



DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

MIRAMONT RESIDENTIAL COMMUNITY

Brazos County, Texas

Declarant

TAC Realty, Inc.

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
MIRAMONT RESIDENTIAL COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("**Declaration**") is made this 1st day of July, 2003, by **TAC REALTY, INC.**, a Texas corporation ("**Declarant**") in light of the following Recitals which form a part of and are incorporated into this Declaration for all purposes.

RECITALS

- A. Declarant is the owner of the real property described in **Exhibit A** attached hereto and made a part hereof for all purposes, and Declarant currently intends to develop the same, together with such additional real property as is subjected, by annexation or otherwise, to this Declaration by any Supplemental Declaration in accordance with **Article X**, in one or more phases as a planned residential community to be known as "**Miramont**".
- B. Declarant is also the owner of certain real property described in **Exhibit B** attached hereto and made a part hereof for all purposes (the "**Country Club Real Property**"), which is generally adjacent to the Residential Property and which Declarant intends to develop as a private country club with a minimum of one (1) 18-hole golf course, tennis courts, and other facilities as part of a private country club, together with certain other amenities and facilities, as well as surface stormwater drainage facilities serving all, or portions of, the Residential Property.
- C. This Declaration imposes upon the Residential Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Residential Property, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Residential Property. This Declaration also imposes certain provisions for the benefit of the Country Club Real Property and the Country Club Property Owner as more particularly set forth hereinbelow; provided, however, the Country Club Real Property is not subject to the terms of this Declaration.

**ARTICLE I
PROPERTY SUBJECT TO DECLARATION**

Declarant hereby declares that all of the Residential Property described in **Exhibit A** attached hereto, and any additional property subjected to this Declaration by one or more Supplemental Declarations, shall be owned, held, occupied, transferred, sold, used, insured, conveyed and encumbered, subject to the following easements, restrictions, covenants and conditions of this Declaration, which are for the purpose of protecting the value and desirability of the Residential Property and which shall be covenants running with the land that run with the Residential Property and shall be binding upon all parties having any right, title, or interest in the Residential Property, or any part thereof, and their respective grantees, heirs, executors, administrators, legal representatives, successors, successors-in-title, and assigns. This Declaration shall inure to the benefit of all parties having any right, title, or interest in the Residential Property, the Country Club Real Property, or any part thereof, and their respective grantees, heirs, executors, administrators, legal representatives, successors, successors-in-title, and assigns.

**ARTICLE II
DEFINITIONS**

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

"Affiliate". A Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with another Person.

"Annual Assessment(s)". An Assessment levied in accordance with Section 11.3 of this Declaration.

"Annual Specific Maintenance Assessments". Assessments levied in accordance with Section 11.14 of this Declaration.

"Architectural Review Committee" or the **"Committee"**. The Committee composed of three (3) members appointed in the manner set forth in this Declaration, which Committee is appointed to provide for architectural control and approval within the Residential Property and to have and exercise such other powers and/or duties as are more specifically set forth in this Declaration.

□ **"Area of Common Responsibility"**. The Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the responsibility of the Association.

"Articles of Incorporation" or **"Articles"**. The Articles of Incorporation of the Association, as filed with the Secretary of State of the State of Texas, as they may be amended or modified, from time to time.

"Assessment(s)". Assessments levied as more particularly described in Article XI.

"Association". A Texas non-profit corporation to be organized under the name Miramont Residential Community Owners Association, Inc., or such other name as the Declarant may designate, and its successors and assigns.

"Board of Directors" or **"Board"**. The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors of a corporation under Texas corporate law.

"By-Laws". The By-Laws of the Association, as they may be amended, supplemented or modified from time to time.

"Class B Control Period". The period of time beginning on the date of this Declaration and terminating on the Termination Date as defined in Article IV.

"Common Area". All real and personal property which the Association owns, leases or otherwise holds possessory or use rights in, for the common use and enjoyment of the Owners and shall include, without limitation, private storm drains, private flood water detention areas, private streets, private gates, private utilities, private parks, open space, trails, and floodways within the Residential Property. The Common Area shall specifically include, without limitation, any areas so designated on any Plats which are filed of record. Any real property or interest in real property which Declarant shall convey to the Association to be designated Common Area shall, at the request of Declarant, be accepted in writing by the Association and shall be conveyed free of all liens and assessments (other than the lien for current ad valorem taxes, assessments or installments of assessments, which are not yet due and payable). The term **"Common Area"** shall also include the Exclusive Common Area, as defined below.

"Common Expenses". The actual and estimated expenses incurred or anticipated to be incurred by and the liabilities of, the Association for the general benefit of the Residential Property, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class B Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs. Common Expenses shall specifically include, however, an equitable portion (as reasonably determined by the Country Club Property Owner) of the costs incurred by the Country Club Property Owner for the maintenance, repair, and replacement of the Stormwater Drainage Facilities even though the same are not owned by the Association, and any other expenses relating to the maintenance, repair, replacement, and operation of facilities within or about the Country Club Property which, in the opinion of the Board, or Declarant, benefit the Residential Property. In addition, Common Expenses shall specifically include (a) expenses (including overhead and administrative costs) relating to maintenance, repair and improvement of the Common Areas (other than the Exclusive Common Areas) and the Area of Common Responsibility, and (b) reimbursement to Declarant for any reserves, deposits or insurance required by the City of Bryan, Texas, Brazos County, Texas, or any other local, state or federal governmental entity relating to the Area of Common Responsibility.

"Community-Wide Standard". The standard of conduct, maintenance, or other activity generally prevailing throughout the Residential Property or as may be more specifically determined, from time to time, by the Board of Directors or the Architectural Review Committee and may include specific landscape maintenance standards set forth in this Declaration or in landscape rules established by the Architectural Review Committee, which rules shall, in addition to other matters, require each Owner to maintain such Owner's Lot in accordance with such landscape rules as may be adopted from time to time as part of the Community-Wide Standard.

"Country Club". Miramont Country Club established by the Declarant which includes all of the Facilities.

"Country Club Property". The Country Club Real Property, together with the Facilities constructed thereon, as the same may be amended, expanded, contracted, changed, or modified from time to time, or at any time, by the Declarant or Declarant's successor, successor-in-title, or assign who takes title to the Country Club Property at their sole discretion.

"Country Club Property Owner". Declarant together with any successor, successor-in-title, or assign who takes title to the Country Club Property

"Country Club Real Property". The real property described in **Exhibit B** attached hereto and made a part hereof for all purposes, as the same may be modified in accordance with Section 17.2(1) hereof.

"Declarant". TAC Realty, Inc., a Texas corporation, or any successor, successor-in-title, or assign who takes title to any portion of the Residential Property for the purpose of development and/or resale in the ordinary course of business and who is designated as the Declarant in an instrument executed by the immediately preceding Declarant and recorded in the Records.

"Design Guidelines". The standards, restrictions or specifications published from time to time by the Architectural Review Committee and governing the construction, placement, location, alteration, maintenance or design of improvements to the Residential Property as they may be amended or modified, from time to time, by the Architectural Review Committee. The Design Guidelines may also include landscaping guidelines and maintenance procedures and criteria.

"Exclusive Common Area". A portion of the Common Area intended for the exclusive use or primary benefit of one or more of the Lots, as more particularly described in Article III.

"Facilities". The improvements and amenities located on, constructed on or situated on the Country Club Real Property, including, without limitation, an 18-hole golf course, an additional four (4) holes of golf, golf practice areas and the main clubhouse, as such improvements and amenities may be amended, changed, expanded, contracted, or modified, from time to time or at any time, by the Country Club Property Owner at its sole discretion.

"Golf Course Lot". Each Lot identified as a "Golf Course Lot" by the Declarant prior to the sale thereof by Declarant.

"Lot". A portion of the Residential Property designated as a "Lot" by the Declarant (whether by Plat or otherwise) and upon which it is intended to be constructed a residential structure. The term "Lot" shall also include all improvements thereon from time to time.

"Member". A person entitled to membership in the Association, as provided in Section 4.2.

"Miramont". The residential community to be developed, in one or more phases, on the Residential Property.

"Mortgage". A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

"Mortgagee". A beneficiary or holder of a Mortgage.

"Mortgagor". Any Person who gives a Mortgage.

"Owner". One or more Persons who hold the record title to any portion of the Residential Property as evidenced by an instrument recorded in the Records, but excluding in all cases any party

holding any interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides. Persons or entities shall be Owners by reason of ownership of portions of the Residential Property used for public or private schools, governmental or quasi-governmental purposes, and such land shall be owned subject to all of the provisions of this Declaration, except that, notwithstanding anything to the contrary contained herein: (i) ownership of land devoted to such purposes described in this sentence shall not create any votes in the Owners owning such land, and (ii) such non-voting Owners shall not be required to pay any assessments other than Specific Individual Assessments as described and authorized in this Declaration. No person or entity shall be an Owner by reason of ownership of any public land, road, easement, right-of-way, or mineral interest.

"Person". A natural person, a corporation, a partnership, a trustee, or any other legal entity.

"Plat" and **"Plats"**. All plats, singly and collectively, pertaining to land that is subject to this Declaration or pertaining to Miramont, and recorded in the Records, including all dedications, limitations, restrictions, easements, notes, and reservations shown on the applicable plat or plats, as they may be amended from time to time.

"Residential Property". The real property described in **Exhibit A** attached hereto and all improvements thereon, together with such additional real property as is subjected, by annexation or otherwise, to this Declaration by any Supplemental Declaration in accordance with **Article X**.

"Records". The Official Records of Real Property in Brazos County, Texas.

"Services Agreements". One or more agreements executed and delivered from time to time by Declarant (on behalf of the Association) or the Association in accordance with **Section 5.11** and the Country Club Property Owner or others with regard to the provision of, and/or sharing costs and expenses to provide, certain services on behalf of the Association and the Owners, including, without limitation: (i) operation, maintenance and repair of the Stormwater Drainage Facilities, (ii) the irrigation, maintenance and repair of the Area of Common Responsibility, and (iii) utility and other services to the Residential Property as a whole including, without limitation, agreements for the provision of potable water, sanitary sewer discharge, electricity, natural gas, security, cable television, refuse removal, Internet access and other communication services. All costs and expenses incurred by the Association under the Services Agreement shall constitute part of the Common Expenses.

"Significant Tree". Any tree having a trunk diameter, measured one foot above the ground, of six (6) inches or more.

"Special Assessment(s)". Assessments levied in accordance with **Section 11.4** of this Declaration.

"Specific Individual Assessment(s)". Assessments levied in accordance with **Section 11.5** of this Declaration.

