hh) "Neighborhood Association" shall mean and refer to a corporation or an unincorporated association whose shareholders or members are comprised entirely of Owners of Lots or Homes within a Neighborhood. The term Neighborhood Association shall specifically include The Traditions Condominium Association, Inc., a Texas nonprofit corporation to be established by Golf Club Owner, its successors and assigns.

(ii) "Neighborhood Declaration" shall mean and refer to any instrument or document, and any amendments thereto, which is recorded in the official records of Brazos County, Texas with respect to any Neighborhood and which creates a property owners association for such Neighborhood or imposes specific covenants, conditions, easements and restrictions with respect to such Neighborhood. The term Neighborhood Declaration shall specifically include that certain Declaration of Condominium for The Founder Cottages at The Traditions, as now or hereafter filed for record in the official records of Brazos County, Texas.

(jj) "Neighborhood Expense" shall mean and refer to the expenses for which the Owners of a particular Neighborhood are liable to the Association, if any, which include the costs and expenses incurred by the Association to benefit primarily the Owners of that particular Neighborhood, and which are in addition to the Common Expenses.

(kk) "Occupant" shall mean and refer to any Person, including, without limitation, any Owner or any guest, invitee, lessee, tenant, or family member of an Owner, occupying or otherwise using a Home within the Community.

(ll) "Owner" shall mean and refer to one or more Persons who hold the record title to any Home or Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

(mm) "Person" shall mean and refer to a natural person, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination thereof.

(nn) "Plat" shall mean any plat of any portion of the Property, which is recorded in the official records of Brazos County, Texas, as the same may be amended from time to time.

(pp) "Resale" shall have the meaning as set forth in Section 9.06 hereof.

(oo) "Resale Assessment" shall have the meaning set forth in Section 9.06 hereof.

ARTICLE II

**DEVELOPMENT**

2.01 Plans of Development of Property.

(a) Declarant reserves the right to impose covenants, conditions, and restrictions on the Lots, Homes, Common Areas, Limited Common Areas, other improvements, and other lands that Declarant may from time to time own or develop within the Property shown and described on a Plat, which covenants, conditions, and restrictions shall be in addition to but not in abrogation or substitution of those imposed by this Declaration.

(b) Prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, Declarant shall have the right, but not the obligation to make improvements and changes to any such Lots or Homes owned by Declarant, including without limitation, (i) changes in the location of the boundaries of any Lots, Homes, Limited Common Areas and Common Areas; (ii) installation and maintenance of any improvements in and to the Common Areas and the Limited Common Areas; and (iii) installation and changes to the maintenance of any water, sewer, drainage, irrigation or other utility systems and facilities.

2.02 Plans of Development of Additional Property. Declarant hereby reserves the option to submit from time to time the Additional Property or a portion or portions thereof to the Property. Such option may be exercised in Declarant's sole discretion in accordance with the following rights, conditions, and limitations, which are the only conditions and limitations on such option.

(a) The option may be exercised from time to time during a period of twenty (20) years from the date of this Declaration; provided, however, that Declarant reserves the right to terminate such option at any time prior to the expiration of such twenty (20) year period by executing and filing an amendment to the Declaration evidencing such termination in the official records of Brazos County, Texas and the county in which the Additional Property is located, if applicable, and except for such termination by Declarant, no other circumstances will terminate such option prior to the expiration of such twenty (20) year period. An amendment pursuant to this Section shall not require the consent of any Person other than Declarant except the owner of such property, if other than Declarant.

(b) Portions of the Additional Property may be added to the Community at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence, or location in which any of such portions may be added to the Property. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

(c) If the Additional Property or any portion thereof is added to the Property, Declarant reserves the right to designate the boundaries of the Lots and Homes, as well as the Common Areas and Limited Common Areas to be added to the Community in connection therewith.

(d) Should the option to add the Additional Property, or any portion thereof, not be exercised within the term specified herein or be terminated by Declarant, such option shall in all respects expire and be of no further force and effect. In the event that such option expires or is terminated, Declarant shall not be obligated to impose on the Additional Property or any portion thereof any covenants, conditions, or restrictions the same as or similar to those contained herein and Declarant shall be free to develop the Additional Property as it deems fit.

(e) The option reserved by Declarant to cause all or any portion of the Additional Property to become part of the Community shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property to the Community or to construct thereon any improvements of any nature whatsoever.

(f) Attaching the legal description of a portion of the Additional Property to this Declaration shall in no way be construed as creating any type or form of encumbrance, restriction or servitude on the Additional Property. Only by the exercise of the option reserved by Declarant shall the Additional Property, or any portion thereof, be subject to the encumbrances, restrictions and servitudes created herein.

(g) The option reserved under this Section 2.02 may be exercised by Declarant only by the execution of an amendment to this Declaration which shall be filed in the official records of Brazos County, Texas and the county in which the Additional Property is located, if applicable, together with a Plat showing the Additional Property or such portion or portions thereof as are being added to the Community by such amendment. Common Areas and Limited Common Areas, if any, designated and contained within the Additional Property, or such portion thereof so submitted shall be conveyed to the Association by Declarant at such time as it deems fit by quit claim deed. Any such amendment shall expressly submit the Additional Property or such portion thereof to all the provisions of this Declaration, and upon the exercise, if any, of such option or options, the provisions of this Declaration shall then be construed as embracing the real property described in Exhibit "A" and the Additional Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements located thereon. If the Additional Property or any portion or portions thereof is added to the Community, then from and after the addition to the Community of the Additional Property or such portion or portions by such amendment to this Declaration, the number of votes in the Association shall be increased for Lots or Homes by the number of Lots platted or Homes constructed and located on the Additional Property or such portion or portions thereof as are added so that there shall continue to be one vote in the Association per Lot or Home in the Community. If the Additional Property or any portion thereof is added to the Community, Declarant reserves the right to impose covenants, conditions, and restrictions on the Lots, Homes, Common Areas, Limited Common Areas other improvements, or other lands within the portion of the Additional Property that Declarant

may, from time to time own, develop, and add to the Community, which covenants, conditions, and restrictions shall be in addition to but not in abrogation or substitution of those imposed by this Declaration. Despite the fact that Declarant's submission of the Additional Property to this Declaration may result in an overall increase in the Common Expenses, and a resulting increase in the Assessments payable by each Lot or Home, or may result in an increase in the total number of votes or Members in the Association, Declarant shall not be required to obtain the joinder or consent of the Association, any Lot or Home Owner, or any other Person for an amendment pursuant to this Section.

2.03 Withdrawal of Property. Declarant may, at any time and from time to time, withdraw any portion of the Property from the provisions of this Declaration as a result of any change whatsoever in Declarant's plans for the Community, without the joinder or consent of any party other than the Owners of that portion of the Property to be withdrawn. Any withdrawal of any portion of the Property shall not result in a material adverse change to the overall uniform scheme of development for the Community. Declarant shall withdraw portions of the Property from the provisions of this Declaration by executing an amendment to this Declaration which shall be filed in the official records of Brazos County, Texas and the county in which the Property is located, if applicable, together with a legal description of that portion of the Property withdrawn by such amendment.

2.04 Water, Sewer and Drainage Facilities. Declarant, its affiliates, successors, or assigns, shall construct the water distribution lines, sewer collection lines and drainage system serving the Community, including all lines, pipes, pumps and other systems related thereto which are located within the Community. Declarant shall have the right, but not the obligation, to at any time convey and dedicate all or any part of such water distribution lines, sewer collection lines and drainage system to the applicable governmental agency. Notwithstanding the right to so convey such water distribution lines, sewer collection lines, and drainage system, such conveyance may be subject to a retention by Declarant of the transferable and alienable right to supply water, sewer treatment and drainage services to properties other than the Community and from time to time to expand such facilities, at its cost and expense, in order to provide such services to such other properties, provided that the provision of such services to such other properties shall not be permitted to the extent that it materially and adversely affects the adequacy of such services with respect to the Community. In the event that any such services are provided to properties other than the Community, the water and sewer charges for the Community, as well as for the other properties to be served by such water and sewer treatment facilities, shall be pro-rated on an equitable basis.

2.05 Neighborhood Associations. It is presently contemplated that there may be established by Declarant, Neighborhood Associations limited to the Owners of Lots or Homes within particular Neighborhoods located within the Property as are designated by Declarant. Such Neighborhoods may be subject to Neighborhood Declarations which impose covenants and restrictions which are in addition to those imposed hereby, and such Neighborhood Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Neighborhoods.

2.06 Interest Subject to Plan of Development. Every purchaser of a Lot or Home shall purchase such Lot or Home and every Mortgagee and lienholder holding an interest therein shall

take title, or hold such security interest with respect thereto, with notice of Declarant's plan of development as herein set forth, and Declarant shall have and does hereby specifically reserve the right to add the Additional Property or any portion or portions thereof to the Community as hereinabove provided, and, with respect to each Lot or Home located within the Additional Property, to convey to the purchaser thereof the title to the Lot or Home and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

### ARTICLE III

#### PROPERTY RIGHTS

3.01 All Owners. Each Lot and Home shall for all purposes constitute real property which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of the Lot or Home owned by such Owner, subject to the provisions of this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot and Home shall include, and there shall pass with each Lot and Home as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas and Limited Common Areas as established hereunder, which shall include, but not be limited to, membership in the Association as described herein. Each Owner shall automatically become a Member of the Association and any Neighborhood Association, if applicable, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to the successor-in-title to his Lot or Home. Lots shall not be subdivided, and, except as provided in Article II hereof, the boundaries between Lots shall not be relocated, unless the relocation thereof is made with the consent of Declarant, so long as Declarant owns a Lot or Home primarily for the purpose of sale. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two (2) or more Lots into a larger Lot in order to create a new Lot.

3.02 Owner's Easements of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors in accordance with the By-Laws and the terms hereof, every Owner, his family, tenants, and guests shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Common Areas or Limited Common Areas which it is entitled to use for their intended purpose, such easement to be appurtenant to and to pass and run with title to each Lot and Home, subject to the following provisions:

(a) Easements, restrictions, reservations, conditions, limitations and declarations of record, now or hereafter existing, including, without limitation, any easements shown on any Plat and the provisions of this Declaration, as amended.

(b) The right of the Association to borrow money (i) for the purpose of improving the Community, or any portion thereof; (ii) for acquiring additional Common Areas and Limited Common Areas; (iii) for constructing, repairing, maintaining or

improving any facilities located or to be located within the Community; or (iv) for providing the services authorized herein, and, subject to the provisions of Section 8.02 hereof, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas and Limited Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(c) The right of the Association to suspend an Owner's rights hereunder or to impose fines in accordance with this Declaration, as amended from time to time.

(d) The right of Declarant and/or the Association to dedicate or transfer all or any part of the Common Areas and Limited Common Areas. No such dedication or transfer shall be effective prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, without prior written consent of Declarant.

(e) The perpetual right of Declarant, prior to the Class B Control Period Expiration Date, to access and enter the Common Areas and Limited Common Areas at any time, for the purposes of inspection and testing of the Common Areas and Limited Common Areas (and after the Class B Control Period Expiration Date, as necessary to comply with any governmental approvals or permits). The Association and each Owner shall give Declarant unfettered access, ingress and egress to the Common Areas and Limited Common Areas so that Declarant and/or its agents can perform all tests and inspections deemed necessary by Declarant. Declarant shall have the right to make all repairs and replacements deemed necessary by Declarant. At no time shall the Association and/or an Owner prevent, prohibit and/or interfere with any testing, repair or replacement deemed necessary by Declarant relative to any portion of the Common Areas and Limited Common Areas.

(f) The right of Declarant, and/or the Association to modify the Common Areas and Limited Common Areas as set forth in this Declaration.

(g) Rules and regulations adopted by the Association and/or Declarant governing use and enjoyment of the Common Areas and Limited Common Areas.

(h) In case of any emergency originating in, or threatening the Community or any Home, regardless of whether the Owner is present at the time of such emergency, the Board, or any other Person authorized by the Board, or the management agent under a management agreement, shall have the right to enter a Lot or Home for the purpose of remedying, or abating, the cause of such emergency, and such right of entry shall be immediate.

(i) The rights and easements reserved to Declarant in Sections 3.05, 3.06, 3.07, 3.08, 3.09, 3.11, 3.12, 3.13, 3.14, 3.15 and 3.25 hereof.

(j) The right of the Association to grant and accept easements as provided in Section 3.07 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas and Limited Common Areas to any public agency or authority, governmental authority, body politic, public or private utility, or other Person, provided that any such transfer of the title must be approved by a majority of the Board of Directors and by Declarant prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community.

(k) The right of Declarant and/or the Association to enter into the Covenant to Share Costs and any contribution and maintenance agreements, cost sharing agreements, easement agreements, and use agreements with the Golf Club Owner.

(l) The rights and easements reserved in Sections 3.05, 3.07, 3.08, 3.10, 3.13, 3.14 and 3.25 hereof for the benefit of the Association, its directors, officers, agents, and employees.

(m) The rights and easements reserved in Section 3.12 hereof for the benefit of the Additional Property.

(n) The rights and easements reserved herein for the benefit of the Golf Club Owner and Golf Club Users.

(o) The rights of the general public to use all roadways within the Community in common with Owners, guests, invitees and members of the Golf Club. All roadways within the Community are owned by the City of Bryan and the cost and expense of all maintenance, repair and replacement of the roadways will be the responsibility of the City of Bryan. However, the cost and expense of maintenance, repair and replacement of the roadway landscaping, buffer areas, medians and other amenities designed to improve the appearance of the Traditions shall be the responsibility of the Association, and the expense of such maintenance, repair and replacement shall be a Common Expense. This Section shall not apply to the road within the Founder Cottages Neighborhood, which road is owned by the Condominium Association and will not be open to the general public.