"Stormwater Drainage Facilities". The facilities located in the Residential Property and the Country Club Real Property or included within the Area of Common Responsibility that are developed or used, in whole or in part, for the drainage of surface stormwater from the Residential Property, the Country Club Real Property and certain other adjacent property and including, without limitation, all detention ponds and lakes within the Country Club Property and all related lines, conduits, pumps, pipes, water outflow meters and systems, and other related equipment and facilities.

"Supplemental Declaration". An amendment or supplement to this Declaration filed pursuant to **Article X** which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or which affects any other amendment or modification of this Declaration.

"Termination Date". The Termination Date is the date as defined **Section 4.4.2**.

ARTICLE III
COMMON AREAS

3.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, but not the right to make alterations, modifications, additions, or improvements to, the Common Area subject to:

- (1) This Declaration, the By-Laws and any other applicable covenants;
- (2) Any easements, encumbrances, restrictions or limitations contained in any deed conveying such property to the Association, depicted on any Plat, or reflected in the Records;
- (3) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area;
- (4) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 5.8;
- (5) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (6) The rights of certain Owners in the exclusive use of those portions of the Common Area designated "**Exclusive Common Area**," as more particularly described in Section 3.2;
- (7) The right of the Association to enter into and execute contracts, including, but not limited to, Services Agreements, with third parties (including the Declarant, and Affiliates of the Declarant, so long as such contracts do not provide for compensation to the Declarant, or its Affiliates, which exceeds compensation which would be commercially reasonable for such services) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association; and
- (8) The right of Declarant and the Association to clear underbrush, such as weeds, ferns and yaupon holly plants, vegetation and living trees from any portion of the Common Area as may be required for development and maintenance of the Residential Property.

3.2 Exclusive Common Area. Certain portions of the Common Area may be designated by the Declarant or the Board as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners of a particular Lot or Lots. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Area shall be assessed as a Specific Individual Assessment against the Owners of the Lots to which the Exclusive Common Area is assigned.

(1) Initially, the Declarant shall designate any Exclusive Common Area as such and shall assign the exclusive use thereof in the deed conveying the Common Area to the Association or on a Plat relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Lots, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 10.1.

(2) Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Lot or Lots and Exclusive Common Area may be reassigned (a) during the Class B Control Period, only by Declarant in Declarant's sole and absolute discretion, and (b) after the Termination Date, upon the vote of Members representing at least a majority of the total Class A votes in the Association (determined as provided in Section 4.4 hereof), including at least a majority of the Class A votes attributable to the Lot(s) to which the Exclusive Common Area is assigned, if applicable, and attributable to the Lot(s) to which the Exclusive Common Area is to be assigned. As long as the Declarant owns any Residential Property for development and/or sale, any such assignment or reassignment shall also require the Declarant's consent.

3.3 Restricted Actions by Owners. No Owner shall permit anything to be done on or in the Common Area which would violate this Declaration, any applicable public law or zoning ordinance or which will result in the cancellation of or increase in the premium for any insurance

carried by the Association, or which is in violation of any law. No waste shall be committed in the Common Area.

3.4 Damage to the Common Area. Each Owner shall be liable to the Association for any damage to the Common Area caused by the negligence or willful misconduct of such Owner or the family, guests, pets, agents, employees, contractors, or invitees of such Owner.

ARTICLE IV

ASSOCIATION FUNCTION, MEMBERSHIP, AND VOTING RIGHTS

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area. The Association shall be the primary entity responsible for administering and enforcing this Declaration and such rules regulating use of the Residential Property as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles, and Texas law.

4.2 Membership. Subject to the terms of this Declaration, the Articles of Incorporation, and the By-Laws, each and every Owner shall automatically be a member ("**Member**") of the Association without the necessity of any further action on such Owner's part. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to any portion of the Residential Property. Ownership of any portion of the Residential Property shall be the sole qualification for being a Member; provided, however, a Member's voting rights, as herein described, or privileges in the Common Area or both may be regulated or suspended as provided in this Declaration; provided, further, that no Person shall be an Owner by reason of ownership of any public land, road, easement, right-of-way, or mineral interest.

4.3 Transfer. Membership of an Owner in the Association may not be severed from or in any way transferred, pledged, mortgaged, or alienated except upon the sale or assignment of said Owner's interest in all or any part of the Residential Property and then only to the purchaser or assignee as the new owner thereof. Such membership shall not be severed by or in connection with the encumbrance by an Owner of all or any part of the Residential Property. Any attempt to make a prohibited severance, transfer, pledge, mortgage, or alienation of an Owner's membership in the Association shall be void and of no further force or effect. Any transfer of the fee title to a lot, tract, or parcel of real estate out of or a part of the Residential Property shall automatically operate to transfer membership in the Association to the new owner thereof. In the event an Owner should fail or refuse to transfer the membership in the Association registered in such Owner's name to the transferee of such Owner's interest in all or any part of the Residential Property, the Association shall nonetheless have the right to record the transfer upon the books and records of the Association.

4.4 Classes of Membership and Voting Rights. The Association shall have two (2) classes of voting membership:

1. CLASS A MEMBERSHIP. Class A Members shall be all Owners, with the exception of the Declarant (until such time as Declarant becomes a Class A Member, pursuant to this Section 4.4). Subject to the provisions of Sections 4.6 and 4.7 hereof, Class A Members shall be entitled to:

(a) One (1) vote for each Lot owned by such Member (whether or not such Lot has been improved with a residential structure); and

(b) One (1) vote for each and every 15,000 square feet of the real estate owned by such Member out of and a part of the Residential Property which does not constitute either (i) a Lot, or (ii) a portion of the Common Area. Fractional votes to which any Class A Member may be entitled pursuant to this Subsection (b) shall be rounded off to the nearest one-quarter (1/4) vote.

2. CLASS B MEMBERSHIP. The Class B Member shall be Declarant. The Class B Member shall appoint all of the members of the Board during the Class B Control Period, and shall otherwise have and retain, during such period, plenary rights over the operation and administration of the Association, the Board and all committees. Subject to the provisions of Section 4.7 hereof, the Class B Member shall be entitled to:

(a) Ten (10) votes for each Lot owned by such Member (whether or not such Lot has been improved with a residential structure);

(b) Ten (10) votes for each and every 15,000 square feet of the real estate owned by such Member out of and a part of the Residential Property which does not constitute either (i) a Lot, or (ii) a portion of the Common Area. Fractional votes to which any Class A Member may be entitled pursuant to this Subsection (b) shall be rounded off to the nearest one-quarter (1/4) vote.

The Class B Membership shall cease and be converted to Class A Membership on the happening of the earlier of the following events (the "**Termination Date**"):

(a) When the total number of votes outstanding in the Class A Membership is greater than the total number of votes outstanding in the Class B Membership; or

(b) On the twentieth (20th) anniversary of the recording of this Declaration in the Records.

4.5 Suspension of Voting Rights. The voting rights of any Member set forth in this Declaration may be suspended by the Board of Directors of the Association for any period during which any Assessment owed by such Member remains past due or as otherwise provided in Section 5.4.

4.6 Multiple Owner Votes. Votes hereunder may not be cast on a fractional basis between multiple Owners of a Lot. Further, where there are multiple owners of a Lot, it is not intended by Section 4.4 that each of said Owners shall be entitled to cast the votes allocated to such Lot. When more than one person or entity owns the interest or interests in and to any Lot as required for membership in the Association, each and every such person or entity shall be a Member, and the vote for any Lot shall be exercised as they, among themselves, collectively determine. If such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall forfeit the vote or votes on the matter in question. If more than one (1) person or entity purports to exercise the voting rights with respect to any Lot on any matter in question, none of such votes attributable to such Lot shall be counted in tabulating the vote on such matter, and such votes shall be deemed void. The Association shall not be required to recognize the vote or written assent of any such multiple Owners except the vote or written assent of the Owner designated in writing executed by all of such multiple Owners and delivered to the Association.

4.7 Special Considerations With Respect to Determination of Lot Area. Notwithstanding anything to the contrary contained herein, for the express limited purpose of determining the area contained within the exterior boundaries of any Lot for purposes of Section 4.4 and 11.3 hereof, any portions of such Lot which constitute all or a portion of any water detention facility, according to the plat establishing such Lot, shall not be considered.

4.8 Quorum, Notice, and Voting Requirements. Except as specifically set forth in this Declaration, notice, voting and quorum requirements for all action to be taken by the Association shall be consistent with its Articles of Incorporation and By-Laws, as same may be amended from time to time.

4.9 Membership In The Association Is Not A Membership in the Country Club. Membership in the Association does not entitle an Owner or a co-Owner of any Lot to membership in the Country Club or any right to use any of, or access to any of, the Facilities. Application for membership in the Country Club is made through a process of the submission of a separate application for non-equity membership in the Country Club, to the Country Club Property Owner or such owner's designee. There are no representations of any type or nature made by Declarant or any other person to: (a) any Owner of a Lot, (b) any prospective owner of a Lot, or (c) any other Person, regarding: (i) the availability of memberships in the Country Club, (ii) whether or not any applicant for membership in the Country Club will be approved for membership in the Club, (iii) the amenities that may now or in the future be part of or included within the Country Club Property, or (iv) any other matter of any nature whatsoever regarding the Country Club.

ARTICLE V

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

5.1 Common Area. The Association shall manage and control the Common Area and all improvements thereon (including without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard.

5.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the properties described in: (i) Exhibit A, and (ii) in one or more Supplemental Declarations. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed whereby the same is so conveyed to the Association.

5.3 Rules. The Association, through its Board, may make and enforce rules governing the use of the Residential Property in addition to, further defining or limiting, and, where specifically authorized hereunder, creating exceptions to those covenants and restrictions set forth in this Declaration. Such rules may include, but shall not be limited to, garbage collection procedures, prescribed hours for lawn maintenance activities, and similar matters. 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 the vote of Members representing at least two-thirds (2/3) of the total Class A votes in the Association (determined as provided in Section 4.4 hereof) and by the Declarant (so long as Declarant, or an Affiliate of Declarant, owns any portion of the Residential Property or the Country Club Real Property).

5.4 Enforcement.

(1) In General. All Owners and their respective family members, guests, invitees, tenants and occupants shall abide by this Declaration, any applicable Supplemental Declaration, the By-Laws, and any rules and regulations adopted by the Board of Directors or the Architectural Review Committee. The Association shall have the power to enforce compliance with the foregoing by all appropriate legal and equitable remedies (including injunctive relief). In the event that any Owner or a family member, guest, invitee, tenant or occupant of such Owner is determined by judicial action to have violated this Declaration, any applicable Supplemental Declaration, the By-Laws, or any rules and regulations adopted by the Board of Directors or the Architectural Review Committee, the Owner (jointly and severally with such family member, guest, invitee, tenant or occupant, if applicable) shall be liable to the Association for all damages and costs, including reasonable attorneys' fees, incurred by the Association in the enforcement thereof. In accordance with the provisions of Section 11.5 hereof, and without limitation of any other available remedies, the Association shall have the right to levy a Specific Individual Assessment against the Owner of any Lot for any costs or expenses payable by such Owner or such Owner's family members, guests, invitees, tenants or occupants pursuant hereto.

(2) Fines and Penalties. The Association shall have the right and power to establish a system of fines and/or penalties (enforceable as Specific Individual Assessments as provided in Article XI of this Declaration) for violations by an Owner or such Owner's family members, guests, invitees, tenants or occupants of this Declaration, any applicable Supplemental Declaration, the By-Laws, or any rules and regulations adopted by the Board of Directors or the Architectural Review Committee.

(3) Suspension of Right to Use Common Area and/or Right to Vote. The Association may suspend the right of any Owner, or such Owner's family members, guests, invitees, tenants or occupants to use the Common Area and/or may suspend the right of any Owner to vote during any period of time that such Owner is in default of their obligations pursuant to this Declaration, any applicable Supplemental Declaration, the By-Laws, or any rules and regulations adopted by the Board of Directors or the Architectural Review Committee.

(4) Enforcement of Maintenance Obligations. Without limiting any rights of enforcement as otherwise provided herein, if, in the opinion of the Association, any Owner or such Owner's tenant or occupant has failed in any of the duties or responsibilities prescribed in Article VI, then the Association may give such Person written notice of such failure and such Person must within ten (10) days after receiving such notice, perform such duties and responsibilities or make arrangements with the Association for making the repairs and maintenance required. Should any such Person fail to fulfill this duty and responsibility within such period, then the Association,

through its authorized agent or agents, shall have the right and power to enter onto the applicable Lot and perform such repairs and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner and such Owner's tenants and occupants of any part of the Lot on which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse the Association for such cost. If such Owner or such Owner's tenant or occupant shall fail to reimburse the Association within (30) days after receipt of a statement for such work from the Association, then said indebtedness, together with interest thereon at the lesser of eighteen percent (18%) per annum or the highest lawful rate, from the date of demand therefor until paid, and the costs of collection thereof (including, without limitation, reasonable attorney's fees), shall be a debt of all of said Persons jointly and severally, and shall constitute a lien against that Lot on which said work was performed. In accordance with the provisions of Section 11.5 hereof, and without limitation of any other available remedies, the Association shall have the right to levy a Specific Individual Assessment against the Owner of any Lot for any costs or expenses payable by such Owner or such Owner's tenant or occupant pursuant hereto.

(5) Enforcement of Ordinances and Deed/Plat Restrictions. The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit the City of Bryan, Texas, or Brazos County, Texas, to enforce applicable ordinances on the Residential Property for the benefit of the Association and its Members. The Association may also enforce any specific covenants and use restrictions applicable to a particular Lot contained in the deed conveying such Lot to the Owner thereof or as set forth on any Plat applicable to the Residential Property.

(6) Limitations. The enforcement rights of the Association set forth in this Section 5.4 are subject to Chapter 209 of the Texas Property Code, as amended or modified from time to time.

5.5 Implied Rights: Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

5.6 Government Interests. So long as the Declarant owns any Residential Property, the Declarant may designate sites within the Residential Property for fire, police, utility facilities, public schools and parks, and other public facilities. The sites may include Common Area and in such case, the Association shall dedicate and convey such sites as directed by the Declarant, and no Association membership approval shall be required.

5.7 Indemnification. To the fullest extent permitted by applicable law, the Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees reasonably incurred in connection with any action, suit, or proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except for the obligations to pay assessments and other charges assessed to them in their capacity as Members hereunder, to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action AND INCLUDING FROM THE CONSEQUENCES OF SUCH PARTIES' OWN NEGLIGENCE IN CONNECTION WITH OR ARISING OUT OF ANY ACTION TAKEN BY THEM IN A GOOD FAITH PURSUIT OF THE PERFORMANCE OF THEIR OBLIGATIONS OR EXERCISE OF THEIR AUTHORITY HEREUNDER. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

5.8 Dedication of Common Area. The Association may dedicate, from time to time, or at any time, portions of the Common Area to the City of Bryan, Texas, Brazos County, Texas, or to

any other local, state, or federal governmental entity and no approval of the Association or vote of the Members shall be required in connection with any such dedications.

5.9 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Residential Property designed to make the Residential Property safer than they otherwise might be, which activities may include manned access control at one or more entries to the Residential Property, remote entry control at certain entries to the Residential Property and one or more roving patrols (the costs of all of the foregoing shall constitute a Common Expense). NETHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE RESIDENTIAL PROPERTY, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM, IF ANY, CAN NOT 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, AGREES, AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE RESIDENTIAL PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS RESULTING FROM ACTS OF THIRD PARTIES.

5.10 Reclaimed Water and Well Water. Declarant hereby discloses to each Owner, and each Owner by acceptance of title to his or her Lot hereby acknowledges, that the Country Club Property Owner, or the operator of the Country Club may use either or both: (i) water from water wells drilled on the Golf Course Real Property, and (ii) reclaimed water for irrigation of the Country Club Property, the Common Areas and, from time to time, portions of the Residential Property, and that SUCH WATER IS NOT INTENDED FOR HUMAN CONSUMPTION AND SHOULD NOT BE CONSUMED BY HUMANS.

5.11 Services Agreements. Both the Declarant, on behalf of the Association, and the Association shall have the right to enter into one or more service agreements (individually, a "Services Agreement" and collectively, the "Services Agreements") whereby Declarant or the Association, as the case may be, grants to third party providers the exclusive or non-exclusive right to provide to the Residential Property and each Owner certain services including, without limitation, those services of the type described in the definition of the term Services Agreement as set forth above. Each Services Agreement shall be binding upon each Owner and the Association. Each Services Agreement shall grant to the party performing services thereunder a non-exclusive license to allow such party and such party's employees and contractors to enter upon the Residential Property and all Common Areas in order to perform the services specified in the applicable Services Agreement. Furthermore, the Declarant (on behalf of the Association) hereby grants to the Country Club Property Owner (a) the exclusive right to repair and maintain, on behalf of the Association, the Area of Common Responsibility, and as compensation therefor, the Country Club Property Owner shall be entitled to reimbursement of the reasonable expenses (including an appropriate allocation of overhead) incurred in providing such services, plus a five percent (5%) administration fee, and (b) together therewith, a non-exclusive license to enter upon the Residential Property and all Common Areas in order to perform such services.

ARTICLE VI **MAINTENANCE**

6.1 Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(1) all landscaping and other flora, signage, structures, and improvements, including any private streets and pedestrian pathways/trails, situated upon, or comprising a part of the Common Area (and whether within or outside the Residential Property);

(2) all landscaping and other flora, signage, structures and improvements, including any sidewalks, ornamental street lights, ornamental traffic signs, monument signs, street pavers, pedestrian towers, fountains, entry markers, sprinkler systems, and drainage facilities, within

public rights-of-way or any public utility easements and conservation easements within Miramont (and whether within or outside the Residential Property), including the public streets within Miramont and parkways adjacent thereto, the entries to Miramont at FM 158 and FM 1179, and other entries to Miramont (subject to the terms of any easement agreement or maintenance agreement relating thereto);

(3) all fences or walls constructed by Declarant or the Association within Miramont or surrounding the exterior of Miramont or the Country Club Real Property, whether located on the Residential Property, the Country Club Real Property or a public right-of-way;

(4) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

(5) on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

There are hereby reserved to the Association easements over the Residential Property as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for reasonable periods as necessary to perform required maintenance or repairs.

The Association may maintain other property which it does not own, including, without limitation, publicly owned property, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard, or as otherwise designated by Declarant so long as Declarant owns any Residential Property.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots in the manner of and as a part of the Annual Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Area shall be assessed pursuant to Article XI solely against the Lot(s) to which the Exclusive Common Area is assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

6.2 Owner's Responsibility. Each Owner and occupants (including lessees) of any Lot shall jointly and severally maintain such Owner's Lot, at their sole cost and expense, in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration, or other declaration of covenants applicable to such Lot, so as to keep each Lot so owned or occupied, including all buildings and improvements thereon, in a well-maintained safe, clean and attractive condition at all times. The Community-Wide Standard for maintenance of all Lots, including all buildings and improvements thereon, shall include, but is not limited to, strict compliance with the following:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Lawn mowing on a regular basis;
- (c) Tree and shrub pruning;
- (d) Watering landscaped areas;
- (e) Keeping exterior lighting and maintenance facilities in working order;
- (f) Keeping lawn and garden areas alive, free of weeds, and attractive;
- (g) Keeping parking areas and driveways in good repair;

- (h) Complying with all government health and police requirements;
- (i) Repair of exterior damages to improvements;
- (j) Repainting of applicable improvements; and
- (k) Replacement of dead landscaping to its previous condition, or in accordance with new landscaping plans approved by the Architectural Review Committee.

6.3 Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. Notwithstanding anything to the contrary contained herein, the Association and/or an Owner shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been grossly negligent in the performance of its maintenance responsibilities.

6.4 Party Walls and Similar Structures.

(1) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(2) Sharing of Repair and Maintenance. Unless otherwise determined by the Board, the cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(3) Damage and Destruction. If a party wall or structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(4) Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by negligence or willful act causes a party structure to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

(5) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

6.5 Owner's Exterior Illumination Requirements. The Architectural Review Committee may require that certain exterior illumination on each Lot be equipped with sensors which cause such lights to illuminate automatically (including, without limitation, lighting attached to the improvements on a Lot or which are intended to illuminate landscaping). Should such sensors be required, each Owner shall cause the same to be maintained in good working condition at all times (including replacement of the same as is necessary) and shall insure that all light bulbs (or other illumination devices) to which the same are affixed are similarly in good working condition at all times.

ARTICLE VII

INSURANCE AND CASUALTY LOSSES

7.1 Insurance. The Board of Directors and its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a loss. The Association shall have the authority to and interest in insuring any privately or publicly owned property for which the

Association has maintenance or repair responsibility. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to parks, rights-of-way, medians, easements, and walkways which the Association is obligated to maintain. This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

The Board of Directors shall obtain a public liability policy applicable to the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement of insurable improvements on or related thereto in the event of a loss covering the Association and its Members for all damage or injury caused by or incurred as a result of the negligence or misconduct of the Association or any of its directors, officers, Members or agents. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000) Dollars.