### 3.03 Golf Club Property.

(a) The Golf Club Property shall be owned, constructed, developed and operated by the Golf Club Owner. Access to and use of the Golf Club is strictly subject to the rules and procedures of the Golf Club Owner. Neither the Association, any Neighborhood Association, nor any Owner shall have any right, title or interest whatsoever in the Golf Club Property or in the operations conducted in the Golf Club Property, including, but not limited to, equity rights, prescriptive easements, use rights to use the improvements, or the right to continued operation of any improvements located on the Golf Club Property.

(b) By acceptance of a deed to a Lot or a Home, Owners acknowledge that some of the lakes adjacent to or in the vicinity of the Community and any access thereto



or improvements thereon are part of the Golf Club Property. Access to and use of such facilities is strictly subject to the rules and procedures of the Golf Club Owner.

(c) By acceptance of a deed to a Lot or a Home, Owners acknowledge that Declarant shall have no responsibility, obligation or duties relative to the construction, development and operations of the Golf Club Property and the sales and marketing of the membership therein as described in the Golf Club Plan except as specifically provided herein. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Neighborhood Association, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of the Golf Club Property. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument executed by the Golf Club Owner.

(d) By acceptance of a deed to a Lot or a Home, the Owners acknowledge that use of the Golf Club Property shall be totally at the risk of those individuals using such facilities and not at the risk of the Association or Declarant. Neither the Association, any Neighborhood Association, nor Declarant shall be liable for the negligence of any party in connection with the use of such facilities, the Common Areas, Limited Common Areas or any other portion of the Community.

(e) Declarant, the Association, any Neighborhood Association or the Golf Club Owner does not guarantee or represent that any view over and across the Golf Club Property from Homes adjacent to the Golf Club Property will be preserved without impairment. The Golf Club Owner shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Golf Club Property from time to time. In addition, the Golf Club Owner may, in its discretion, change the location, configuration, size, and elevation of the trees, bunkers, fairways and greens from time to time. Any such additions or changes may diminish or obstruct any view from the Homes and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

(f) In consideration of the fact that the Golf Club will benefit from maintenance of the Common Areas and Limited Common Areas within the Community, as well as the maintenance, repair and replacement of the roadway landscaping, buffer areas and medians, and the Association will benefit from the maintenance of the roadway landscaping, buffer areas and medians within the Golf Club Property, the Golf Club Owner and the Association shall be obligated to enter into the Covenant to Share Costs.

(g) Declarant, the Association, any Neighborhood Association, the ARB or any committee shall not approve any construction, addition, alteration, change, or installation on or to any portion of the Community which is adjacent to, or otherwise in the direct line of sight of, the Golf Club Property without giving the Golf Club at least fifteen (15) days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Golf Club shall then have fifteen (15) days to respond in writing approving

or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Golf Club to respond to the notice within the fifteen (15) day period shall constitute a waiver of the Golf Club's right to object to the matter. This Section shall also apply to any work on the Common Areas, the Limited Common Areas or any common property or common elements of a Neighborhood Association, if any.

(h) In recognition of the fact that the provisions of this Section are for the benefit of the Golf Club, no amendment to this Section, and no amendment in derogation of any other provisions of this Declaration benefiting the Golf Club, may be made without the written approval of the Golf Club Owner.

(i) It is Declarant's intention that the Association, any Neighborhood Association and the Golf Club shall cooperate to the maximum extent possible in the operation of the Community and the Golf Club. Each shall reasonably assist the other in upholding the standards of the Community as they pertain to maintenance and the Architectural Guidelines. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Club Property without the prior written consent of the Golf Club Owner.

3.04 Ingress and Egress. An easement for ingress and egress is hereby created for pedestrian traffic over, through and across sidewalks, golf cart crossings, paths, walks, driveways, passageways, and lanes as the same, from time to time, may exist upon, or be designed as part of, the Common Areas or Limited Common Areas, and for vehicular traffic over, through and across such portions of the Common Areas or Limited Common Areas as, from time to time, may be paved and intended for such purposes.

3.05 Common Areas and Limited Common Areas Generally. NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY HEREIN, THE DEFINITION OF "COMMON AREAS" AND "LIMITED COMMON AREAS" AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND OR OBLIGATE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN SUCH DESCRIPTION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON AREAS OR LIMITED COMMON AREAS TO BE OWNED, LEASED BY OR DEDICATED TO THE ASSOCIATION OR ANY NEIGHBORHOOD ASSOCIATION, EXCEPT AFTER CONSTRUCTION AND DEDICATION OR CONVEYANCE OF ANY SUCH ITEM. In addition, the following provisions shall be applicable to the Common Areas and Limited Common Areas.

(a) Prior to Conveyance. Prior to the conveyance, identification and/or dedication of the Common Areas and Limited Common Areas to the Association, any portion of the Common Areas and Limited Common Areas owned by Declarant shall be operated, maintained, and administered at the sole cost of the Association or the Neighborhood Association, as the case may be, for all purposes and uses reasonably intended, as Declarant in its sole discretion deems appropriate. During such period, Declarant shall own, operate, and administer the Common Areas and Limited Common Areas without interference from any Owner or Lender of a Home or Lot or any other

Person whatsoever. Owners shall have no right in or to any Common Areas and Limited Common Areas referred to in this Declaration unless and until same are actually constructed, completed, and conveyed to, leased by, dedicated to, and/or maintained by the Association or any Neighborhood Association. The current conceptual plans and/or representation, if any, regarding the composition of the Common Areas or Limited Common Areas are not a guarantee of the final composition of the Common Areas or Limited Common Areas.

(b) Construction of Common Areas and Limited Common Areas Facilities.

Declarant has constructed or will construct, at its sole cost and expense, certain facilities and improvements as part of the Common Areas and Limited Common Areas, together with equipment and personalty contained therein, and such other improvements and personalty as Declarant determines in its sole discretion. Declarant shall be the sole judge of the composition of such facilities and improvements. Prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, Declarant reserves the absolute right to construct additional facilities and improvements as part of the Common Areas and Limited Common Areas within the Community, from time to time, in its sole discretion, and to remove, add to, modify and change the boundaries, facilities and improvements now or then part of the Common Areas and Limited Common Areas. Declarant is not obligated to, nor has it represented that it will, modify or add to the facilities, improvements, or Common Areas or Limited Common Areas as it is contemplated as of the date hereof. Declarant is the sole judge of the foregoing, including the plans, specifications, design, location, completion schedule, materials, size, and contents of the facilities, improvements, appurtenances, personalty (e.g., furniture), color, textures, finishes, of the Common Areas or Limited Common Areas, or changes or modifications to any of them.

(c) Use of Common Areas and Limited Common Areas by Declarant.

Until the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, Declarant shall have the right to use any portion of the Common Areas and Limited Common Areas, without charge, for any purpose deemed appropriate by Declarant.

(d) Conveyance.

After the Class B Control Period Expiration Date, or earlier as determined by Declarant in its sole discretion, Declarant may transfer, convey or dedicate to the Association all or portions of the Common Areas and Limited Common Areas in the form of Plat dedications, easements, or written instrument recorded in the official records. The dedication, creation by easement, or conveyance shall be subject to easements, restrictions, reservations, conditions, limitations, and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance, and administration of the conveyed portions of Common Areas and Limited Common Areas and other obligations relating to the Common Areas and Limited Common Areas imposed herein. The Association, by its joinder in this Declaration, hereby accepts such dedications (or conveyances) without setoff, condition,

or qualification of any nature. The Common Areas and Limited Common Areas, personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREAS OR LIMITED COMMON AREAS BEING CONVEYED.

(e) Operation After Conveyance. After the conveyance or dedication of any portion of the Common Areas or Limited Common Areas to the Association, the portion of the Common Areas or Limited Common Areas so dedicated shall be owned, operated and administered by the Association for the use and benefit of the Owners in the Community including, but not limited to, the Association, Declarant, Owners and any Lenders. Subject to the Association's right to grant easements, and other interests as provided herein, the Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas or Limited Common Areas to a third party without (i) if prior to the Class B Control Period Expiration Date, the approval of (a) a majority of the Board and (b) the consent of Declarant; or (ii) from and after the Class B Control Period Expiration Date, approval of (a) sixty-six and two-thirds percent (66 2/3%) of the Board and (b) sixty-six and two-thirds percent (66 2/3%) of all of the votes in the Association.

(f) Delegation. Once conveyed or dedicated to the Association, the Common Areas and Limited Common Areas and facilities and improvements located thereon shall, subject to the provisions of this Declaration and the document of conveyance or dedication, at all times be under the complete supervision, operation, control, and management of the Association. Notwithstanding the foregoing, the Association may delegate all or a portion of its obligations hereunder to a licensed manager or professional management company. The Association specifically shall have the right to pay for management services on any basis approved by the Board (including bonuses or special fee arrangements for meeting financial or other goals). Declarant, its parent companies, affiliates and/or subsidiaries shall have the right to manage the Association. Owners and the Association acknowledge that it is fair and reasonable to have Declarant, its parent companies, affiliates and/or subsidiaries manage the Association. Further, in the event that Common Areas or Limited Common Areas are created by easement or maintenance agreement, the Association's obligations and rights with respect to such Common Areas or Limited Common Areas may be limited by the terms of the document creating such easement or maintenance obligation.

(g) Nonexclusive Use. The Common Areas and Limited Common Areas shall be used and enjoyed by the Owners on a non-exclusive basis in common with other Persons, entities and corporations (who may, but are not required to be, members of the Association) entitled to use those portions of the Common Areas and Limited Common Areas. Prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, Declarant, and thereafter, the Association, has the right to make the Common Areas and Limited Common Areas available to other individuals, Persons, firms, or corporation, as it deems appropriate. The granting of such rights shall not

invalidate this Declaration, reduce or abate any Owner's obligations pursuant to this Declaration, or give any Owner the right to avoid any of the covenants, agreements or obligations to be performed hereunder.

(h) Right to Allow Use. Declarant and/or the Association may enter into easement agreements or other use or possessory agreements whereby the Owners, the Association and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or non-exclusive basis, for certain specified purposes. The Association may agree to maintain and pay the taxes, insurance, administration, upkeep, repair, and replacement of such property, the expenses of which shall be Common Expenses or Neighborhood Expenses, as the case may be. Any such agreement by the Association prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, shall require the consent of Declarant.

(i) Obstruction of Community Property. No portion of the Common Areas or Limited Common Areas may be obstructed, encumbered, or used by Owners for any purpose other than as permitted by the Association and this Declaration.

(j) Assumption of Risk. Without limiting any other provision herein, each Person within any portion of the Common Areas or Limited Common Areas accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupation of any portion of such Common Areas or Limited Common Areas, including, without limitation, (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers, (c) view restrictions caused by maturation of trees and shrubbery, (d) reduction in privacy caused by the removal or pruning of shrubbery or trees within any portion of the Common Areas or Limited Common Areas and (e) design of any portion of the Common Areas or Limited Common Areas. Without limiting the foregoing, all Persons using the Common Areas or Limited Common Areas, including without limitation, any pool or area adjacent to a lake, do so at their own risk. BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS AND LIMITED COMMON AREAS MAY CONTAIN WILDLIFE. DECLARANT, THE CLUB OWNER AND THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

3.06 Changes in Boundaries: Additions to Designated Common Areas and Limited Common Areas. Declarant expressly reserves for itself and its affiliates, successors and assigns, the right to change and realign the boundaries of the designated Common Areas, Limited Common Areas, Neighborhoods and any Lots or Homes owned by Declarant, including the realignment of boundaries between adjacent Lots, Homes, or both, owned by Declarant, provided that any such change or realignment of boundaries shall not materially decrease the acreage of the designated Common Areas, Limited Common Areas and Neighborhoods and shall be evidenced by a revision of or an addition to the applicable Plat which shall be recorded in the official records of Brazos County, Texas.

3.07 Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other Person, upon, over, under, and across (i) all of the Common Areas and Limited Common Areas; (ii) all land within easement areas shown on recorded subdivision plats; and (iii) all land located along the interior of and within five (5') feet of each boundary of all Lots, Homes and Neighborhoods, such lands to be bounded by the exterior boundaries of such Lots, Homes and Neighborhoods and by lines in the interior of such Lots, Homes and Neighborhoods which are exactly five (5') feet from such exterior boundaries, for the purpose of installing, replacing, repairing, maintaining all utilities, including, but not limited to storm sewers and drainage systems and electrical, gas, telephone, cable television, water, sewer, advanced water treatment, and irrigation lines. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board of Directors, provided, however, that prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, the Board of Directors must obtain the written consent of Declarant prior to granting or accepting any such easements. To the extent practicable, all utility lines and facilities serving the Community and located therein shall be located underground. By virtue of any such easement, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Community so encumbered (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities; (ii) to cut and remove trees, bushes, or shrubbery; (iii) to grade, excavate, or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

3.08 Easements for Walks, Trails and Signs. There is hereby reserved for the benefit of Declarant, the Association, any Neighborhood Association and their respective successors and assigns, the alienable, transferable, and perpetual right and easement upon, over, and across all land located along the interior of and within ten (10') feet of each boundary located adjacent to streets and roads, such lands to be bounded by such exterior boundaries adjacent to streets and roads and by lines in the interior of such Lots, Homes and Neighborhoods which are exactly ten (10') feet from such exterior boundaries, for the installation, construction, maintenance, and use of sidewalks, jogging trails, bike paths, traffic directional signs, and related improvements.

3.09 Easements for Road Construction and Maintenance. There is hereby reserved for the benefit of Declarant, the City of Bryan, and their successors and assigns, the perpetual right and easement upon, over and across all unimproved land located along the interior of and within ten (10') feet of each boundary located adjacent to streets and roads, such lands to be bounded by such exterior boundaries adjacent to streets and roads and by lines in the interior of such Lots, Homes or Neighborhoods which are exactly ten (10') feet from such exterior boundaries, for the construction and maintenance of such streets and roads. The easement provided in this Section 3.09 shall be perpetual and shall commence upon the recording of this Declaration.

3.10 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot, Home or Neighborhood, or any portion thereof in the performance of their

respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or Occupant of the Lot, Home or Neighborhood directly affected thereby.

3.11 Development, Sales and Construction Easement. In addition to the rights reserved elsewhere herein, Declarant reserves an easement for itself or its nominees and creates an easement in favor of the Golf Club Owner and Golf Club Users over, upon, across, and under the Community (except those Lots which have been conveyed to Owners other than Declarant), including, without limitation, Lots owned by Declarant, Common Areas and Limited Common Areas, as may be required in connection with the development of the Community and other lands designated by Declarant and to promote or otherwise facilitate the development, construction, repair, replacement and sale, marketing and/or leasing of Homes, the Golf Club Property and other lands designated by Declarant. Specifically, each Owner acknowledges that construction vehicles and trucks may use portions of the Lots owned by Declarant, the Common Areas or the Limited Common Areas and Declarant may use portions of the Lots owned by Declarant, the Common Areas or the Limited Common Areas for storage of construction materials. Declarant shall restore or repair any portion of the Common Areas or Limited Common Areas damaged as a result of Declarant's use of the same. Without limiting the foregoing, at no time shall Declarant be obligated to pay any amount to the Association or Neighborhood Association on account of Declarant's and the Golf Club Owner's use of the Common Areas or Limited Common Areas for construction purposes. Declarant may use the Common Areas or Limited Common Areas for sales of new and used Homes. Further, Declarant may market other residences and commercial properties located outside of the Community from Declarant's sales facilities located within the Community. Prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, Declarant has the right to use all portions of the Golf Club Property, the Common Areas or Limited Common Areas in connection with its marketing activities, including, without limitation, allowing members of the general public to inspect model Homes, installing signs and displays, holding promotional parties and picnics, and using the Golf Club Property, the Common Areas and the Limited Common Areas for every other type of promotional or sales activity that may be employed in the marketing of new and used residential Homes. The easements created by this Section, and the rights reserved herein in favor of Declarant, shall be construed as broadly as possible and supplement the other rights of Declarant set forth herein.

3.12 Easements for Additional Property. There is hereby reserved in Declarant, and its successors, assigns, and successors-in-title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for (i) the installation, maintenance, repair, replacement, and use within the Property and those portions of the Lots, Homes and Neighborhoods encumbered pursuant to Section 3.07 hereof, for utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water, sewer, and cable system lines; and (ii) drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall not materially damage or affect the Community or any improvements from time to time located thereon.

3.13 Maintenance Easement. Subject to the terms of Section 5.02(b) hereof, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Neighborhood or Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Community. Furthermore, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any Lots which are located within thirty (30') feet from the water's edge of any lake, pond, or other body of water within the Community, for the purpose of mowing such area and keeping the same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards. The foregoing easements set forth in this Section 3.13 shall not impose any duty or obligation upon Declarant or the Association to perform any of the foregoing actions.

3.14 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Lots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, procedures from time to time promulgated by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides and herbicides.

3.15 Wells. There is hereby reserved for the benefit of Declarant and its affiliates, agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to drill, install, locate, maintain, and use wells, pumping stations, siltation basins and tanks, and related water and sewer treatment facilities and systems within the Common Areas and Limited Common Areas and lands within the Property owned by Declarant. Further, there is hereby reserved for the benefit of the Golf Club Owner and its affiliates, agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to drill, install, locate, maintain, and use recharge wells ("Recharge Wells"), at the Golf Club Owner's sole cost and expense, upon a portion of the Common Areas or Limited Common Areas. The pumping of water from any lake, pond, or other body of water within the Community for any purpose other than fire fighting is prohibited without the express written permission of Declarant. Provided, however, the Golf Club Owner shall be allowed to pump water from any lake, pond or other body of water within the Golf Club Property for the purpose of irrigation.

3.16 Golf Club Property Construction Easements. There is hereby reserved for the benefit of the Golf Club Property a perpetual easement and right of entry on, over and across all Lots, the Common Areas and the Limited Common Areas for the construction, maintenance, repair, replacement and reconstruction of certain improvements as follows (provided that such easements shall not impose any duty or obligation upon Declarant, the Association or the Golf Club Owner to perform any such actions):

- (a) The Recharge Wells, water supply lines, irrigation lines, sanitary and storm sewer lines, electric and gas supply lines, telephone lines, other utility service lines,



golf cart paths, and other improvements related to and reasonably necessary for the construction and operation of the Golf Club Property.

(b) Improvements to the Golf Club Property and all other related improvements over and across portions of the Property adjacent to and abutting the Golf Club Property. The easement reserved herein shall extend for as far as necessary onto the Property along the contiguous property lines between the Property and the Golf Club Property.

(c) The easement rights created in this Section 3.16 shall include (i) the right to cut, trim, or remove any trees or other obstructions which may interfere with the construction, reconstruction, or operation of the Golf Club Property, pile dirt and materials, and to operate equipment on the surface of the land, within the easement areas described herein, during periods of construction of the improvements to the Golf Club Property; and (ii) the right of ingress and egress onto the easement areas described herein for the purpose of exercising the rights herein granted.

(d) The easement rights created herein shall be nonexclusive and Declarant and Owners shall have the right to use the land within the easement areas described herein for any purpose not inconsistent with the rights herein conveyed.

(e) Within a reasonable time after completion of any portion of the improvements to the Golf Club Property, the surface of the easement areas described herein shall be restored to as near as practicable to the condition found prior to the construction of such portion of the Golf Club Property, including, without limitation, ground covers, plantings, roads, sidewalks and other improvements.

3.17 Golf Club Drainage Easement. A non-exclusive easement shall exist for the benefit of the Golf Club Property over, across and upon the Community for drainage and water management purposes. An easement for ingress, egress and access shall exist for the Golf Club Owner, or its agents or assigns, to enter upon and over any portion of the Community (including Lots and Homes) in order to construct, maintain, inspect, record data on, monitor, test, or repair, as necessary, any water management areas and facilities thereon and appurtenances thereto. No structure, landscaping, or other material shall be placed or be permitted to remain which may damage or interfere with the drainage or irrigation of the Community and/or installation or maintenance of utilities or which may obstruct or retard the flow of water through the Community and/or water management areas and facilities or otherwise interfere with any drainage, irrigation and/or easement provided for in this Section.

3.18 Golf Cart Paths. There is hereby reserved for the benefit of the Golf Club Property, a nonexclusive easement within ten (10) feet of either side of each golf cart path boundary over and across portions of the Lots, Common Areas and Limited Common Areas for the purpose of construction, maintenance, repair, and replacement of golf cart paths. The Golf Club Owner shall restore any damage to the easements reserved herein due to the Golf Club Owner's use of such easement. Further, the Golf Club Owner shall have the right to install, replace, maintain and repair directional and safety signage within the easements granted herein, as deemed reasonably necessary.

3.19 Golf Cart and Maintenance Vehicle Easement. There is hereby reserved for the benefit of the Golf Club Property, a nonexclusive easement to Golf Club Users to operate golf carts, machinery, equipment and maintenance vehicles used in connection with the operation and maintenance of the Golf Club Property over and across all easements reserved in Section 3.18 herein.

3.20 Golf Course Play Easement. There is hereby reserved to the Golf Club Owner, along with the Golf Club Users, a nonexclusive easement over and across the Common Areas, Limited Common Areas and Lots for the following purposes:

(a) Retrieval of golf balls, including the right to enter on any Lot for that purpose, provided the right to retrieve golf balls shall only extend to nonenclosed portions of the Lots, and the person retrieving the golf ball shall do so in a reasonable manner and will repair any damage caused by entry onto the Lot to retrieve the golf ball.

(b) Flight of golf balls over, across and upon the Common Areas, Limited Common Areas, Homes and Lots.

(c) Doing of every act necessary and incident to the playing of golf and other recreational activities on the Golf Club Property, including, but not limited to, the operation of lighting facilities for operation of swimming during hours of darkness, and the creation of usual and common noise levels associated with such recreational activities.

(d) Creation of noise related to the normal maintenance and operation of the Golf Club Property, including, but not limited to, the operation of mowing and spraying equipment. Such noise may occur from sun up to sun down every day.

3.21 Damage by Errant Golf Balls. The Class A Members, for themselves and each and every subsequent Class A Member, hereby acknowledges and agrees that the existence of a golf course in the Golf Club Property is beneficial and highly desirable; however, each Class A Member acknowledges and agrees that portions of the Property located adjacent to the Golf Club Property are subject to the risk of damage or injury caused, directly or indirectly, by golf balls flying, landing, hitting, or resting in or around the Lots, Homes and Common Property. The Class A Members, for themselves and each subsequent Class A Member, their successors and assigns, hereby assume the risk of damage and injury caused by errant golf balls in, on, or around the Lots, Homes and Common Property. Nothing contained herein shall be deemed to limit liability of the individual golfer who has struck the errant golf ball for any damage he or she has caused.

3.22 Encroachments on Waterbodies. The construction of any docks, bulkheads, or other improvements adjacent to or encroaching upon any lake or other body of water within the Community is prohibited unless otherwise permitted by Declarant and approved by the Architectural Review Board unless such waterbody is located within the Golf Club Property, in which event such encroachment must be approved by the Golf Club Owner.

3.23 Easements for Encroachments. Declarant hereby grants an easement for encroachment in the event any improvements upon the Common Areas or the Limited Common

Areas now or hereafter encroaches upon a Lot, or in the event that any Home now or hereafter encroaches upon the Common Areas or the Limited Common Areas or upon another Lot, as a result of minor inaccuracies in survey, construction, reconstruction, or due to settlement or movement or otherwise to a distance of not more than three (3') feet, as measured from any point on the common boundary along a line perpendicular to such boundary. The encroaching improvements shall remain undisturbed as long as the encroachment exists. This easement for encroachment shall also include an easement for the maintenance and use of the encroaching improvements. In no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, Occupant or the Association.

3.24 Easement for Construction Access. The Owner of each Lot shall have an easement of access over and upon all Lots and the Common Areas and Limited Common Areas located within three (3') feet of the boundary of such Owner's Lot for the purpose of allowing such Owner to (i) maintain, repair or replace roofs, walls, and fences; (ii) paint the exterior of the Owner's Home's fence and wall; (iii) construct, maintain, repair or paint a Home in the event of loss or destruction; and (iv) maintain, repair and replace air-conditioning compressors, air-conditioning equipment, meters and other equipment servicing such Owner's Lot which may be located on such adjoining Lots and/or the Common Areas and Limited Common Areas. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then only upon advance notice to and with permission of the Owner directly affected thereby. The Owner shall be solely responsible for all of the foregoing maintenance, repair or maintenance obligations.

3.25 Easement for Repair or Maintenance of a Home. Declarant, its directors, officers, agents and employees is granted an easement over the Common Areas, the Limited Common Areas and the Lot of each Owner for the purpose of maintenance or repair of the Homes in the Community. Notwithstanding the foregoing sentence, Declarant shall at all times have the right, but not the obligation to maintain or repair Homes in the Community.

3.26 No Partition. There shall be no judicial partition of the Community or any part thereof, nor shall any Person acquiring any interest in the Community or any part thereof seek any such judicial partition unless the Community has been removed from the provisions of this Declaration.

#### ARTICLE IV

##### MEMBERSHIP

###### 4.01 Membership.

(a) Class A Members. Each Class A Member shall have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Home, and ownership of a Lot or Home shall be the sole qualification for such membership. In the event that fee title to a Lot or Home is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee. The foregoing is not

intended to include Mortgagees or any other Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Where a mortgagee or other Person holding an interest in a Lot or Home as security for the performance of an obligation acquires title to such Lot or Home through a foreclosure proceeding or the issuance of a deed in lieu of foreclosure, such mortgagee or other transferee shall be deemed to have a membership in the Association upon acquiring title to such Lot or Home. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more Persons, shall have more than one membership per Lot or Home. In the event of multiple Owners of a Lot or Home, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a Member, but in no event shall more than one vote be cast or more than one office held for each Lot or Home, and further provided that a Member casting a vote or holding an office with respect to his Lot or Home shall not be entitled to cast an additional vote or to hold an additional office for the Lot upon which his Home is located. When more than one person holds an interest in any Lot or Home, the vote for such Lot or Home shall be exercised as those Owners of such Lot or Home themselves determine and notify the Secretary or an Assistant Secretary of the Association prior to any meeting. In the absence of such notice, the vote appurtenant to such Lot or Home shall be suspended in the event more than one person seeks to exercise it. Such a suspended vote shall be counted for the purpose of calculating a quorum, but such a suspended vote shall not be cast with regard to voting matters of the Association until the Persons owning such Lot or Home determine how such vote shall be cast and so advise the Secretary or Assistant Secretary of the Association. The voting weight appurtenant to each Lot or Home is equal and each Lot or Home shall have one vote. Such voting weight shall continue to be equally apportioned upon the addition of all or a portion of the Additional Property to the Community, and each Lot or Home therein shall have one vote. Each Owner, by acceptance of a deed or other conveyance for a Lot or Home, consents and agrees to the dilution of his voting interest in the Association by virtue of the submission from time to time of the Additional Property or any portion thereof to the terms of this Declaration as provided herein.