The policies maintained by the Association may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a reputable company licensed to do business in Texas.
- (b) All policies shall be for the benefit of the Owners and their mortgagees, as their interests may appear.
- (c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (d) In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.
- (e) All casualty insurance policies shall have an inflation guard endorsement, if available on a commercially reasonable basis, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Brazos County, Texas, area.
- (f) The Board of Directors shall be required to make reasonable efforts to secure insurance policies which include or provide as follows:
 - (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests, if available on a commercially reasonable basis;
 - (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
 - (iii) no policy may be cancelled, invalidated, or suspended on account of the actions or omissions of any one or more individual Owners;
 - (iv) no policy may be cancelled, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior written demand to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or mortgagee;

(v) any "other insurance" clause in any policy shall exclude individual Owners' policies from consideration; and

(vi) no policy may be cancelled or substantially modified without at least twenty (20) days' prior written notice to the Association.

In addition to the other insurance required by this Section 7.1, the Board of Directors shall obtain: (i) worker's compensation insurance, if and to the extent necessary, to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, and (ii) director and officer liability insurance covering the officers of the Association and the members of the Board of Directors of the Association in such amounts and upon such terms as the Board of Directors may, in its reasonable discretion, determine is appropriate, from time to time. The amount of fidelity coverage shall be at least the sum of three (3) months assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall, to the extent reasonably obtainable, contain a provision that such bonds may not be cancelled or substantially modified without at least twenty (20) days' prior written notice to the Association.

Premiums for all insurance maintained by the Association shall be Common Expenses, and shall be included in the Annual Assessment; provided, however, premiums for insurance on Exclusive Common Areas shall be assessed as a Specific Individual Assessment in accordance with Section 11.5 against the Lot(s) benefited unless the Board reasonably determines that other treatment of the premiums is more appropriate. In the event of an insured loss, the deductible shall be paid in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Lot of such Owner or occupant as a Specific Individual Assessment pursuant to Section 11.5.

7.2 Insurance Proceeds. Proceeds of insurance shall be disbursed by the insurance carrier to the Association or contractors designated by the Association as the Board of Directors may direct. The Association shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement.

7.3 Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage to the Common Area or Area of Common Responsibility, as applicable, or the improvements thereon or appurtenant thereto, the Board of Directors shall, without a vote of the Members, levy a Special Assessment as provided for in Article XI of this Declaration to cover the deficiency against the Owners responsible for the premiums for the applicable insurance coverage under Section 7.1. If the insurance proceeds are insufficient to repair or replace any loss or damage for which an Owner is bound hereunder, such Owner shall, as his sole and undivided responsibility, promptly pay any excess costs of repair or replacement.

7.4 Association as Attorney-in-Fact. Each Owner, by ownership of an interest in the Residential Property, or any portion thereof, shall be deemed to have irrevocably appointed the Association as their true and lawful attorney-in-fact to act in connection with the following:

(a) The Association as said attorney-in-fact shall have full right, power and authority for the purpose of dealing with the Common Area or the Area of Common Responsibility, as applicable, upon its partial or complete destruction. Without limiting the generality of the foregoing, the Association, as attorney-in-fact, shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of any Owner which is necessary or appropriate to exercise the power herein granted. The Association shall have full authority, right, and power, as attorney-in-fact, to cause any repair and restoration of the Common Area or Area of Common Responsibility, as applicable, permitted or required pursuant to this Declaration or the By-Laws of the Association.

(b) The Association as said attorney-in-fact shall also have the full right, power and authority to purchase and maintain a master policy of fire and extended coverage, vandalism, and malicious mischief and liability insurance (the "Policy") covering the

Common Areas and the Area of Common Responsibility. Without limiting the generality of the foregoing, the Association shall have full and complete authorization, right, and power to collect and remit premiums for the Policy, to collect proceeds and to distribute the same to the Association, Owners, and their respective mortgagees (subject to the provisions of this Declaration and the By-Laws) as their interests may appear, to execute all documents and to do all things on behalf of such Owners and the Common Area and the Area of Common Responsibility as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters. Notwithstanding the foregoing, there may be named as an insured under the Policy, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association enters into an insurance trust agreement or any successor to such trustee, who shall, subject to the terms of such insurance trust agreement, have exclusive authority to negotiate losses under the Policy.

(c) The Association as said attorney-in-fact shall have the full right, power and authority to represent the Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for the acquisition of the Common Area and the Area of Common Responsibility or any part thereof by eminent domain. Without limiting the generality of the foregoing, the Association shall have the full authority, right, and power, as attorney-in-fact, to enter into settlement agreements with the condemning authority, to collect condemnation awards and distribute the same to the Association, the Owners and their respective mortgagees (subject to the provisions of this Declaration and the By-Laws) as their interests may appear, and to execute all documents and to do all things on behalf of such Owners, the Association, and their respective mortgagees as shall be necessary to the accomplishment of the foregoing; and any condemning authority may deal exclusively with the Association in regard to such matters.

7.5 Destruction of Improvement on Individual Lots. By virtue of owning or taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements comprising part of a Lot, less a reasonable deductible. In no event shall Declarant or the Association be obligated to provide such insurance nor shall, in any event, either Declarant or the Association be liable or responsible for any damage to a Lot REGARDLESS OF THE CAUSE OR ORIGIN THEREOF INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF DECLARANT OR THE ASSOCIATION OR THEIR RESPECTIVE AGENTS, CONTRACTORS, OR EMPLOYEES, and each Owner, by acceptance of a deed to a Lot, will have agreed to forever waive and relinquish any and all such claims. Each Owner agrees that in the event of destruction (total or partial) to the improvements on any such Owner's Lot due to fire or any other cause, such Owner will (a) complete removal of the damaged improvements and commence all necessary repairs or reconstruction within four (4) months of the date that the damage occurs, and (b) complete such repairs and reconstruction within a reasonable time from the commencement of such work. Repairs, reconstruction or complete removal of damaged improvements may be commenced more than four (4) months after the date of occurrence of damage if the delays in commencement are caused by factors (other than financial inability) beyond the reasonable control of the Owner of the damaged improvements. Once repairs or reconstruction are commenced, such repairs or reconstruction shall be pursued and completed in a continuous and diligent manner, subject to delays (other than financial inability) which are beyond the reasonable control of the Owner of the damaged improvements. The Owner shall pay any and all costs of such removal, repairs, and construction to the extent such costs are not covered by insurance.

ARTICLE VIII
NO PARTITION; NO SUBDIVISION

8.1 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No person shall seek any judicial partition unless the Residential Property or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

8.2 No Merger or Subdivision of Lots. No Owner may (a) merge one or more adjacent Lots into a single Lot or (b) subdivide such Owner's Lot without the express prior written consent of the Board. Furthermore, no Owner may create any "timeshare estate" in any Lot at any time ("timeshare estate" being given the meaning assigned to it as of the date hereof in the Texas Timeshare Act which comprises a part of the Texas Property Code).

8.3 Declarant's Right to Alter Lots. Notwithstanding the foregoing or any other provisions of this Declaration, Declarant reserves the right to do each of the following with respect to a Lot at any time prior to the conveyance of such Lot by Declarant: (a) subdivide such Lot into one or more lots each of which shall, upon completion of such subdivision, be a "Lot" for purposes hereof, and (ii) merge one or more adjacent Lots into a single Lot. Declarant may also make such changes in the configuration of a Lot owned by the Declarant as Declarant may desire at any time and from time to time so long as the same does not materially adversely affect any other Lot not owned by Declarant (unless such other Owner consents thereto). In addition to the foregoing, Declarant may, in Declarant's sole discretion, apply for and obtain modifications of the zoning classifications of portions of the Residential Property owned by Declarant to a different type of single-family residential classification of zoning by filing amended Plats, from time to time, or at any time, so long as the same does not materially adversely affect any other Lot not owned by Declarant (unless such other Owner consents thereto).

ARTICLE IX
CONDEMNATION

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class A votes in the Association (determined as provided in Section 4.4 hereof) and of the Declarant, as long as the Declarant owns any Residential Property) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any Residential Property, and Members representing at least 75% of the total Class A votes in the Association (determined as provided in Section 4.4 hereof) shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Article VII regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE X
ANNEXATION AND WITHDRAWAL OF PROPERTY

10.1 Annexation to Residential Property Subject to Declaration by Declarant. Any real property which is contiguous to the Residential Property, or which is located within one (1) mile of any portion of the Residential Property, and which is now or hereafter owned by Declarant may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association, without the approval of the Association or any other party, provided that a Supplemental Declaration covering the real property sought to be annexed is executed by Declarant and recorded in the Records in accordance with this Article X; provided, however, no Supplemental Declaration shall be

so executed and recorded by the Declarant pursuant to this Article X more than thirty (30) years after the date this Declaration is recorded in the Records. The execution and recordation by Declarant of any such Supplemental Declaration shall constitute and effectuate the annexation of the real property described therein, making any such real property subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association, and thereafter said annexed real property shall be a part of the Residential Property and all the Owners in said annexed real property shall automatically be Members of the Association. Although Declarant shall have the ability to annex other real property to this Declaration, as provided herein, Declarant shall not be obligated to subject or annex all or any other portion of any real property owned by Declarant to this Declaration, regardless of whether or not such real property is located adjacent to, or in close proximity to, the Residential Property; and no portion of such other real property shall become subject to this Declaration unless and until a Supplemental Declaration covering the applicable property shall have been executed and recorded by Declarant as provided herein. Moreover, Declarant reserves the right to subject any other real property owned by Declarant to the plan of one or more separate declarations of covenants, conditions, and restrictions which subject such property to the functions, powers, and jurisdiction of an association or other entity with power and obligations similar to the Association and which may or may not be subject to this Declaration.

10.2 Supplemental Declarations. The annexation authorized by this Declaration shall be accomplished by executing and filing of record in the Records, a Supplemental Declaration or similar instrument, with respect to the applicable additional real property which shall extend the plan of this Declaration to such real property. Any such Supplemental Declaration may contain such additions, deletions, and/or modifications of the covenants, restrictions, easements, liens, and charges contained in this Declaration as may be necessary or desirable to reflect the different character, if any, of such annexed real property, and as are not, in Declarant's judgment, substantially inconsistent with the plan of this Declaration. In no event, however, shall any such Supplemental Declaration, or any merger or consolidation revoke, modify, or add to the covenants, conditions, restrictions, easements, liens, or charges established by this Declaration, as same relate to and affect that portion of the Residential Property previously subject to this Declaration (as constituted immediately prior to the annexation). The rate of assessments for, and the method of determining the assessed valuation of the annexed property may be substantially similar to the rate and method utilized for the Residential Property, as constituted immediately prior to the annexation. However, notwithstanding the immediately preceding sentence, the rate of assessments for, and the method of determining the assessed valuation of, the annexed property may differ from the rate and method utilized for the Residential Property (as constituted immediately prior to the annexation) if Declarant determines that a reasonable economic basis exists for a different rate or method of valuation. Interpretation and discretion of such assessment adjustments shall lie with the Board of Directors of the Association. Any annexation made pursuant to this Declaration, when made, shall automatically extend the functions, powers, and jurisdiction of the Association to the real property so added.