(b) Class B Member. The sole Class B Member shall be Declarant. The Class B Member may appoint a majority of the members of the Board of Directors prior to the Class B Control Period Expiration Date. Additional rights of the Class B Member are specified in the relevant section of the Governing Documents. After the Class B Control Period Expiration Date, the Class B Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws. The Class B Membership shall terminate upon the Class B Control Period Expiration Date. Upon termination of the Class B Membership, Declarant shall be a Class A Member entitled to Class A votes for each Lot or Home which it owns.

4.02 Transfer. The transfer of the fee title to a Home or Lot, whether voluntary or by operation of law, terminating the Owner's title to that Home or Lot shall terminate the Owner's rights to the use of and enjoyment of the Common Areas and Limited Common Areas as it pertains to that Home or Lot. An Owner's rights and privileges under this Declaration are not

assignable separately from a Home or Lot. The Owner of each Home or Lot is entitled to the benefits of, and is burdened with the duties and responsibilities set forth in, the provisions of this Declaration. All parties acquiring any right, title and interest in and to any Home or Lot shall be fully bound by the provisions of this Declaration. In no event shall any Owner acquire any rights that are greater than the rights granted to, and limitations placed upon its predecessor in title pursuant to the provisions of this Declaration. In the event that any Owner desires to sell or otherwise transfer title of his or her Home or Lot, such Owner shall give the Board, any applicable Neighborhood Association and the Golf Club Owner at least fourteen (14) days prior written notice of the name and address of the purchaser or transferee, the date on which such transfer of title is to take place, and such other information as the Board may reasonably require. The transferor shall remain jointly and severally liable with the transferee for all obligations of the Owner and the Home or Lot pursuant to this Declaration including, without limitation, payment of all Assessments and Golf Club Dues accruing prior to the date of transfer. Until written notice is received as provided in this Section, the transferor and transferee shall be jointly and severally liable for all Assessments and Golf Club Dues accruing subsequent to the date of transfer. In the event that upon the conveyance of a Home or Lot an Owner fails in the deed of conveyance to reference the imposition of this Declaration on the Home or Lot, the transferring Owner shall remain liable for all Assessments accruing on the Home or Lot from and after the date of conveyance.

4.03 Membership in the Neighborhood Association. Every Owner of a Lot or Home shall be deemed to have a membership in the applicable Neighborhood Association, if any, encompassing such Owner's Lot or Home. Membership in such Neighborhood Association shall be appurtenant to and may not be separated from ownership of any Lot or Home, and ownership of a Lot or Home shall be the sole qualification for such membership. In the event that fee title to a Lot or Home is transferred or otherwise conveyed, the membership in the Neighborhood Association which is appurtenant thereto shall automatically pass to such transferee. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security for the performance of an obligation shall not terminate or otherwise affect an Owner's membership in the Neighborhood Association. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Lot or Home. In the event of multiple Owners of a Lot or Home, votes and rights of use and enjoyment shall be as provided in Section 4.01(a).

4.04 Membership in the Golf Club. Every Owner of a Lot or Home shall be required, at the time such Owner takes title to such Lot or Home, to obtain and maintain a Golf Club membership, as provided in the Golf Club Plan, and such Owner shall be subject to the same membership requirements, fees and dues structures and such other rules and regulations as are applicable to other Golf Club Users in accordance with the Golf Club Plan. The fees and dues charged under the Golf Club Plan are separate and apart from the Assessments described in Article IX herein. All transfers or upgrading of memberships in the Golf Club are subject to the terms and conditions regarding transfers of memberships and the payment of fees therefor as set forth in the Golf Club Plan. Notwithstanding the foregoing, in the event an Owner purchases more than one (1) Lot or Home within the Community, then such Owner will not be required to activate the Golf Club membership with respect to such additional Lots or Homes until the date that is thirty-six (36) months from the closing date for each additional Lot or Home.

## ARTICLE V

### MAINTENANCE

5.01 Responsibilities of Owners and Neighborhood Associations. All maintenance and repair of Lot and Homes together with all other improvements thereon or therein and all lawns, landscaping, and grounds and irrigation thereof (if appropriate) on and within a Lot or Home shall be the responsibility of the Owner of such Lot or Home, unless such maintenance is the responsibility of a Neighborhood Association pursuant to a Neighborhood Declaration. Each Owner or Neighborhood Association shall be responsible for maintaining such Owner's Lot, Home or Neighborhood as the case may be, in a neat, clean, and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Homes, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. In the event a Home constructed on a Lot is going to be unoccupied for a consecutive period of one (1) month or longer, the Association may require the Owner to designate a responsible firm or individual to undertake his or her general maintenance responsibilities, which responsibilities shall include, at a minimum, maintaining exterior appearance, safeguarding the property to prepare for severe weather and repairing the Home in the event of any damage thereto. At the request of the Association, the name(s) and address of such firm or individual must be furnished to the Association. Owners of Lots fronting on any roadway within the Properties shall maintain, at the Owner's expense, driveways serving their respective Lot (if such driveways exist). Owners of Lots fronting on the water's edge or upon greenbelt buffer fronting the water's edge of any lake or other body of water shall maintain and irrigate, at such Owner's expense, all landscaping between the Lot boundary and such water's edge. The Owners performing maintenance of the foregoing areas abutting a Lot shall have no right to remove trees, shrubs or similar vegetation from this area without prior approval of the ARB. As provided in Section 5.02(b) hereof, each Owner or Neighborhood Association shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner or Neighborhood Association, but which responsibility such Owner or Neighborhood Association fails or refuses to discharge. If such Owner's Lot or Home or the Neighborhood is subject to the approval of the ARB, such Owner or Neighborhood Association shall not (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Home, building or other improvement or the landscaping, grounds, or other improvements within a Lot or Neighborhood unless such decoration, change, or alteration is first approved, in writing, by the Architectural Review Board as provided in Article X hereof; or (ii) do any work which, in the reasonable opinion of the Architectural Review Board, would jeopardize the soundness and safety of the Community, reduce the value thereof, or impair any easement or hereditaments thereto, without in every such case obtaining the written approval of the Architectural Review Board.

5.02 Association's Responsibility.

(a) Unless otherwise provided herein or in the appropriate Neighborhood Declaration, the perpetual maintenance and repair of all Common Areas, Limited Common Areas or common elements located within such Neighborhoods (including all landscaping, grounds and irrigation and all recreational facilities and other improvements

located within such Neighborhood) shall be the responsibility of the Association. Such responsibility shall include, without limitation, the maintenance, repair, and replacement of: (i) walks, trails, lakes, ponds, parking lots, landscaping, landscaped areas, and other improvements situated within the Common Areas, the Limited Common Areas or within the easements described in Section 3.08 hereof; and (ii) such drainage system, utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Areas and Limited Common Areas and which are not maintained by a public authority, public or private utility, or other Person. The Association shall not be liable for injury or damage to any person or property: (A) caused by weather conditions or by any Owner or any other Person not acting as either an agent or employee of the Association, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas and Limited Common Areas, or (C) caused by a pipe, plumbing, drain, conduit, appliance, equipment, or utility line or facility, the responsibility for the maintenance of which is that of the Association, nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas, Limited Common Areas or any other portion of the Property. No diminution or abatement of assessments, fees, or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments, fees, and charges being a separate and independent covenant on the part of each Owner.

(b) In the event that Declarant or the Board of Directors determines that: (i) any Owner or Neighborhood Association has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or his or her family, tenants, guests or invitees, or a Neighborhood Association and is not covered and promptly paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, shall give such Owner or Neighborhood Association written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner or Neighborhood Association, as the case may be, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner or Neighborhood Association, as the case may be, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situation, or the failure of any Owner or Neighborhood Association to comply with the provisions hereof after notice, Declarant or the Association may provide (but shall not

have the obligation to so provide) any such maintenance, repair or replacement at the sole cost and expense of such Owner or Neighborhood Association, as the case may be, and, (i) in the case of an Owner, said cost shall be added to and become a part of the Assessment to which such Owner and his or her Lot or Home are subject; and (ii) in the case of a Neighborhood Association, said cost shall become a part of the Assessments for all Owners within such Neighborhood Association and shall become a lien against such Owners' Lots or Homes. In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses of any nature. In the event the Association provides any of the forgoing maintenance, repair or replacement, the Association shall not be obligated to procure bids for such maintenance repair or replacement and the Association, in its sole discretion, shall designate a contractor to perform such work.

5.03 Golf Club's Responsibility. Unless otherwise provided herein, the perpetual maintenance and repair of all Golf Club Property including, without limitation, all roads, landscaping, grounds and irrigation and all recreational facilities and other improvements located within such Golf Club Property, shall be the responsibility of the Golf Club Owner.

## ARTICLE VI

### INSURANCE AND CASUALTY LOSSES

#### 6.01 Insurance.

(a) The Board of Directors or its duly authorized agents shall have the authority to obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas and Limited Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board or its duly authorized agents shall have the authority to obtain and continue in effect a public liability policy covering all the Common Areas, Limited Common Areas and all damage or injury caused by the negligence of the Association, its Members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.

(c) The Board or its duly authorized agents shall have the authority and may obtain: (i) worker's compensation insurance to the extent necessary to comply with any applicable laws; and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.



(d) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for each of the Owners and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Community shall be vested in the Board of Directors; provided, however, that no mortgagee or other security holder of the Common Areas and Limited Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law, the Association shall be required to make reasonable effort to secure insurance policies with the provisions hereinafter set forth.

(i) All policies shall be written with a company licensed to do business in the State of Texas and holding a rating of A+ or better in such financial categories as established by Best's Insurance Reports, if such report is available or, if not available, its equivalent rating or the best rating possible.

(ii) All property insurance policies shall be for the benefit of the Owners and their Mortgagees as their interests may appear.

(iii) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days' prior written notice of such cancellation to the Association and to any Mortgagee to which a mortgagee endorsement has been issued.

(iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

(v) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, and their respective families, servants, agents, tenants, guests, and invitees, including, without limitation, the Association's manager.

(vi) All policies shall contain a provision that no policy may be canceled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, or their respective families, servants, agents, employees, tenants, guests, and invitees, or on account of the acts of any director, officer, employee, or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(vii) It shall be the individual responsibility of each Owner at his or her own expense to provide public liability, property damage, title and other insurance with respect to his or her own Lot or Home. The Board of Directors may require all Owners and/or Neighborhood Associations to carry public liability and property damage insurance with respect to their respective Lots or Homes and property owned by a Neighborhood Association and to furnish copies or certificates thereof to the Association evidencing continuing coverage from

time to time. Notwithstanding the foregoing, Declarant shall not be required to maintain insurance on Lots or Homes owned by Declarant.

6.02 Damage or Destruction to Common Areas and Limited Common Areas. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas and Limited Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. Unless within ninety (90) days following any damage or destruction to all or a part of the Common Areas or Limited Common Areas, Declarant, prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, together with at least seventy-five percent (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such damaged Common Areas or Limited Common Areas. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, upon ninety (90) days written notice to Owners, without the necessity of a vote, pursuant to Section 9.04 hereof, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a Special Assessment shall be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the Common Areas and Limited Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas and Limited Common Areas left in a clean, orderly, safe, and sightly condition.

6.03 Damage or Destruction to Lots or Homes. In the event of damage or destruction by fire or other casualty to any Lots or Homes, and in the further event that either the Owner of such Lot or Home elects not to repair or rebuild the damaged or destroyed Lot or Home, such Owner making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot or Home in a clean, orderly, safe, and sightly condition. Should such Owner elect to repair or rebuild such Lot or Home, such Owner shall repair or rebuild such Lot or Home to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration (including, without limitation, Article X hereof). All such work or repair or construction shall be commenced promptly following such damage or destruction and shall be

carried through diligently to conclusion. In the event any Owner has failed or refused to discharge properly obligations set forth in this Section, the Association shall have the right, but not the obligation, to perform such obligations and assess such Owner for the costs associated therewith in accordance with Section 5.02.

## ARTICLE VII

### CONDEMNATION

7.01 Condemnation of Common Areas and Limited Common Areas. Whenever all or any part of the Common Areas or Limited Common Areas of the Community shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board of Directors acting on the agreement of at least seventy-five percent (75%) of the total vote of the Association and of Declarant, prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Common Areas or Limited Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, together with at least seventy-five percent (75%) of the total membership of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas or Limited Common Areas which are available therefor, in accordance with the plans approved by the Board of Directors, the Architectural Review Board, and by Declarant, prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote, pursuant to Section 9.04 hereof, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a Special Assessment shall be levied against the Owners in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.

(b) If the taking or sale in lieu thereof does not involve any improvements to the Common Areas or Limited Common Areas, or if there are funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or funds shall be retained by and for the benefit of the Association.

(c) If the taking or sale in lieu thereof includes any portion of a Lot or Home, and also includes any part of the Common Areas or Limited Common Areas, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners of any Lot or Home taken for their interest in such Lot or Home; provided, however, such apportionment may instead be resolved by the agreement of: (i) the Board of Directors; (ii) the Owners of all Lots or Homes wholly or partially taken or sold, together with the Mortgagees for each such Lot or Home; and (iii) Declarant (prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community).