10.3 Withdrawal of Property. The Declarant reserves the right to unilaterally amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Residential Property from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Residential Property, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Residential Property. Such amendment may be made without prior notice and without the consent of any Person other than the Owner of the property being withdrawn (if not the Declarant), and any such Owner shall join in the execution of the amendment to evidence such consent. Upon request of the Declarant, the Association shall consent to withdrawal of Common Area in accordance with this Section.

ARTICLE XI **ASSESSMENTS**

11.1 Covenants for Assessments. The Declarant (except as otherwise expressly provided herein), for each Lot or parcel of real estate owned by it out of or a part of the Residential Property, shall pay, and each Owner of any Lot or parcel of real estate out of or a part of the Residential Property by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of such Lot or parcel of real estate out of or a part of the Residential Property), to pay to the Association (or to any entity or collection agency designated by the Association): (1) annual

assessments or charges as specified in Section 11.3 of this Article XI (sometimes hereinafter referred to individually as a "**Annual Assessment**" or collectively, as the "**Annual Assessments**"), such assessments to be fixed, established and collected from time to time as herein provided; (2) special assessments as specified in Section 11.4 of this Article XI (sometimes individually referred to as a "**Special Assessment**" or collectively as the "**Special Assessments**"), such assessments to be fixed, established and collected from time to time, as herein provided; (3) individual specific assessments as specified in Section 11.5 of this Article XI (sometimes individually referred to as "**Specific Individual Assessment**" and collectively, as the "**Specific Individual Assessments**"), such assessments to be fixed, established and collected from time to time as herein provided; and (4) annual specific maintenance assessments as specified in Section 11.14 of this Article XI (sometimes individually referred to as "**Annual Specific Maintenance Assessment**" and collectively, as the "**Annual Specific Maintenance Assessments**"), such assessments to be fixed, established and collected from time to time as herein provided. The assessments described in (1), (2), (3) and (4) of the immediately preceding sentence (which shall, individually and collectively constitute the "**Assessments**"), together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall be a charge on the land and shall be a continuing lien upon each Lot or portion of the Residential Property against which each such Assessment is made. Each such Assessment, together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall also be the personal obligation of the Owner of such Lot or portion of the Residential Property against which such Assessment is made at the time when such Assessment fell due. No Owner may exempt themselves from liability for such Assessments or waive or otherwise escape liability for the Assessments for non-use of the Common Area, abandonment of their Lot, or any other means. The personal obligation to pay any such Assessments, together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall pass to the successors in title of such Owner whether or not expressly assumed in writing by such successors; provided that such personal obligation with respect to any Assessments and other costs and charges arising prior to the date of any judicial or non-judicial foreclosure of any bona fide mortgage or deed of trust shall not pass to mortgagees of such Owner who succeed to the title of such Owner, by virtue of such judicial or non-judicial foreclosure; however, any such mortgagee shall have a personal obligation to pay any Assessments or other costs or charges arising on or after the date of such foreclosure.

11.2 Purpose of Assessments. Subject in all respects to the provisions of Section 11.1 hereof, the Assessments levied by the Association shall be used, in part, for the purpose of: (1) promoting the recreation, comfort, health, safety and welfare of the Members of the Association and/or the residents of the Residential Property; (2) managing the Common Area; (3) enhancing the quality of life in the Residential Property and the value of the Residential Property, and in particular for the improvement and maintenance of the properties, services and facilities devoted and related to the use and enjoyment of the Residential Property including, but not limited to, the payment of taxes on the Common Area and any improvements in the Area of Common Responsibility, insurance in connection with the Common Area and the Area of Common Responsibility, and the repair, replacement and addition of improvements thereto; (4) paying the cost of labor and equipment (including the expense of leasing any equipment) with respect to the Common Area and the Area of Common Responsibility; (5) carrying out the powers and duties of the Board of Directors of the Association as set forth in this Declaration and in the Articles of Incorporation and By-Laws, including, without limitation, the purchase of insurance coverage pursuant to this Declaration; (6) for paying any assessments or charges which may be payable by the Owners or the Association to any master association, pursuant to any declaration or restrictive covenants covering the Residential Property as of the date this Declaration is first recorded in the Records; and (7) for carrying out the purposes of the Association, as stated in the Articles of Incorporation and this Declaration, including payment of Common Expenses.

11.3 Annual Assessments. The Board of Directors of the Association shall establish an annual budget in advance for each fiscal year, and such budget shall project all expenses anticipated by the Board of Directors for the purposes described in Sections 11.2 and 11.9 of this Declaration. The Annual Assessment to be levied against the Members of the Association for such fiscal year shall be established by the adoption of such annual budget by the Board of Directors of the Association. However, should such Board of Directors at any time determine, in the sole discretion of such Board of Directors, that the Annual Assessments levied are or may prove to be insufficient to pay the costs of the Association in any fiscal year for any reason (including non-payment of assessments by Members of the Association), then the Board of Directors shall have the authority at any time and from time to time to levy such additional assessment or assessments as they shall deem to be necessary for that purpose and/or to increase the amount of the Annual Assessment with respect to the remainder of the applicable fiscal year.

All Annual Assessments levied against Members of the Association shall be apportioned among and paid by the Members in accordance with their respective Proportionate Shares. As used herein, the "**Proportionate Share**" of each Member of the Association (and attributable to the portion of the Residential Property owned by such Member) shall mean a fraction, the numerator of which is the Allocated Interest attributable to the portion of the Residential Property owned by such Member, and the denominator of which is the sum of the Allocated Interests attributable to all portions of the Residential Property. Subject to the provisions of Section 4.7 hereof, the Allocated Interest attributable to various portions of the Residential Property shall be determined, from time to time, as follows:

(a) The Allocated Interest attributable to any Lot (whether or not such Lot has been improved with a residential structure) shall be 1.0;

(b) The Allocated Interest attributable to any portion of the Residential Property, whether improved or unimproved, which does not constitute either (A) a Lot, or (B) a portion of the Common Area shall be equal to (i) the number of square feet of land contained in such portion, divided by (ii) 15,000. A fractional Allocated Interest attributable to any portion of the Residential Property pursuant to this Subparagraph (b) shall be rounded off to the nearest one-quarter (1/4);

(c) Notwithstanding any of the foregoing, the Allocated Interest attributable to any portion of the Residential Property which constitutes Common Area shall be zero; and

(d) Notwithstanding any of the foregoing, the Allocated Interest attributable to any portion of the Residential Property owned by Declarant and designated as private or public open space, pursuant to the applicable zoning plan or development plan therefor, as the same may exist from time to time, shall be zero.

The determination by the Board of Directors of the Association of the Allocated Interest attributable to the various portions of the Residential Property shall be conclusive and binding, absent manifest error on the part of such Board of Directors.

Each Member of the Association agrees to pay an Annual Assessment to the Association equal to the product of (i) the annual budget established by the Board of Directors of the Association with respect to the applicable fiscal year of the Association, multiplied by (ii) the Proportionate Share attributable to any portion of the Residential Property owned by such Member. All such Annual Assessments shall be paid by the Members of the Association directly to the Association (or to any entity or collection agency designated by the Association).

The failure or delay of the Board of Directors of the Association to prepare or adopt a budget for any year shall not constitute a release or waiver of a Member's obligation to pay their Proportionate Share of the applicable Annual Assessment established with respect to such year whenever the same shall be determined; and in the absence of any annual budget, each Member shall continue to pay Annual Assessments at the rate established for the previous fiscal year until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collection.

11.4 Special Assessments. In addition to the Annual Assessments authorized by Section 11.3 of this Article XI, the Association may levy in any calendar year a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction following acceptance of Common Area by the Association, unexpected repair or replacement of a capital improvement upon the Common Area or Area of Common Responsibility, including the necessary fixtures and personal property related thereto, or for maintenance of portions of the Common Area or Area of Common Responsibility and improvements thereon or for carrying out other purposes of the Association as stated in the Articles of Incorporation and this Declaration, including to cover unbudgeted expenses or expenses in excess of those budgeted; provided, that, except as otherwise provided in Section 7.3, any such Special Assessment levied by the Association shall be approved as provided in Section 11.6. Each Member of the Association agrees to pay such Member's Proportionate Share of any Special Assessments levied by the Association. All such Special Assessments shall be paid by the Members of the Association directly to the Association (or to any entity or collection agency designated by the Association). In no event or circumstance will Declarant be liable for any Special Assessments on any Lot or portion of the Residential Property owned by Declarant.

11.5 Specific Individual Assessments. Upon the affirmative majority vote of the Board of Directors of the Association, and subject to Chapter 209 of the Texas Property Code, the Association may levy Specific Individual Assessments against individual Members of the Association for: (i) reimbursement to the Association for repairs to the Common Area or the Area of Common Responsibility or improvements thereto, occasioned by the willful or negligent acts of such Member(s), or the family members, guests, invitees, tenants or occupants of such Member(s), and not the result of ordinary wear and tear; (ii) expenses (including overhead and administrative costs) relating to maintenance, repair and improvement of the Exclusive Common Areas; (iii) reimbursement to Declarant for any reserves, deposits or insurance required by the City of Bryan, Texas, Brazos County, Texas, or any other local, state or federal governmental entity relating to the Exclusive Common Areas; (iv) payment of fines, penalties or other charges imposed against an individual or separate Member relative to the failure of such Member or such Member's family members, guests, invitees, tenants or occupants to comply with the provisions of this Declaration, any applicable Supplemental Declaration, the By-Laws or any rules or regulations promulgated hereunder, including, without limitation, any costs and charges which are payable by such Member pursuant to Section 5.4 hereof. Each Member of the Association agrees to pay any Special Individual Assessment levied by the Association in accordance with this Section 11.5. All such Special Individual Assessments shall be paid by the Members of the Association directly to the Association (or to any entity or collection agency designated by the Association). In no event or circumstance will Declarant be liable for any Specific Individual Assessments on any Lot or portion of the Residential Property owned by Declarant.