7.02 Condemnation of Lots or Homes.

(a) In the event that all or any part of a Lot or Home is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such Lot or Home responsible for the maintenance and repair of such Lot or Home elects not to restore the remainder of the Lot or Home, then such Owner making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such Lot or Home and any remaining undamaged improvements thereon in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of such Lot or Home remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations, then such Owner shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and sightly condition referred to above, of deeding the remaining portion of the Lot or Home, to the Association as a part of the Common Areas, and thereafter any such Owner shall not have any further voting rights or membership rights or privileges in the Association or with respect to the Community and shall not be subject to any further assessments imposed by the Association and payable after the date of such deeding.

(b) In the event that any part of a Lot or Home is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such Lot or Home responsible for the maintenance and repair of such Lot or Home elects to restore the remainder of the same, such Owner making such election shall restore the remainder of such Lot or Home as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with the applicable standards, restrictions, and provisions of this Declaration and all such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion.

(c) As to any Lot or other portion of the Community (or any portion thereof) owned by Declarant which has been approved or permitted by any governmental entity in any fashion for the construction or placement of any type of improvement or specified

number of dwelling units thereon which is taken by an authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, Declarant shall have the right, but not the obligation, in its sole discretion, to seek any and all types of governmental approval to have those improvements or assigned number of dwelling units associated with the Lot or other portion of the Community taken by eminent domain designated, placed and constructed within other areas of the Property or the Additional Property. All Owners by acceptance of a deed to any Lot or Home within the Community, agree and consent to the approval, placement, and construction of the aforementioned improvements anywhere within the Property or the Additional Property designated by Declarant.

## ARTICLE VIII

### ADMINISTRATION

8.01 Common Areas. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by the provisions of the Texas Statutes relating to nonprofit corporations, this Declaration, the By-Laws, or the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the Owners.

8.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the Texas Statutes relating to nonprofit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between them, then the Texas Statutes, this Declaration, the By-Laws, and the Articles of Incorporation, in that order, shall prevail, and each Owner of a Lot or Home, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include, but shall not be limited to, the power to purchase or otherwise receive title to one or more Lots or Homes, and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public or private utilities, or others, as a Common Expense or by billing directly to Lots and Homes, to furnish trash collections, water, sewer, and/or security service for the Common Areas or Limited Common Areas and/or the Lots and Homes. Notwithstanding the provisions of this Declaration to the contrary, prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, the Association shall not, without the consent of Declarant, borrow money or

pledge, mortgage, or hypothecate all or any portion of the Common Areas or Limited Common Areas.

8.03 Agreements. Subject to the prior approval of Declarant, prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, all agreements and actions lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community; and in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any Person to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Community, whether such personnel are furnished or employed directly by the Association or by any Person with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers, or Members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal, accounting and other professional services as are necessary or desirable in connection with the operation of the Community or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

8.04 Management Agreement. Declarant, an affiliate, or a third party shall be employed as the manager of the Association and the Community until the Class B Control Period Expiration Date, commencing with the recording of this Declaration. Thereafter, the Board of Directors of the Association shall select and employ the entity or individual to act as manager of the Association and the Community, provided, however, that prior to the Class B Control Period Expiration Date, no individual or entity shall be employed as manager of the Association and the Community without the written approval of Declarant.

8.05 Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot or Home also transfers the membership in the Association which is an appurtenance to such Lot or Home.

8.06 Rules and Regulations. As provided in Article XII hereof, the Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Lots, Homes, Common Areas and Limited Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The rules and regulations established by the Association are intended to apply to Homes and Lots only, and shall not be applied in a manner which would prohibit or restrict the development or operation of the Golf Club or adversely affect the interests of Golf Club Owner or Declarant.

## ARTICLE IX

### ASSESSMENTS

9.01 Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Community, and maintaining the Community and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

9.02 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot or Home, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) "Annual Assessments" to be established and collected as provided in Section 9.03 hereof, (b) "Special Assessments" to be established and collected as provided in Section 9.04 hereof, (c) "Individual Assessments" against any particular Lot or Home which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such Lot or Home in accordance with Article XII hereof. Any such Assessments, together with late charges, simple interest at the maximum rate allowable by law per annum, and court costs and attorneys' fees incurred to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon the Lot or Home, the Owner of which is responsible for payment. Each Owner shall be personally liable for Assessments coming due while he is the Owner of a Lot or Home, and his grantee shall take title to such Lot or Home subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid Assessments shall not apply to the holder of any first priority Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors, or assigns, and who takes title to a Lot or Home through foreclosure or through conveyance of a deed in lieu of foreclosure or to any purchaser of such Lot or Home at such foreclosure sale. In the event of co-ownership of any Lot or Home, all of such co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, provided that unless otherwise provided by the Board, the Annual Assessments shall be paid annually in advance at the beginning of the fiscal year of the Association.

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, Limited 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 Association has the right to require an unconditional personal continuing guarantee from a principal of an entity that owns a 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 or Limited 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 Declarant, the Association, any Neighborhood Association or the Board to take some action or perform some function required to be taken or performed by Declarant, the Association, any Neighborhood Association or the 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 Association, or from any action taken by 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.

Prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, Declarant shall not have any obligation to pay Assessments on property it owns, whether such property is original inventory or has been reacquired by Declarant. Rather, until that time, Declarant may elect annually to pay the difference, if any, between the amount of Assessments assessed (whether collected or not) relative to all property subject to Assessment and the amount of actual expenditures required to operate the Association during the fiscal year (the "Difference"). Any Difference paid by the Declarant shall be used for Common Expenses incurred during the year of payment of the Difference. Declarant shall have no obligation to fund the Association Initial Expense Fund, capital replacements, capital repairs, capital additions or reserves of any kind. Any capital replacements, capital repairs or additions shall be funded through reserves which may be collected as, Annual Assessments, Special Assessments or, after the Class B Control Period Expiration Date, contributions to capital from Resales as described in Section 9.06.

Declarant may, but shall not be obligated to reduce the amount of the Assessments payable by Declarant for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant in accordance with the immediately preceding paragraph). Any such subsidy may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

#### 9.03 Computation of Annual Assessments.

(a) It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The Board shall cause a



copy of the budget and the proposed total of the Annual Assessments to be levied against Lots or Homes for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The budget and the Annual Assessments shall become effective unless disapproved at the meeting by either: (i) Declarant, as long as Declarant has the authority to appoint and remove directors and officers of the Association; or (ii) a vote of a majority of the votes of the Owners who are voting in person or by proxy at such meeting. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board of Directors fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and Annual Assessments in effect for the then current year shall be increased in proportion by the greater of either ten (10%) percent of the budget and assessments for the previous year or by the percentage increase, if any, over the previous year's Consumer Price Index (all Urban Consumers, United States City Average, All Items 1967=100), or its successor index, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. The Common Expenses to be funded by the Annual Assessments may include, but shall not be limited to, the following:

(i) management fees and expenses of administration, including legal and accounting fees;

(ii) utility charges for utilities serving the Common Areas and charges for other common services for the Community, including trash collection and security services, if any such services or charges are provided or paid by the Association;

(iii) the cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;

(iv) the expenses of maintenance, operation, and repair of those portions of the Common Areas and Limited Common Areas which are the responsibility of the Association under the provisions of this Declaration;

(v) the expenses of maintenance, operation, and repair of other amenities and facilities serving the Community, the maintenance, operation, and repair of which the Board from time to time determines to be in the best interest of the Association;

(vi) the expenses of the Architectural Review Board which are not defrayed by plan review charges;

(vii) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(viii) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, tenants, guests, and invitees;

(ix) the cost of operating and monitoring any security system within the Community;

(x) such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots or Homes; and

(xi) the expenses of maintenance, operation, repair and reconstruction of any and all roadways, pathways, trails, lakes, waterways and landscaped areas within the Property and Additional Property which have not been designated as Common Areas and conveyed to the Association.

(b) Upon the addition of the Additional Property or any portion thereof to the Community, the Lots and Homes being added to the Community shall thenceforth pay Assessments which are equal to those imposed upon Lots and Homes previously in the Community. In such event, the Association's budget shall be accordingly revised by the Board, without the necessity of approval by the Owners, to include Common Expenses and assessments related to such additional Lots and Homes.

(c) Commencing on the first day of the period covered by the annual budget, and until the adoption of the next annual budget, the Assessments shall be allocated so that each Owner shall pay his pro rata portion of Annual Assessments, Special Assessments, and reserves, if any, based upon a fraction, the numerator of which is the total number of Lots owned by such Owner and the denominator of which is the total number of Lots in the Community conveyed to Owners or any greater number determined by Declarant from time to time. Declarant, in its sole and absolute discretion, may change such denominator from time to time. Under no circumstances will the denominator be less than the number of Lots owned by Owners other than Declarant.

(d) In the event Common Expenses as estimated in the budget for a particular fiscal year are, after the actual Common Expenses for that period is known, less than the actual costs, then the difference shall, upon a vote of the Board: (i) be added to the calculation of Annual Assessments for the next ensuing fiscal year; or (ii) be immediately collected from the Owners as a Special Assessment. The Association shall have the unequivocal right to specially assess Owners retroactively on January 1st of any year for any shortfall in Annual Assessments, which Special Assessment shall relate back to the date that the Annual Assessments could have been made. No vote of the Owners shall be required for such Special Assessment (or for any other Assessment except to the extent specifically provided herein). All surplus funds, if any, shall be applied to reduce Common Expenses.

(e) Except as hereinafter specified to the contrary, Annual Assessments, Special Assessments and reserves, if any, shall be allocated equally to each Lot. Each Owner shall be assessed for each Lot purchased. In the event an Owner purchases more than one (1) Lot, which are then consolidated into one (1) Lot and upon which only one (1) Home is constructed, such Owner shall be assessed based on one (1) Lot.

(f) The Board of Directors may, but is not obligated to, annually prepare a reserve budget which shall take into account the number and nature of significant replaceable assets, the estimated useful life of each asset and the estimated, repair and replacement cost. If a reserve budget is established, the Board shall set the required reserve contribution. The reserve contribution required shall be fixed by the Board and included within and distributed with the budget and Common Expenses and Neighborhood Expenses. The reserve budget may, if funded, be used by the Board of Directors to fund capital replacements, capital additions and capital repairs.

IF RESERVES ARE ESTABLISHED, DECLARANT SHALL BE UNDER NO OBLIGATION TO FUND OR PAY RESERVE CONTRIBUTIONS.

NOTHING IN THIS SECTION OR THIS DECLARATION SHALL REQUIRE THE ASSOCIATION TO COLLECT OR ASSESS FOR CAPITAL RESERVES. IF RESERVES ARE COLLECTED, NO REPRESENTATION IS MADE THAT THE AMOUNTS COLLECTED WILL BE SUFFICIENT FOR ANY OR ALL CAPITAL REPLACEMENTS OR REPAIRS, AND IT IS LIKELY THAT SPECIAL ASSESSMENTS MAY BE NECESSARY. NO REPRESENTATION OR WARRANTY IS MADE BY DECLARANT OR THE ASSOCIATION THAT, ON THE DATE THAT DECLARANT TURNS OVER CONTROL OF THE ASSOCIATION TO THE MEMBERS, ANY RESERVE FUNDS WILL BE TURNED OVER TO THE ASSOCIATION DUE TO THE FACT THAT RESERVES MAY NOT BE ASSESSED OR COLLECTED AND IF COLLECTED, MAY BE USED FOR CAPITAL REPLACEMENTS OR REPAIRS PRIOR TO SUCH TURN OVER OF CONTROL. IF ANY CLAIM IS MADE AGAINST DECLARANT OR DECLARANT'S APPOINTED BOARD OF DIRECTORS FOR COMMON AREA OR LIMITED COMMON AREA CONDITIONS, ANY RESERVES OF THE ASSOCIATION EXISTING AT THE CLASS B CONTROL PERIOD EXPIRATION DATE SHALL BE APPLIED TO REMEDY ANY DECLARANT OR DIRECTOR LIABILITY, IF ANY, TO THE ASSOCIATION.

9.04 Special Assessments. In addition to the Annual Assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, Special Assessments for Common Expenses, applicable to that year only, provided that except as otherwise permitted in Sections 6.02 and 7.01 hereof, any such Assessment shall be approved by Declarant, prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community. The Board of Directors may make such Special Assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such Special Assessments are to be prorated among the Lots and Homes as provided with respect to Annual Assessments.

9.05 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests, or invitees of any Owner shall be specially assessed against such Owners and their respective Lots or Homes. The Individual Assessments provided for in this Section 9.05 shall be levied by the Board of Directors and the amount and due date of such Individual Assessment so levied by the Board shall be as specified by the Board.

9.06 Assessments on Property Resales. In addition to the Annual Assessments, Special Assessments and Individual Assessments as provided herein, each Owner of a Lot or Home upon resale of such Lot or Home, at closing, shall pay to the Association an amount (the "Resale Assessment") equal to one-fourth (1/4) of one (1%) percent of the gross sales price of such Home or one-half (1/2) of one (1%) percent of the gross sales price of such Lot. For purposes of this Section 9.06, "Resale" is defined as any transfer of legal or equitable title to all or any portion of the Property for valuable consideration, other than by gift, inheritance, or mortgage foreclosure, where said transfer occurs subsequent to the initial sale by Declarant, its successors or assigns, to a bona fide purchaser for value. A Resale transfer of legal or equitable title shall also include, but is not limited to, the execution of (i) a contract of sale which provides for a closing more than one (1) year beyond the date of execution of said contract; (ii) a lease for a term, including renewal terms, in excess of one (1) year with a purchase option which applies rental payments towards the purchase price; or (iii) an option for a term, including renewal terms, in excess of one (1) year which applies option payments towards the purchase price. The Association shall utilize Resale Assessments for the general beautification of the Community and public relations and marketing of the Community. Notwithstanding anything in this Section 9.06 to the contrary, no Resale Assessment shall be payable by any "Preferred Builder" (as designated on the Preferred Builder list maintained by Declarant) on the initial sale of a "spec home" built by that Preferred Builder within The Traditions, provided that the Preferred Builder is in good standing at the time of the sale. For purposes of this section, a "spec home" shall have the meaning ordinarily ascribed such term within the home building industry in Brazos County, Texas.

9.07 Neighborhood Expenses. Notwithstanding anything to the contrary contained herein, Assessments may be divided by the Board of Directors into several categories, as the Board of Directors may determine in its sole and absolute discretion. Without limitation on the foregoing, the Board of Directors may determine in its sole discretion that certain expenses exclusively and directly benefit some but not all of the Neighborhoods ("Neighborhood Expenses"), in which event the Board of Directors may ratably allocate those Neighborhood Expenses only among those Neighborhoods that the Board of Directors determines are benefited thereby. These Neighborhood Expenses shall be ratably assessed to all Owners in the Neighborhood benefited by such Neighborhood Expense as provided in Section 9.03 subject to the limitations set forth therein.

9.08 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 9.03 and 9.04 hereof, shall be sent to all Members not less than fifteen (15) days nor more than forty-five (45) days in advance of such meetings. With respect to annual meetings, the presence of Members or proxies entitled to cast over one-half (1/2) of all the votes of the Association 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 the presence in person or by proxy of Members having one-third (1/3) of the total votes of the Association. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.09 Liens. All sums assessed against any Lot or Home pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or Home in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot or Home except only for: (i) liens of ad valorem taxes; (ii) Golf Club Dues; and (iii) liens for all sums unpaid on a first priority Mortgage or on any Mortgage to Declarant, or its affiliates, successors, or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of assessments and charges to the lien of such Mortgages shall only apply to such assessments and charges which have become due and payable prior to a foreclosure. All other persons acquiring liens or encumbrances on any Lot or Home after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments and charges as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

9.10 Effect of Nonpayment; Remedies of the Association. Any Assessments, Golf Club Dues or charge of an Owner or any portions thereof which are not paid when due shall be delinquent. Any Assessment, Golf Club Dues or charge delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board or Golf Club Owner (as applicable) from time to time and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum or the maximum interest rate allowed by the laws of the State of Texas, whichever is lower. A lien and equitable charge as herein provided for each Assessment, Golf Club Dues or charge shall attach simultaneously as the same shall become due and payable, and if an Assessment, Golf Club Dues or charge has not been paid within thirty (30) days, the entire unpaid balance of the Assessment, Golf Club Dues or charge may be accelerated at the option of the Board or the Golf Club Owner (as applicable) and be declared due and payable in full. The continuing lien and equitable charge of such Assessment, Golf Club Dues or charge shall include: (i) the late charge established by the Board of Directors or the Golf Club Owner (as applicable); (ii) interest on the principal amount due at the rate of eighteen percent (18%) per annum or the maximum interest rate allowed by the laws of the State of Texas, whichever is lower; (iii) all costs of collection (including reasonable attorneys' fees and court costs); and (iv) any other amounts provided or permitted hereunder or by law. In the event that the Assessment, Golf Club Dues or charge remains unpaid after sixty (60) days from the original due date, the Association or the Golf Club Owner may institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association or the Golf Club Owner (as applicable) and each Owner, by his acceptance of a deed or other conveyance to a Lot or Home vests in the Association and the Golf Club Owner and its agents the right and power to bring all actions against them personally for the collection of such Assessments, Golf Club Dues and charges as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property, including non-judicial foreclosure pursuant to Chapter 51 of the Texas Property

Code, as may be amended from time to time; and such Owner hereby expressly grants to the Association and the Golf Club Owner the right of private power of sale in connection with such lien. The Association and the Golf Club Owners shall have the power to bid on the Unit at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same.

(a) Before the Association may (i) suspend an Owner's right to use a Common Area, (ii) file a suit against an Owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, (iii) charge an owner for property damage, or (iv) levy a fine for a violation of the Declaration or Bylaws or rules of the Association, the Association must give written notice to the Owner by certified mail, return receipt requested, in the manner provided in the ByLaws, consistent with Texas Property Code Chapter 209. Such notice will provide that the Owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months, and that the Owner may request a hearing under Texas Property Code Section 209.007 on or before the 30<sup>th</sup> day after the date the Owner receives the notice.

9.11 Association Information: Resale Certificate. In accordance with Texas Property Code Section 207.003, not later than the tenth (10<sup>th</sup>) day after the date a written request for Association or Community information is received from an Owner, Owner's agent, or title insurance company or its agent acting on behalf of an Owner, the Association shall deliver to the Owner, Owner's agent, or title insurance company or its agent, the following information:

- (a) A current copy of the Declaration, including all amendments, and any other restrictions applying to the Community;
- (b) A current copy of the Bylaws and rules of the Association;
- (c) A resale certificate that complies with Texas Property Code Section 207.003(b), as such section may be amended or renumbered from time to time.

The Association may charge a reasonable fee to assemble, copy, and deliver the information and may charge a reasonable fee to prepare and deliver an update of a resale certificate.

9.12 Date of Commencement of Annual Assessments. The Annual Assessments provided for herein shall commence as to each Lot and Home, including, without limitation, any Additional Property hereafter submitted to the terms of this Declaration, on the later of (i) the date on which such Lot or Home is conveyed to a Person other than Declarant; or (ii) the date when the property within the Neighborhood in which the Lot or Home is located has met all of the applicable governmental requirements necessary for the issuance of initial building permits and an Owner's Lot or Home is eligible for a building permit upon application therefor, and shall be due and payable in such manner and on such schedule as the Board of Directors may provide. Declarant shall not be responsible for the payment of Annual, Individual or Special Assessments on Lots or Homes which it owns. Annual Assessments and any outstanding Special Assessments shall be adjusted for such Lot or Home according to the number of months then remaining in the

then fiscal year of the Association and the number of days then remaining in the month in which such Lot or Home is first conveyed.

9.13 Designation. The designation of Assessment type shall be made by the Association. Prior to the Class B Control Period Expiration Date, any such designation must be approved by Declarant. Such designation may be made on the budget prepared by the Association. The designation shall be binding upon all Owners.

9.14 Association Initial Expense Fund. The Association has established a capital fund for the operation of the Association (the "Association Initial Expense Fund"). There shall be collected from each Owner that purchases a Home or Lot from Declarant at the time of conveyance of each Home or Lot an amount equal to two (2) months' Annual Assessments. Each Owner's share of the Association Initial Expense Fund shall be transferred to the Association immediately after the closing of the Home or Lot. The Association Initial Expense Fund shall be used to reduce the deficit that might otherwise be funded by Declarant or for any other purposes deemed appropriate by Declarant and/or the Association. Without limiting the foregoing, no portion of the Association Initial Expense Fund shall be used for the payment of legal fees or litigation expenses. To the extent of any deficiencies in the Common Areas or Limited Common Areas, the Association shall use the Association Initial Expense Fund to remedy such deficiencies before making any claim against Declarant. Moreover, the total amount of such funds and interest accrued thereon, if any, shall be a set-off against any amounts payable by Declarant to the Association. Amounts paid into the Association Initial Expense Fund are not to be considered as advance payment of Assessments and may be used by the Association for any purpose whatsoever. Notwithstanding anything herein to the contrary, Declarant shall have the option to waive contributions to the Association Initial Expense Fund. No representation or warranty is made by Declarant or the Association that, on the date that Declarant turns over control of the Association to the Members, any funds will be turned over to the Association from the Association Initial Expense Fund.

9.15 Golf Club Dues. The Golf Club shall collect from Owners, Golf Club Dues. The Golf Club Dues are in addition to Assessments collected by the Association. The Association and Golf Club Owner shall each have all of the enforcement rights with respect to Golf Club Dues as otherwise provided for Assessments in this Article IX, including lien rights for unpaid Golf Club Dues as provided in Section 9.09 and enforcement rights for Golf Club Dues as provided in Section 9.10.

## ARTICLE X

### ARCHITECTURAL STANDARDS

10.01 Purpose. In order to preserve the natural setting and beauty of the Community, to establish and preserve a harmonious and aesthetically pleasing design for the Community, and to protect and promote the value of the Community, it is hereby declared that the Lots, Homes and Neighborhoods, and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article X. Every grantee of any interest in the Community and every

Neighborhood Association, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article X.

10.02 Architectural Review Board.

(a) The Board of Directors shall establish the Architectural Review Board of not less than three (3) members. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the ARB by the Board shall be subject to the prior approval of Declarant until that date which is three (3) years from and after the date on which Declarant's right to appoint and remove officers and directors of the Association is terminated. The ARB shall elect a chairman and he, or in his absence, the vice chairman, shall be the presiding officer at its meetings. The ARB shall meet at least once in each calendar month, as well as upon call of the chairman, and all meetings shall be held at such places as may be designated by the chairman. A majority of the members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARB shall constitute the action of the ARB on any matter before it. The ARB is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, attorneys, and/or other professionals in order to advise and assist the ARB in performing its functions set forth herein. Each member of the ARB may be paid a stipend or honorarium as from time to time determined by the Board. The ARB is hereby empowered to establish and promulgate architectural and landscaping policies and procedures which must be adhered to by all Owners, with the exception of Declarant, in undertaking any improvement within any Lot, Home, Limited Common Area or Common Area.

(b) Each Owner and its contractors and employees shall observe, and comply with, the Architectural Guidelines which now or may hereafter be promulgated by the ARB and approved by the Board from time to time. The Architectural Guidelines shall be effective from the date of adoption; shall be specifically enforceable by injunction or otherwise; and shall have the effect of covenants as set forth herein verbatim. The Architectural Guidelines shall not require any Owner to alter the improvements previously constructed, provided those improvements met ARB guidelines and were approved by the ARB (if applicable) at the time those improvements were constructed. Until the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, Declarant shall have the right to approve the Architectural Guidelines, which approval may be granted in its sole discretion.

(c) The ARB shall have the right, in its sole and absolute discretion, to delegate its authority under Section 10.02(a) to a Neighborhood Association (or an architectural review board of a Neighborhood Association). Such Neighborhood architectural review board or Neighborhood Association shall provide the ARB with copies of all architectural review decisions made, together with copies of all information and supporting documentation reviewed in making such decision. Notwithstanding any



such delegation under this Section 10.02(c), the ARB shall have the right to object to any architectural review decision made by any Neighborhood architectural review board or Neighborhood Association within ten (10) days after the ARB's receipt of an architectural review decision (and information and supporting documentation) from such Neighborhood architectural review board or Neighborhood Association. If the Architectural Review Board objects to any such architectural review decision, the Owner no later than ten (10) days after written request by the ARB shall submit a complete application to the ARB. In the event of any objection by the ARB, the decision of the Neighborhood architectural review board or Neighborhood Association shall be set aside, and the decision of the ARB shall be binding and final.

(d) In the event the ARB elects to delegate its authority to a Neighborhood Association (or an architectural review board of a Neighborhood Association), such delegee shall have all the rights and duties of the ARB under Sections 10.02(a) and 10.02(b) subject, however, to the terms of Section 10.02(c).

10.03 Permitted Improvements. No improvements of any nature whatsoever shall be constructed, altered, added to, or maintained upon any part of the Community, except: (i) for Homes and other improvements which are constructed by Declarant; (ii) such improvements as are approved by the ARB in accordance with this Article X; (iii) improvements which pursuant to this Article X do not require the consent of the ARB; or (iv) improvements constructed on the Golf Club Property.

#### 10.04 Construction of Improvements.

(a) All buildings, structures, or other improvements (excepting sidewalks and driveways) on or with respect to any Lot or Home shall be located only within the setback lines specified on the Plats thereof recorded at the time of submission of said Lots or Homes to this Declaration, provided that the ARB shall be empowered to grant variances with respect to such setback lines provided that such variances are consistent with setback requirements of the appropriate governmental entity. To assure that Homes and other structures will be located so that the maximum view, privacy, and breeze will be available to each Home or structure, Homes and structures will be located with regard to the topography of each Lot and Home taking into consideration the location of trees and vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other Homes or structures within the Community.

(b) No construction of improvements on any Lots or Homes shall be undertaken or conducted on any Sundays, or holidays as established by the ARB, except for: (i) construction activities of Declarant; (ii) emergency situations involving the potential loss, injury, or damage to persons or property; and (iii) as otherwise permitted by the ARB.