11.6 Vote Required for Special Assessment. Except as otherwise provided in Section 7.3, any Special Assessment levied by the Association in accordance with Section 11.4 of this Article XI must be approved as set forth in this Section 11.6. Prior to the Termination Date, any Special Assessment levied by the Association in accordance with Section 11.4 must be approved by the Class B Membership. From and after the Termination Date, any Special Assessment levied by the Association in accordance with Section 11.4 must be approved by Members holding at least sixty-seven percent (67%) of the votes of all Members, determined in accordance with Section 4.4 hereof.

11.7 Date of Commencement of Annual Assessments and Due Date of Assessments. The obligation to pay Annual Assessments shall commence as to a Lot or portion of the Residential Property on the first day of the month following: (a) the month in which such Lot or portion of the Residential Property is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies Annual Assessments pursuant to this Article XI, whichever is later; and each such Annual Assessment or any installment thereof (if payable in installments) shall be considered delinquent if not paid within thirty (30) days after such assessment or any installment thereof is stated to be due and payable. The first Annual Assessment shall be made for the balance of the calendar year in which it is levied. The amount of the Annual Assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the Annual Assessment provided for in Section 11.3 of this Article XI as the remaining number of months in that year bear to twelve (12). The Annual Assessments for any calendar year after the year ending December 31, 2003, shall become due and payable on January 1 of such calendar year, and such assessment or any installment thereof (if payable in installments) shall be considered delinquent if not paid within thirty (30) days after such assessment or any installment thereof is stated to be due and payable. Notwithstanding the foregoing, the Board of Directors of the Association may, from time to time, at its election, provide that Annual Assessments levied by such Board be payable in monthly, quarterly, or semi-annual installments, or in single annual installments.

The due date of any Special Assessment or Specific Individual Assessment under Sections 11.4 or 11.5 of this Article XI, respectively, shall be fixed by the Board of Directors of the Association.

11.8 No Offsets. All Assessments shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason.

11.9 Reserves. The Annual Assessments shall include reasonable amounts as determined by the Board of Directors of the Association as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Area and the Area of Common Responsibility and the improvements thereon. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be held in trust for the purposes for which they were collected. Assessments collected as reserves shall not be considered to be advance payments of regular assessments.

11.10 Nonpayment of Assessments.

(a) Delinquency. Any Assessment provided for in this Declaration which is not paid in full on or before the date ("delinquency date") which is thirty (30) days after the date upon which such Assessment first became due and payable shall be deemed delinquent. The Association shall have the right to reject partial payment of an Assessment and demand full payment thereof. If any Assessment or part thereof is not paid on or before the delinquency date, the unpaid amount of such Assessment shall bear interest from the delinquency date until paid at a rate equal to the lesser of: (i) eighteen percent (18%) per annum, or (ii) the maximum lawful rate. Acceptance by the Association of partial payment of any Assessment shall not be deemed to constitute a waiver or forgiveness of the unpaid portion of such Assessment.

(b) Unpaid Amount. The unpaid amount of any Assessment shall, together with the interest thereon as provided in Section 11.10(a) of this Article XI and the cost of collection thereof, including reasonable attorneys' fees, as herein provided, constitute a continuing lien and charge on the Lot or portion of the Residential Property of the non-paying Owner subject to such Assessment, which shall bind such Lot or portion of the Residential Property in the hands of the Owner, and their heirs, executors, administrators, devisees, personal representatives, successors and assigns. The lien shall be self-operative and shall continue in inchoate form without being reserved or referenced in any deed or other document and without any other action required. Such lien shall be superior to all other liens (including Mortgage liens), except the liens of all taxes, bonds, assessments, and other levies which by law would be superior. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth (a) the amount of the delinquent sums due the Association at the time such document is executed, (b) the name of the Owner of the real property covered by such lien, as shown on the records of the Association, (c) a description of the Lot or portion of the Residential Property covered by such lien, and (d) the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien. The Association shall have the power to subordinate the lien securing the payment of any Assessment levied by the Association to any other lien. Such power shall be entirely discretionary with the Association. The personal obligation of the Owner, at the time of such Assessment, to pay such Assessment shall remain the personal obligation of such Owner and may pass to such Owner's successors in title whether or not expressly assumed by them in writing, as set forth in Section 11.1 hereinabove. The lien for the unpaid Assessments shall be unaffected by any sale or assignment of a Lot or portion of the Residential Property and shall continue in full force and effect. Such a sale shall not relieve the Owner of such real property from liability for an Assessment thereafter becoming due nor from the lien of any such subsequent Assessment.

(c) Remedies. The lien securing the payment of the Assessments shall attach to the Lot or portion of the Residential Property belonging to the non-paying Owner. The Association may institute an action at law against the Owner or Owners personally obligated to pay the Assessment and/or for the foreclosure of the aforesaid lien by judicial foreclosure, or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with Section 51.002 of the Texas Property Code, as it may be amended from time to time, in like manner as any deed of trust on real property. Subject to the requirements of Chapter 209 of the Texas Property Code, as it may be amended from time to time, in any foreclosure proceeding the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association in connection therewith. In the event an action at law is instituted against the Owner or the Owners personally obligated to pay the Assessment, subject to the requirements of Chapter 209 of the Texas Property Code, as it may be amended from time to time, there shall be added to the amount of any such Assessment the interest provided in this Section 11.10, the costs of preparing and filing the complaint in such action and the reasonable attorneys' fees incurred in connection with such action; and in the event a judgment is obtained, such judgment shall include interest on the Assessment as provided in this Section 11.10 and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action. Each Owner vests in the Association and its assigns the right and power to bring all actions at law or in equity (including, without limitation, an action in foreclosure) against such Owner or other Owners for the collection of such delinquent Assessments. Each Owner hereby grants to the Association, whether or not it is

so expressed in the deed or other instrument conveying the Lot or portion of the Residential Property to such Owner, a power of sale to be exercised in accordance with Section 51.002 of the Texas Property Code, as it may be amended, or in any manner permitted by applicable law. A foreclosure must comply with the requirements of Chapter 209 of the Texas Property Code, as it may be amended from time to time. The Association may not foreclose the assessment lien if the debt consists solely of fines and/or a claim for reimbursement of attorney's fees incurred by the Association, pursuant to Section 209.009 of the Texas Property Code.

11.11 Exempt Property. The following property subject to the Declaration shall (except as hereinafter provided) be exempt from the Assessments, charges and liens created in this Declaration:

- (a) All properties dedicated and accepted by the local public authority, public utilities and property devoted to public use, including, but not limited to any and all property owned by any school district;
- (b) All Common Area; and
- (c) All portions of the Residential Property owned by Declarant and designated as private or public open space pursuant to the applicable zoning plan or development plan therefor, as the same may exist from time to time.

Portions of the Residential Property which are exempt from the Assessments, charges and liens created by this Declaration pursuant to this Section 11.11 shall in any event be subject to all other provisions of this Declaration including, but not limited to, the use restrictions and protective covenants of this Declaration and provisions for special individual assessments as set forth herein. Owners of portions of the Residential Property which are exempt pursuant to this Section 11.11 shall be Members of the Association but shall have no voting rights in the Association with respect to ownership of such exempt portions of the Residential Property.

11.12. Declarant's Obligation for Assessments. During the Class B Control Period and thereafter, Declarant may annually elect either to pay Annual Assessments on the Lots or portions of the Residential Property owned by it, or to pay the difference between the amount of Annual Assessments collected on all other Lots or portions of the Residential Property subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 10 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of such election, the Association shall have a lien against all Lots or portions of the Residential Property owned by the Declarant to secure the Declarant's obligations under this paragraph, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Lots or portions of the Residential Property under this Article. The Declarant's obligations hereunder may be satisfied, in Declarant's sole discretion, in the form of cash or by in kind contributions of services or materials, or by a combination of these.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article X, the Declarant may, but shall not be obligated to, reduce the Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under this Section 11.12), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy and the nature thereof shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

11.13 Estoppel Information with Respect to Assessment. The Association shall upon written request, and upon receipt of a description of the portions of the Residential Property owned by an Owner, furnish to such Owner, a certificate in writing signed by an officer of the Association, setting forth whether an Assessment attributable to such portion of the Residential Property has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificates. The provisions of such certificates shall comply with the provisions of Article 207 of the Texas Property Code, as amended from time to time.

11.14 Annual Specific Maintenance Assessments. In addition to the Annual Assessments authorized by Section 11.3 of this Article XI, since the Country Club Real Property enhances the quality of life in the Residential Property and the value of the Residential Property, the Association shall also levy annual specific maintenance assessments (the "**Annual Specific Maintenance Assessments**") for the purpose of defraying, in part, the costs incurred by the Country Club Property Owner of maintaining the Country Club Real Property. The Annual Specific Maintenance Assessments shall be levied by the Association at the same time as the Annual Assessments and shall be due and payable at the same time as the Annual Assessments. All Annual Specific Maintenance Assessments received by the Association shall be remitted to the Country Club Property Owner within thirty (30) days of the Association's receipt of the payment of any such Annual Specific Maintenance Assessments. The maintenance costs incurred by the Country Club Property Owner of maintaining the Country Club Real Property shall include, but are not limited to, the costs of labor and equipment (including the expense of leasing any equipment), and irrigation and water costs but shall specifically exclude any capital repairs or improvements to the Country Club Real Property. The initial amount of the Annual Specific Maintenance Assessments shall be \$300.00 for each Golf Course Lot and \$200.00 for each Lot other than a Golf Course Lot for the first year in which they are levied. Thereafter, the Annual Specific Maintenance Assessments shall be automatically increased on an annual basis by the amount specified in writing by the Country Club Property Owner to the Association, provided that any such increase shall not exceed five percent (5%) of the amount of the Annual Specific Maintenance Assessment for the immediately preceding year. **It is specifically acknowledged by the Association and each Member that the Country Club Property Owner: (a) is an intended third-party beneficiary of the provisions of this Section 11.14 and (b) has the right to enforce the provisions of this Section 11.14 including, but not limited to, the right to enforce the payment of the Annual Specific Maintenance Assessments in the same manner as the Association is entitled to enforce the payment of all other Assessments; provided, however, the Country Club Property Owner is specifically prohibited from foreclosing on any lien securing the payment of any unpaid Annual Specific Maintenance Assessments.** The Association and each Member hereby acknowledge and agree that, neither the Association, nor any Member has: (i) any right to audit or review any books or records: (a) of the Country Club Property Owner, or (b) relating to the Country Club Property or the maintenance thereof, (ii) any ownership, equity right or profits interest of any nature whatsoever in the Country Club Property Owner or the Country Club Property (or any portion thereof), or (iii) any right to participate in, or have input with respect to, any phase of the management, operation or maintenance of the Country Club Property Owner or the Country Club Property (or any portion thereof). In no event or circumstance will Declarant be liable for any Annual Specific Maintenance Assessments on any Lot or portion of the Residential Property owned by Declarant.