(c) The ARB, in its sole discretion, may require that any Owner of a Lot or Home, their contractors and/or subcontractors post payment and/or performance bonds with the ARB to assure that such contractor or subcontractor shall satisfactorily complete such improvements, such bonds to be in the name of the Association and to be in form

and amount satisfactory to the ARB. Furthermore, the ARB, in its sole discretion, may require that an Owner place in escrow with the ARB a sum that is initially no more than FIVE THOUSAND DOLLARS (\$5,000) in order to assure the completion of all improvements, including landscaping, in accordance with the approved plans and specifications and within the time periods provided in this Section 10.04 and in Section 10.06 hereof. Such sum may be increased by the ARB in its sole discretion from time to time. The construction of any improvement to a Lot or a Home shall be completed within eighteen (18) months after the construction of same shall have been commenced, except where the ARB allows for an extension of time because such completion within such time is impossible or would result in great hardship to the Owner or builder thereof due to strikes, national emergencies, fires, floods, lightning, earthquakes, or other casualties. For purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the ARB and all appropriate fees and deposits have been paid; (b) a building permit has been issued for the Home by the appropriate jurisdiction; and (c) construction of a Home on the Lot has physically commenced beyond site preparation. Completion of a Home shall mean that a Certificate of Occupancy has been issued by the appropriate governmental entity. In the event that such improvements or landscaping are not completed within the provided periods, the ARB shall be entitled to collect on or enforce any payment or performance bonds required hereunder so as to ensure the proper completion of any such improvements. Furthermore, the ARB shall be entitled to retain any sums so held in escrow as a penalty for such failure to complete, and such sums shall be remitted to and shall be the property of the Association.

(d) Homes may not be temporarily or permanently occupied until a Certificate of Occupancy has been issued by the appropriate governmental entity. No temporary house, shack, tent, barn, or other outbuilding shall be permitted on any Lot or Home, at any time, except as provided in Section 11.11 hereof and except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board, nor shall any stable, poultry house or yard, or other similar yard structure be constructed or allowed to remain on any Lot or Home. During the continuance of construction by an Owner, such Owner shall require its contractors to maintain the Lot or Home in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, such Owner shall cause its contractors to immediately remove all equipment, tools, and construction material and debris from the Lot or Home on which such construction has been completed.

(e) Completion of Construction/Option to Construct. Every Owner of an undeveloped Lot shall complete construction of a Home on such Lot in accordance with the Architectural Guidelines within eighteen (18) months from "Commencement of Construction" (as defined below). Commencement of construction shall mean that (i) all plans for construction have been approved by the Architectural Review Board and all appropriate fees and deposits have been paid, (ii) a building permit has been issued for the residence on the Lot by the appropriate jurisdiction, and (iii) construction of a residence on the Lot has physically commenced beyond site preparation ("Commencement of Construction") and completion of construction shall be evidenced

by receipt of a certificate of occupancy for such construction ("Completion of Construction"). If construction is delayed by events constituting acts of God, impossibility of performance or frustration of purpose, the date of commencement and/or completion shall be extended by the delay period. In the event Owner does not cause Completion of Construction to occur within eighteen (18) months from Commencement of Construction, Declarant may, in its sole and absolute discretion, (i) impose a daily penalty of \$250.00 against Owner or (ii) complete the construction at Owner's sole cost and expense. Declarant in its sole and absolute discretion shall have the right but not the obligation to extend the eighteen (18) month period for Completion of Construction if Owner can demonstrate that the approved design of the Home is of such a size and complexity that it can not be constructed within the eighteen (18) month period.

10.05 Architectural Approval. To preserve the architectural and aesthetic appearance of the Community, no construction of improvements of any nature whatsoever shall be commenced or maintained by any Owner, other than Declarant, with respect to the construction or exterior of any Home or with respect to any other portion of the Community, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, bulkheads, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until three (3) copies of the plans and specifications and related data (including, if required by the ARB, a survey showing the location of trees of six (6") inches in diameter at a height of four (4') feet and other significant vegetation on such Lot or Home) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to: (i) the harmony of external design; (ii) location; (iii) quality of design, workmanship and materials; and (iv) appearance in relation to surrounding structures and topography by the ARB. At least one copy of such plans, specifications, and related data so submitted shall be retained in the records of the ARB, and one copy shall be returned to the Owner marked "approved" or "disapproved". The ARB shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his Home without the necessity of approval or review by the ARB. The ARB shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. In connection with approval rights and to prevent excessive drainage or surface water run-off, the ARB shall have the right to establish a maximum percentage of a Lot which may be covered by Homes, buildings, structures, or other improvements, which standards shall be promulgated on the basis of topography, percolation rate of the soil types and conditions, vegetation cover, and other environmental factors. Following approval of any plans and specifications by the ARB, representatives of the ARB shall have the right during reasonable hours to enter upon and inspect any Lot or Home, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the ARB shall determine that such plans and specifications have not been approved or are not being complied with, the ARB shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the ARB fails to approve or

disapprove in writing any proposed plans and specifications within sixty (60) days after such plans and specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved. Upon approval of plans and specifications, no further approval under this Article X shall be required with respect thereto, unless such construction has not substantially commenced within sixty (60) days of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the ARB upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

10.06 Landscaping Approval. To preserve the aesthetic appearance of the Community, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner, other than Declarant, or Neighborhood Association unless and until the plans therefor have been submitted to and approved in writing by the ARB. The provisions of Section 10.05 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Such plans shall include a grading plan and calculation of the ratio of the area to be covered by grass lawns versus the area to be left in a natural state, and the ARB shall be entitled to promulgate standards with respect to such ratios. Such landscape and grading plans shall be reviewed and approved with consideration to the harmony of the proposed landscape design to the environmental character in the surrounding area, integration of any structures and proposed landscaping to the character and nature of the surrounding area, the preservation of natural drainage patterns, the visual impact to surrounding areas and the establishment of adequate and sufficient shading and buffering with regard to the individual Lot or Home to the surrounding area. In addition to the other provisions of this Section 10.06, the landscaping plan for any Lots or Homes that are adjacent to the Golf Club Property shall, for that portion of such Lot or Home which is within thirty (30') feet of the boundary of the Golf Club Property, be in general conformity with the overall landscaping plan of the Golf Club Property. Unless located within five (5') feet of a building or a recreational or parking facility, no trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6") inches or more at a point of four (4') feet above ground level; shall not be cut, removed or mutilated by any Owner or without obtaining the prior approval of the ARB, provided that dead or diseased trees which are inspected and certified as dead or diseased by the ARB or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation shall be cut and removed promptly from any Lot or Home by the Owner of such Lot or Home. If any Owner removes such a tree without the approval of the ARB as herein provided, the Owner shall replace the same with a tree of comparable value. In the event the Owner fails within thirty (30) days to satisfactorily replace the tree, the Owner shall pay the Association or ARB a damage fee in an amount as set by the ARB from time to time per lost tree and the Association or ARB shall have the right to enter the Property for the purpose of replacing the tree. Said liquidated damages will become a lien on the property of the Owner and all provisions relative to assessments herein shall apply to these damages.

All of the landscaping of Homes must be completed within ninety (90) days of occupancy or substantial completion of the Home, whichever date shall first occur.

10.07 Disclaimer as to Architectural Review Board: Approval Not Guarantee. NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF STANDARDS SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS OR STANDARDS WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED OR CONSTRUCTED IMPROVEMENTS. SUCH APPROVALS AND STANDARDS SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY HOME OR OTHER IMPROVEMENT BUILT IN ACCORDANCE THEREWITH WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. NEITHER DECLARANT, THE ASSOCIATION NOR THE ARB SHALL BE RESPONSIBLE OR LIABLE FOR ANY DEFECTS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED PURSUANT TO THE TERMS OF THIS ARTICLE X. ANY LOSS OR DAMAGE TO ANY PERSON ARISING OUT OF THE APPROVAL OR DISAPPROVAL OF ANY PLANS OR SPECIFICATIONS, ANY LOSS OR DAMAGE ARISING FROM THE NONCOMPLIANCE OF SUCH PLANS AND SPECIFICATIONS WITH ANY GOVERNMENTAL ORDINANCES AND REGULATIONS, OR ANY DEFECTS IN CONSTRUCTION UNDERTAKEN PURSUANT TO SUCH PLANS AND SPECIFICATIONS.

## ARTICLE XI

### USE RESTRICTIONS

11.01 Service Yards. All service areas, exterior utility equipment, loading docks, trash and garbage disposal containers and receptacles and other service areas shall be screened so as to not be visible from any public or private right-of-way or any portion of the Common Area or Limited Common Area. All utility and mechanical equipment and roof embellishments shall be screened so as not to be visible from any public or private right-of-way or any portion of the Common Area or Limited Common Area.

11.02 Exterior Appearance. Chainlink fences are not allowed within the Community. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or other purpose, and all window treatments for all Homes within the Community shall conform to rules and regulations established by the ARB. Except within screened service yards, outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed, or maintained, nor shall any clothing, rugs, or other item be hung on any railing, fence, hedge, or wall.

11.03 Signs and Other Structures. No sign (including contractor, brokerage or for sale/lease signs), flag, banner, balloons, sculpture, fountain, solar equipment, artificial vegetation, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in or upon any part of a Home that is visible from the outside; provided, however, signs required by governmental agencies and approved by the ARB may be displayed (e.g., permit boards). The ARB may establish reasonable restrictions regarding the display of the American flag. The ARB shall establish specifications for standardized "For Sale" signs and no other "For Sale" signs shall be used within the Community. No lawn ornament, fountain or artificial vegetation shall be placed in or upon any part of a Home that is visible from the outside without the prior written approval thereof being first had and obtained from the ARB as required

by this Declaration. Notwithstanding the foregoing, the restrictions of this Section 11.03 shall not apply to Declarant. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas or Limited Common Areas.

11.04 Unauthorized Signs. Any signs or posters displayed within the Community in violation of Section 11.03 may be reviewed by Declarant and Declarant shall have the right to enter upon the premises where such signs or posters are displayed for the purpose of removing the unauthorized sign or poster without it being deemed a trespass.

11.05 Antennas and Transmitters. No exterior radio antenna, television antenna, or other antenna of any type shall be erected or maintained on a Lot or Home. Satellite dishes of twenty-four (24") inches or less may be allowed with the approval of the ARB. No electronic or radio transmitters of any kind other than garage door openers or cordless telephones shall be operated on any Lot or Home except as may be approved by the ARB.

11.06 Water Wells and Septic Tanks. Subject to the terms of Section 3.15 hereof, no private water wells may be drilled or maintained on any Lot or Home so long as Declarant or an affiliate, or the Association, any governmental unit, or any public or private utility shall have installed a water distribution line within two hundred (200') feet of such Lot, Home, or the Golf Club Property with average daily water pressure in such line adequate for the normal and reasonable activities associated with the use of those Homes, Lots, and the Golf Club Property served by such distribution line. Furthermore, no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Home. Each Owner shall be responsible for the maintenance, repair and replacement of any lateral sewer lines located on such Owner's Lot.

11.07 Water Conservation. In order to promote good water conservation practices and to lessen the burden of treating and disposing of sewage effluent, so as to benefit the Community and the surrounding areas, all water faucets and showerheads and nozzles located within Homes shall provide for a maximum flowage rate not to exceed two and one-half (2-1/2) gallons of water per minute, and all toilets and commodes located within the Community shall have maximum flowage rates not to exceed three and one-half (3-1/2) gallons of water per flush. If within any Home or other structure or structures approved for construction by the ARB it can be demonstrated that because of the use planned for that Home or structure that it will be practically impossible to limit all water faucets located within such Home or structure to the maximum flowage rates set forth hereinabove, then, in that event, maximum flowage rates for certain nozzles and faucets may exceed those provided for herein, but only with the written consent of Declarant and only where required due to the practical impossibility of limiting such faucets and nozzles to the maximum flowage rates set forth herein.

11.08 Pets. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept by any Owner upon any portion of the Property, provided that up to three (3) generally recognized house pets (not including tropical fish, which may be kept in reasonable numbers) may be kept in Units, subject to rules and regulations adopted by the Association through its Board of Directors, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be kept within any screened enclosure. No pet shall be allowed to make an unreasonable amount of noise or to become a

nuisance. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Areas or the Limited Common Areas. Pets shall be under leash at all times when walked or exercised in any portion of the Community, except when confined within a fenced area located on an Owner's Lot, and no pet shall be permitted to leave its excrement on any portion of the Common Areas or the Limited Common Areas, and the Owner of such pet shall immediately remove the same. The Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 11.08, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the Owner of a particular pet to remove such pet from the Property if such pet is found to be a nuisance or to be in violation of these restrictions. In the event an Owner does not remove such pet upon written notice from the Association, such Owner shall be fined in accordance with Section 12.03 of this Declaration.

11.09 Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Community, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Community, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Community. Noxious or offensive activities shall not be carried on in any Lot or Home or on the Common Areas or Limited Common Areas which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other portions of the Community or which could result in a cancellation of any insurance for any portion of the Community, or which would be in violation of any law or governmental code or regulation. Any waste, garbage, or refuse materials produced or occurring as a result from the permitted activities conducted within any portion of the Property shall be stored, processed and transported away from the Property in a safe, neat, clean, efficient, healthy and sanitary manner. Any and all streets, roadways, driveways, and right-of-ways, including Common Areas, shall be kept and maintained in a clean, safe, neat and efficient manner. All such streets, driveways, walkways, and right-of-ways shall be kept reasonably clean and free of leaves, limbs, excess sand and soil and any and all other types of debris. Nothing contained in this Section 11.09 shall be construed so as to prevent or inhibit the normal construction, repair and maintenance of the Golf Club Property by the Golf Club Owner, its successors or assigns.

11.10 Golf Course Areas. Owners of Lots and Homes adjacent to the Golf Club Property, as well as their families, tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would distract the playing qualities of the golf course. Such prohibited activities shall include, but not be limited to, permitting dogs or other pets to interfere with golf course play due to their loud barking or other actions, running, bicycling or walking on the golf cart paths and fairways, picking up balls, or like interference with play.