ARTICLE XII

ARCHITECTURAL REVIEW COMMITTEE AND STANDARDS

12.1 Architectural Review Committee. The architectural review committee (herein sometimes hereinafter referred to as the "**Architectural Review Committee**" or the "**Committee**") shall be composed of three (3) individuals selected and appointed by the Declarant. The Committee shall perform all duties specified to be performed by the Committee pursuant to this Declaration and shall function as the representative of the Owners for the purposes consistent with the creation and preservation of the Residential Property as a first-class residential development. Any vacancy in the Committee resulting from the removal, resignation or death of any member, or otherwise, shall be filled by an individual designated by Declarant, or, subject to the written consent of Declarant, the Association.

Declarant hereby designates Michael R. Jones, Joel C. Ross and Denise Maggard as the initial members of the Committee. Declarant shall have the power to change the membership of the Architectural Review Committee from time to time, with or without cause, and notwithstanding anything to the contrary contained herein.

Each member of the Committee shall act reasonably and in good faith in performing his duties and obligations under this Article XII.

12.2 Basis of Approval. No building, structure, fence, wall, sidewalk, walkway or other improvement of any kind or nature shall be erected, placed or altered on any Lot until all final plans and specifications and a plot plan have been submitted to and approved in writing by the Committee, or a majority of its members, as to:

- (a) quality of workmanship and materials; proper facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscapings;
- (c) location with respect to topography and finished grade elevation, and relationship between and effect of location and use on neighboring Lots and improvements situated thereon;
- (d) drainage arrangements and erosion control (including, without limitation, silt fencing); and
- (e) compliance with the other standards set forth within this Declaration (and any amendments hereto).

(1) The Committee is authorized and empowered to consider and review any and all aspects of construction, construction of other improvements and location, quality and quantity of landscaping on the Lots, which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Residential Property. The Committee is permitted to consider, among other factors, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. In addition, the Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Committee. The Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of the restrictions and covenants described in this Declaration. Unless otherwise expressly provided in this Declaration, wherever the approval of the Committee is required by the provisions of this Declaration, such approval shall mean the prior written approval of the Committee.

(2) Any improvements constructed in accordance with plans and specifications approved by the Committee in accordance with its then applicable standards and requirements shall not be required to be changed because such standards are thereafter amended. However, in the event the Committee approves plans and specifications for any improvement and construction of such improvement is not commenced within one (1) year after the date of such approval, such improvement shall not be constructed unless and until the plans and specifications for such improvement are resubmitted to and approved by the Committee. Any such resubmission shall be made upon the same basis as initial submission of plans and specifications for an improvement; and such approval shall be based upon the then applicable standards and requirements of the Committee, notwithstanding that such standards and requirements may have changed from those which were applicable when the plans and specifications for such improvement were initially approved. The Committee shall review and act upon submitted plans and specifications in accordance with the applicable time periods specified in Sections 12.4 and 12.6.

12.3 Definition of Improvement. For purposes of this Declaration, "improvement" shall be broadly construed and shall mean and include, without limitation, all buildings and roofed structures (including garages), balconies, decks, patios, athletic and other recreational facilities or equipment (including playground equipment), fences, walls, poles, driveways, ponds, lakes, water wells, swimming pools, tennis courts, signs, mailboxes, exterior lighting fixtures (other than streetlights), changes in any exterior color or shape, glazing of exterior windows with mirrored or reflective glass or changes in the color or style of any existing window glazing, streets, landscaping, irrigation systems, site work (including skating, clearing, grading, and drainage), utilities, sidewalks, walks, walkways and any new construction or exterior improvement significantly altering the appearance of any of the foregoing. "Improvement" does not include (a) public streets, streetlights, utilities, walks, walkways, or (b) garden shrub replacements or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expenses in accordance with generally accepted accounting principles and which does not change exterior colors or exterior appearances. "Improvement" does include both original improvements and all later changes and improvements.

12.4 Preliminary Plan Submissions. The Architectural Review Committee is authorized and empowered to and shall consider, review, and comment on preliminary plans submitted in duplicate on an informal basis to assist Owners, developers, and prospective purchasers of portions of the Residential Property in complying with applicable covenants and restrictions and to assist in

the completion of feasibility studies undertaken by such persons or entities. If the preliminary plans and specifications are approved by the Committee, one set thereof will be retained by the Committee, and one complete set of plans will be marked "**Approved**" and returned to the applicable Lot Owner or his designated representative. If not approved by the Committee, one set of such preliminary plans and specifications shall be marked "**Disapproved**", and returned to the applicable Lot Owner or his designated representative, accompanied by a reasonable statement of items found not to comply with the provisions of this Article XII or other applicable provisions of this Declaration. The Committee's approval or disapproval, as required herein, shall be in writing. If the Committee fails to approve or disapprove such plans and specifications within forty-five (45) days after the date of submission, approval of the matters submitted shall be presumed, subject to the provisions of Section 12.6. Comments on and approvals of preliminary plans and specifications shall be binding upon the Architectural Review Committee, provided that confirming final plans and specifications are submitted to the Architectural Review Committee within ninety (90) days of such preliminary comment or approvals.

12.5 Plan Submissions. Final plans and specifications shall be submitted in duplicate to the Committee prior to the construction of any improvements on a Lot, which plans and specifications shall include, to the extent applicable to the proposed improvements as determined by the Architectural Review Committee, (i) a landscaping plan (the "**Landscaping Plan**"), and (ii) architectural plans (the "**Architectural Plans**") complying with the requirements of this Section 12.5 and the other provisions of this Declaration. The Landscaping Plan shall be prepared and sealed by a licensed professional landscape architect and shall include, without limitation, a tree survey prepared by a licensed professional surveyor or engineer and depicting the location of all Significant Trees and the locations of all proposed structures, driveways and parking areas, details for thoroughfare street edge treatment, entry areas and minimum Lot front yard treatment, and the design for all sprinkler systems. The Architectural Plans shall include:

- (a) A plat showing the location of all proposed improvements, including structures, patios, mailboxes, swimming pools, driveways, parking areas and structures, fences and walls. Existing and finished grades shall be shown at Lot corners and at corners of proposed improvements. Lot drainage provisions shall be included as well as cut and fill details if any appreciable change in the Lot contour is contemplated.
- (b) Exterior elevations of all proposed buildings and structures.
- (c) A description of exterior materials, colors, textures and shapes of all buildings and structures.
- (d) A depiction of all walkways, fences and walls, elevation changes, outdoor furniture and sculpture.
- (e) Parking areas and driveway plans.
- (f) Screening including size, location and method.
- (g) Exterior illumination, if any, including location, manufacture's fixture number and support photometric test data.
- (h) Any public street or utilities to be built with the completed engineering design for said improvements.
- (i) Dimensional floor plan of all enclosed spaces including dwelling areas and any garages or parking facilities.
- (j) Location and name of all proposed streets, alleys, walkways and easements.
- (k) Such other matters as may be required by the then applicable zoning or building codes of the City of Bryan, Texas or any other municipal or governmental authority having jurisdiction over the Lot or the Residential Property.
- (l) A plan showing the location and screening of all exterior utility meters, transformers, and other mechanical equipment.

(m) Any other data or information requested or deemed reasonably necessary by the Architectural Review Committee, including, without limitation, samples of proposed construction materials.

The Committee may defer the date for submission of any of the matters described in Section 12.5 by notice in writing to the person or entity requesting such deferral of the submission date. However, such deferral shall not constitute a waiver of the applicable submission, absent an express written waiver of such submission by the Architectural Review Committee.

12.6 Approval Procedure. At such time as the final plans and specifications are approved by the Committee, one complete set of final plans will be retained by the Committee, and one complete set of final plans will be marked "**Approved**" and returned to the Lot Owner or his designated representative. If not approved by the Committee, one set of such plans and specifications shall be marked "**Disapproved**," and returned to the applicable Lot Owner or his designated representative, accompanied by a reasonable statement of items found not to comply with the provisions of this Article XII or other applicable provisions of this Declaration. The Committee's approval or disapproval, as required herein, shall be in writing. If the Committee fails to approve or disapprove such plans and specifications within forty-five (45) days after the date of submission, approval of the matters submitted shall be presumed, subject, however, to the other provisions of this paragraph. Any material modifications or changes to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. Material modifications or changes in plans and specifications for residential improvements must be approved or disapproved in writing within forty-five (45) days after the date of submission, or such modifications or changes shall be deemed to be approved, subject, however, to the other provisions of this paragraph. Notwithstanding any of the foregoing, in no event shall any failure by the Committee to approve or disapprove any plans or specifications constitute consent or approval by the Committee to any aspects of such plans and specifications which do not comply with the express requirements set forth in this Declaration; and any approval by the Committee which is deemed to have been given by virtue of the Committee's failure to approve or disapprove any plans or specifications within a specified time shall apply only with respect to those matters which, pursuant to the terms of this Declaration, are within the judgment and discretion of the Committee and are not contrary to or in violation of the express standards set forth in this Declaration. Any variance granted by the Committee with respect to the standards set forth in this Declaration must be given by the Committee in writing and shall not be presumed or deemed to have been given by virtue of any failure by the Committee to approve or disapprove plans or specifications within a specific time frame.

The Committee is authorized and empowered to condition its approval for plans and specifications submitted to the Committee upon changes noted by the Committee on such plans and specifications (including relocation of native plants within the construction site) or upon subsequent approval by the Committee of certain items noted on such plans and specifications, such as the colors or materials for items which have not been selected by the applicable Owner. In such case, the Committee may mark the applicable plans and specifications "Approved as Noted", and such plans and specifications shall be deemed to have been approved by the Committee subject in all respects to the conditions and subsequent approvals so noted by the Committee on such plans and specifications.

All improvements approved by the Committee shall be diligently pursued to completion after the commencement of construction thereof.

12.7 Design Guidelines. The Committee may, from time to time, publish and promulgate Design Guidelines, and such Design Guidelines shall be explanatory and illustrative of the general intent of the development of the Residential Property and are intended as a guide to assist the Architectural Review Committee in policy and in reviewing plans and specifications. In any event, such Design Guidelines shall not be binding upon the Committee and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials submitted to the Committee for approval.