11.11 Motor Vehicles, Trailers, Boats, Etc. Vehicles shall be parked only in the garages or in the driveways serving the Homes or in the appropriate spaces or designated areas in which parking may be assigned, and then subject to the reasonable rules and regulations adopted by the Association. No vehicles shall be parked on streets and roads within the Community or within Common Areas or Limited Common Areas, except as otherwise set forth in this Declaration or in accordance with rules and regulations promulgated by the City of Bryan, as applicable. There shall be no outside storage or overnight parking upon any Lot or Home or within any portion of the Common Areas or Limited Common Areas of any mobile home, trailer (either with or

without wheels), motor home, tractor, truck (other than standard size or compact pick-up trucks), camper, motorized camper or trailer, boat or other watercraft, boat trailer, or any other related forms of transportation devices. Commercial vehicles are also prohibited from outside storage or parking, unless such vehicles are cars, standard size vans, or standard or compact size pick-up trucks, and such vehicles are parked or stored within adequately screened areas as determined by the Architectural Review Board. No Owners or other occupants of any portion of the Community shall repair or restore any vehicle of any kind upon or within any Lot, Home or the Golf Club Property or within any portion of the Common Areas or Limited Common Areas, except (i) within enclosed garages or workshops; or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

11.12 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Homes or the developing of Lots, Homes, Common Areas, Limited Common Areas and the Additional Property, including, without limitation, the installation and operation of construction trailers and sales offices, signs and model Homes, provided that the location of any construction trailers of any assignees of Declarant under this Section 11.12 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Homes as model residences, and to use any Home as an office for the sale of Lots and/or Homes and for related activities. Declarant shall also have the right to allow the Golf Club Owner the right to maintain and carry on such facilities and activities as may be reasonably necessary and incidental to the completion, improvement and operation of the Golf Club.

11.13 Leases. Homes may be leased, licensed or occupied so long as the lease (i) is for not less than the entire Lot and all the improvements thereon; (ii) is for a period of not less than six (6) months; (iii) complies with all governmental laws, rules, ordinances and regulations; (iv) complies with all applicable Neighborhood restrictions; and (v) is otherwise in compliance with the rules and regulations as may be promulgated and published from time to time by the Board of Directors. No Home may be occupied by more than two (2) unrelated persons. No bed and breakfast facility may be operated out of a Home. Individual rooms of a Home may not be leased on any basis. All leases or occupancy agreements shall be in writing, and, prior to the commencement of any such lease, the Owner shall provide the Association and the managing agent of the Neighborhood Association, if any, with copies of such lease. No time-share or other similar arrangement is permitted. The Owner must make available to the lessee or occupants copies of the Governing Documents. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the Articles of Incorporation, the By-Laws, the rules and regulations of the Association and any other applicable provisions of any other agreement, document or instrument governing the Community or administered by the Association or any other applicable governmental law, rule or regulation. During the time a Home is leased or occupied by others, the Owner thereof shall not have the right to use the Common Areas, Limited Common Areas and Golf Club, unless the Owner owns a second Membership, except as a guest of another Owner or lessee. Owners wishing to lease their Homes shall be jointly and severally liable to the Association with the lessees of their Home for any amount which is required by the Association to effect such repairs or to pay any claim for injury or damage to



property caused by or which is the responsibility of such lessee. All leases shall provide that the Association shall have the right (i) to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation or By-Laws, the rules and regulations of the Association or any other applicable provisions of any agreement, document or instrument governing the Community or administered by the Association; and (ii) to collect all rental payments due to the Owner and to apply same against unpaid Assessments if, and to the extent that, the Owner is in default in the payment of Assessments. This Section 11.13 shall not apply to leases of the Cottages which leases shall be subject to the Neighborhood Declaration governing the Cottages.

11.14 Residential Use. All Lots and Homes shall be for single family residential use only. This Section 11.14 shall not apply to the Cottages.

11.15 Safety and Security. Each Owner and Occupant of a Home, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association or the Golf Club may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each Person provides for himself or herself and his or her property. Neither the Association, the Golf Club nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all Occupants of its Home that the Association, the Golf Club, their Boards and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Homes and the contents of Homes, resulting from acts of third parties.

11.16 Paint. Homes shall be repainted as often as needed but in any event within sixty (60) days of notice by the ARB.

11.17 Pressure Treatment. Roofs and/or exterior surfaces and/or pavement, including, but not limited to, walks and drives, shall be pressure cleaned as often as appropriate but in any event within thirty (30) days of notice by the ARB.

11.18 Sports Equipment. Sports equipment may not be installed unless approved by the ARB, in its sole and absolute discretion and as follows:

- (a) Temporary or mobile basketball hoops shall be permitted with ARB approval provided that they are located such that the base and rim are entirely within the Lot and not in the road or hardscape adjacent to the Lot. Such hoops may be used between the hours of 9:00 a.m. and dusk. Basketball hoops and backboards shall be

permitted by the ARB only if such items are aesthetically compatible, if nuisances to adjoining Lots and properties are minimized, and if specifically approved by the ARB.

(b) Play sets, swing sets, jungle gyms, playhouses, sand boxes or other play equipment may be installed with ARB approval provided the same are screened, fully landscaped and blocked from view of neighboring Homes and adjacent property, are located in the backyard or rear portion of the Home, are less than eight feet (8') in height, and are specifically approved as to location, screening, size, shape, color, materials, and other relevant factors by the ARB. All bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers and similar items shall be stored so as to be not visible from the streets or adjacent Lots. No such items shall be allowed to remain on any Common Areas, Limited Common Areas or Lots so as to be visible from adjacent property when not in use.

## ARTICLE XII

### RULE MAKING

12.01 Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Homes, the Common Areas and the Limited Common Areas and facilities located thereon. In particular, but without limitation, the Board of Directors may promulgate from time to time rules and regulations which shall govern activities which may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides, and other chemicals. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners of Lots and Homes prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners of Lots and Homes, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation be specifically overruled, canceled, or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community.

12.02 Powers of the Association Relating to Neighborhoods. The Association, through its Board, may make and enforce reasonable rules and regulations governing the use of the property within specific Neighborhoods. Such rules shall be binding upon all Owners, Occupants, invitees and licensees until and unless repealed or modified in a regular or special meeting by vote of the Members representing a majority. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood committee which the Board reasonably determines to be adverse to the interests of the Association or its Members, or inconsistent with the community-wide standard. The Association also shall have the power to require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Neighborhood committee, and to require that a proposed budget include certain items and that specific expenditures be made.

(a) Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood committee shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association or Neighborhood committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood committee.

(b) To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Homes in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided above. Such Assessments may be collected as a Special Assessment hereunder and shall be subject to all lien rights provided for herein.

12.03 Authority and Enforcement. Subject to the provisions of Section 12.04 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments or charges, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Home, the Owners, occupants, or guests of which are guilty of such violation; (ii) to suspend an Owner's right to vote in the Association or Neighborhood Association, as applicable; or (iii) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of the Common Areas and the Limited Common Areas, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants or by his co-Owners or the family, guests, or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days. The fines levied and assessed as provided for in this Section 12.03 herein shall be a lien upon the applicable Lot or Home in the same manner as that provided for in Section 9.09 herein. The effect of the non-payment of such fines and the remedies of the Association to enforce collection thereof shall be the same as those provisions provided for in Section 9.10 herein.

12.04 Procedure. Except with respect to the failure to pay Assessments or charges, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other occupant of the Community for violations of the Declaration, the By-Laws, or any rules and regulations of the Association, unless and until the following procedure is followed:

- (a) Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying:
- (i) The alleged violation;
  - (ii) The action required to abate the violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(b) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

- (i) The nature of the alleged violation;
- (ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;
- (iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and
- (iv) The proposed sanction to be imposed.

(c) The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Any sanctions and fines levied by the Board of Directors according to the terms and provisions of this Article XII shall be established by a majority vote of the Directors present at the above-referenced hearing. No such hearing shall be undertaken with less than a duly constituted quorum of the Board of Directors. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

### ARTICLE XIII

#### GENERAL PROVISIONS

##### 13.01 Control by Declarant.

(a) NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association until such time

as the first of the following events shall occur: (i) the date upon which all Homes and/or Lots in the Community, as ultimately planned and as fully developed, have been conveyed by Declarant (and all other Persons, if any, holding the rights of Declarant) to Owners; or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Home vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 13.01. Every grantee of any interest in the Community, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 13.01. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section 13.01, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Homes and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

(b) After the completion of terms of the initial Board of Directors, the Golf Club Owner shall at all times thereafter have the right, but not the obligation, to designate at least one (1) member of the Board of Directors.

(c) Nothing contained herein, however, shall in any way affect any of the rights of Declarant hereunder and the provisions of this Section 13.01 shall pertain only to the rights of Declarant to appoint and remove members of the Board and officers of the Association.

13.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the official records of Brazos County, Texas, without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, (i) in the event that such amendment materially and adversely alters or changes any Owner's right to the use and enjoyment of his Lot, Home, the Limited Common Areas or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot or Home, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; or (ii) in the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration as provided in Section 2.02 hereof. Any amendment made pursuant to this Section 13.02 shall be certified by Declarant as having

been duly approved by Declarant, and by such Owners and Mortgages if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot or Home agrees to be bound by such amendments as are permitted by this Section 13.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Community (a) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to any Lots or Homes subject to this Declaration, (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on a Lot or Home, or other improvements subject to this Declaration, or (d) if such amendment is required by a reputable private insurance company to insure Mortgages on the Lots, Homes or other improvements subject to this Declaration. Notwithstanding any other provision in this Section 13.02, no amendment to this Declaration shall be made that will materially affect the ownership or operations of the golf course, Golf Club Property or the Golf Club Owner without the written approval of the Golf Club Owner.

13.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 13.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by Members of the Association. Such amendment must be approved by Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee; and (ii) prior to the Class B Control Period Expiration Date or for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Community, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

Notwithstanding any other provision in this Section 13.03, no amendment to this Declaration shall be made that will materially affect the ownership or operations of the golf

course, Golf Club Property or the Golf Club Owner without the written approval of the Golf Club Owner.

13.04 Enforcement. Each Owner shall comply strictly with the By-Laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot or Home, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Common Areas and Limited Common Areas, or for instituting an action to recover sums due, for damages, and/or for injunctive relief, such actions to be maintainable by Declarant, the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of Declarant, the Association, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any Person of the provisions of this Declaration, the By-Laws, or any rules and regulations of the Association, however long continued.

13.05 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of the recording of the Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of an initial thirty (30) year period or the last year of any ten (10) year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the official records of Brazos County, Texas, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any

Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

13.06 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Rose Kennedy, mother of former U.S. President John Fitzgerald Kennedy.

13.07 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the official records of Brazos County, Texas. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Texas.

13.08 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

13.09 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

13.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Owners, and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Community, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

13.11 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or Home, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.



13.12 No Trespass. Whenever the Association, Declarant, the Architectural Review Board, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Community, the entering thereon and the taking of such action shall not be deemed to be a trespass.

13.13 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated, at the addresses of such Owners' respective Lots or Homes. All notices to the Association shall be delivered or sent in care of Declarant to Declarant's main office at 2100 Traditions Boulevard, Bryan, Texas, 77807, or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant's main office at 2100 Traditions Boulevard, Bryan, Texas, 77807, or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, duly authorized officers of the undersigned Declarant have executed this Declaration under seal, this 26 day of FEBRUARY, 2004.

DECLARANT:

BRYAN/TRADITIONS L.P., a Texas Limited Partnership

By: ROSEMEL PROPERTIES, INC., a Texas Corporation, its general partner

By: John Jordan  
Print Name: JOHN JORDAN  
Its: VICE PRESIDENT

STATE OF TEXAS )

COUNTY OF Brazos }

ACKNOWLEDGEMENT

Before me, a Notary Public, in and for the County and State aforesaid, personally appeared John Jordan, the V. President of Rosemel Properties, Inc., a Texas Corporation, the General Partner of Bryan/Traditions L.P., a Texas Limited Partnership (the "Company"), who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for The Traditions as such General Partner acting for and on behalf of said Company, and, who has been duly sworn, stated that any representations therein contained are true.

Witness my hand and notarial seal this 26<sup>th</sup> day of February, 2004.



My Commission Expires: 10/13/2007

Martha Lynch  
Signature  
Martha Lynch  
Printed Name  
Residing in Brazos



**EXHIBIT "A"**

**INITIAL PROPERTY**

Parcels 29C, 30, 31A, and 31B of the PD-M Zoning plan for The Traditions, according to the revisions dated 1/9/04 filed with the City of Bryan, Texas.

**EXHIBIT "B"**

**ADDITIONAL PROPERTY**

Parcels 3, 3A, 3B, 4, 5, 6, 7, 7A, 7B, 8, 9, 9A, 12, 17, 19, 23, 24, 25A, 25B, 26, 27, 28, 29A, 29B, 32, 32A, 33 of the PD-M Zoning plan for The Traditions, according to the revisions dated 1/9/04 filed with the City of Bryan, Texas.

Filed for Record in:  
BRAZOS COUNTY

On: Mar 03, 2004 at 01:41P

As a  
Recording

Document Number: 00847353

Amount 145.00

Receipt Number - 237439

By,  
Cynthia Rincon

STATE OF TEXAS COUNTY OF BRAZOS  
I hereby certify that this instrument was  
filed on the date and time stamped hereon by me  
and was duly recorded in the volume and page  
of the named records of:  
BRAZOS COUNTY  
as stamped hereon by me.

Mar 03, 2004

HONORABLE NICHOL MCQUEEN, COUNTY CLERK  
BRAZOS COUNTY