12.8 Variances. Upon submission of a written request for same, the Committee may, from time to time, in its sole discretion, permit Owners to construct, erect, or install Improvements which are in variance from the standards which are provided in this Declaration or which may be promulgated in the future. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community. Written requests for variances shall be deemed to be disapproved if the Committee has not expressly and in writing, approved such request within forty-five (45) days of the submission of such request. No

member of the Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the grant of any variance to any other Owner or the failure to grant any particular variance request. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder, against any other Owner.

12.9 Nonconforming and Unapproved Improvements. The Association may require any Owner, at such Owner's sole cost and expense, to restore such Owner's improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any approved improvement) if such improvements were commenced or constructed in violation of this Article XII. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal and levy the amount of the cost thereof, together with interest at the maximum rate then allowed by law, as a Specific Individual Assessment against the Lot upon which such improvements were commenced or constructed.

12.10 No Liability. Neither Declarant, any Affiliates of Declarant, the Association, the Committee, the Board of Directors, nor the officers, directors, members, employees and agents of any them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgement, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications, and every Owner of any portion of said property agrees that he will not bring any action or suit against Declarant, any Affiliates of Declarant, the Association, the Committee, the Board of Directors, or the officers, directors, members, employees and agents of any of them, to recover any such damages and hereby releases, remises, and quitclaims all claims, demands and causes of action arising out of or in connection with any such judgment, negligence or nonfeasance and, to the greatest extent permitted by applicable law, hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

12.11 Certificate of Compliance. Within forty-five (45) days after actual receipt by the Committee of an Owner's request for same and upon substantial completion of improvements, the plans and specifications for which are subject to review by the Committee, the Committee shall inspect such improvements, and if the improvements are constructed, erected, placed, or altered in accordance with approved plans and specifications, the Committee shall issue a Certificate of Compliance with respect to such improvements. No construction or improvement on any Lot shall become occupied (as defined by the City of Bryan, Texas in its Certificate of Occupancy permit) without the issuance of a Certificate of Compliance by the Committee.

12.12 Appointment and Designation. The Committee may from time to time, by the vote or written consent of a majority of its members, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons or subcommittees of the Committee, which shall have full authority to act on behalf of said Committee in all matters delegated.

12.13 Review Fee and Address. Any plans and specifications shall be submitted in duplicate, in writing, for approval, together with a reasonable processing fee as set by the Committee. The processing fee shall cover only the cost of employing non-affiliated consultants to review plans and specifications, as well as incidental expenses associated with the review process. The address of the Committee shall be the registered office of the Association, from time to time reflected in the offices of the Secretary of the State of Texas. Such address shall be the place for the submittal of any plans and specifications.

12.14 Inspection. After no less than five (5) days prior written notice to the applicable Owner, any member or agent of the Committee may from time to time at any reasonable hour or hours enter and inspect all or any part of the grounds and exterior portions of the Lot of such Owner to confirm improvement or maintenance in compliance with the provisions of this Declaration; provided, however, that in no event shall any member or agent of the Committee be entitled to enter or inspect the interior of the residence or other improvements located on an Lot.

12.15 Governmental Authorities. No improvement or addition or applicable change or alteration thereof shall be constructed, erected, placed, altered, or maintained on any of the Residential Property, including the Common Area, which is in violation of any of the laws or ordinances of the City of Bryan, Texas, or any other applicable governmental laws, rules, or regulations. Notwithstanding anything to the contrary herein contained, Declarant, any Affiliate of Declarant, the Association, the Committee, the Board of Directors and their respective officers, directors, agents, and employees shall have no obligation to enforce or to report the violation of any such law, ordinance, rule, or regulation.

12.16 No Liability for Design Defects. Plans and specifications are reviewed or approved by the Committee on the basis of aesthetic considerations only and not for adequacy of engineering or structural design, quality of materials, or compliance with applicable building codes and other governmental requirements, and by approving such plans and specifications, neither the Committee, the Association, the Board of Directors, Declarant, any Affiliates of Declarant, nor any of their respective officers, directors, members, employees, or agents assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

12.17 Limitations. Nothing contained herein shall be construed to limit the right of an Owner to do the following provided they do not violate any applicable governmental laws, rules or regulations: (a) remodel or make interior modifications or alterations to improvements on any Lot so long as such modifications or alterations do not affect the exterior appearance of the improvements and are not visible from outside the boundaries of the Lot, or (b) paint the interior of the improvements on any Lot any color desired; provided, however, modifications or alterations to interiors of screened porches, patios, or any other portions of improvements on any Lot visible from outside the boundaries of the Lot shall be subject to the prior approval of the Committee. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

ARTICLE XIII **USE GUIDELINES AND RESTRICTIONS**

13.1 Plan of Development; Applicability; Effect. Declarant has established the Residential Property as a single-family, residential development and, in furtherance of its and every other Owner's interests, has established a general plan of development for the Residential Property. The Residential Property is subject to land development, architectural, and design guidelines as set forth in Article XII. All provisions of this Declaration and of any Association rules shall also apply to each Owner of a Lot and to all occupants of any Lot, including tenants, guests, invitees, and licensees. Any lease on any Lot or portion thereof shall provide that the lessee and all occupants of the leased property shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association. Declarant promulgates the general plan of development for the Residential Property in order to protect the Owners' collective interests, the aesthetics and environment within the Residential Property, and the value and the vitality of the Residential Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires.

13.2 Permitted Uses. The Residential Property shall be used only for single-family residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association). Any Supplemental Declaration or Supplemental Declarations may impose stricter standards than those contained in this Article XIII. The Association shall have standing and the power to enforce all of the provisions of this Article XIII.

The Board shall have authority to make, modify, and to enforce standards and restrictions governing the use of the Residential Property, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners of a Lot and to all occupants of any Lot, including tenants, guests, invitees, and licensees, if any, until and unless overruled, cancelled or modified by the Board or in a regular or special meeting of the Association following a vote therefor by the vote of Members representing a majority of the total Class A votes in the Association (determined as provided in Section 4.4 hereof) and by Declarant (so long as Declarant, or an Affiliate of Declarant, owns any portion of the Residential Property or the Country Club Real Property).

13.3 Laws and Ordinances. No Owner shall permit anything to be done or kept in any building or on his Lot which will violate any applicable federal, state, or municipal public law, statute or any zoning ordinance or which will result in the cancellation of, or increase the premium(s) for, any insurance carried by the Association, or which is in violation of any law or any rule or regulation promulgated by the Board of Directors or the Architectural Review Committee. In the event of a conflict between the restrictions contained herein and the zoning ordinances of the City of Bryan, Texas, the more restrictive shall apply. No waste shall be committed in the Common Areas. Notwithstanding the foregoing, neither the Board nor the Architectural Review Committee shall have any obligation to take action to enforce such public laws, statutes, or zoning ordinances or rules.

13.4 Removal of Dirt. The digging of dirt or the removal of any dirt from any Lot is prohibited, except as necessary in conjunction with landscaping, drainage or construction of improvements thereon in accordance with plans previously approved in writing by the Architectural Review Committee.

13.5 Signs. No signs of any kind shall be erected within the Residential Property, including in, on, or around any Lot if visible from outside the Lot, without the written consent of the Architectural Review Committee. If permission is granted to any Person to erect a sign within the Residential Property, the Architectural Review Committee reserves the right to restrict the size, color, lettering and placement of such sign as well as the length of time such sign may be displayed. Notwithstanding the above, no signs, banners or similar items advertising or providing directional information with respect to activities being conducted outside the Residential Property shall be permitted to be displayed or posted within the Residential Property. The Association shall be authorized to enter upon any Lot and remove any sign, advertisement billboard or other structure displayed in violation hereof, and in doing so shall not be subject to any liability for trespass or other tort in connection with or arising from such entry or removal. Notwithstanding the foregoing: (a) the Association, the Declarant and the Country Club Property Owner shall each have the right to erect signs (including entry and directional signs) within the Residential Property as they, in their discretion, deem appropriate, (b) during the initial construction of the residence on any Lot, the builder may utilize one (1) professional sign of not more than five (5) square feet in size per Lot, acceptable to the Architectural Review Committee, for advertising and sales promotion on behalf of such builder, and (c) during the initial construction of the residence on any Lot, the Owner of such Lot may utilize one (1) professional sign of not more than five (5) square feet in size, acceptable to the Architectural Review Committee, advertising the lending institution providing financing for such construction.

13.6 Drilling and Mining Operations. Except as expressly permitted hereby, no oil drilling, water drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot; and no derrick or other structure designed for use in boring for oil, natural gas or water shall be erected, maintained or permitted upon any Lot. Notwithstanding the foregoing, the extraction of oil, natural gas or other minerals under the Residential Property shall not be prohibited, so long as such extraction is achieved by pooling, unitization, directional or horizontal drilling, or other subsurface procedures which do not involve any use of the surface of the Residential Property or any portion thereof and which do not substantially impair the subjacent support of the Residential Property or any improvements thereon.

13.7 Parking and Prohibited Vehicles.

(1) Parking. Vehicles shall be parked only in the garage or driveway serving the Lot, or in such other paved areas as have been approved by the Board for parking vehicles. A maximum of two (2) occupant vehicles may be parked outside of the garage, if any, serving the Lot. For purposes of this provision, a vehicle shall be considered an "occupant vehicle" if it is parked on the Lot four (4) or more hours per day, four (4) or more days in any seven (7) day period. There is no on-street parking except on a temporary basis for visitors and guests and in no event shall on-street overnight parking of vehicles be permitted. No garage shall be enclosed, modified or otherwise used so as to reduce its capacity for parking vehicles below that originally constructed by Declarant or approved by the Architectural Review Committee unless alternative arrangements for enclosed parking are approved by the Architectural Review Committee; however, Declarant may temporarily convert a garage into a sales or construction office, provided that it is converted back to a garage within thirty (30) days after cessation of construction and sale of new homes within the Residential Property by Declarant. Garage doors visible from any street within the Residential

Property shall remain closed except during ingress or egress or when the garage is actively being used by the Owner or occupant.

(2) Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, buses, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats or other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Architectural Review Committee. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Residential Property except within enclosed garages. Vehicles that become inoperable while on the Residential Property must be removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin or similar material and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Architectural Review Committee. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Residential Property for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas.

13.8 Occupants Bound. All provisions of the Declaration, By-Laws, any applicable Supplemental Declaration, and any rules and regulations promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Lot, including tenants, guests, invitees and licensees. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, any applicable Supplemental Declaration, and all rules and regulations of the Association. Every Owner shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

13.9 Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Residential Property, except that dogs or cats, not to exceed a total of three (3) pets, may be permitted in a Lot. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots, the owner of any portion of the Residential Property, or the Country Club Property Owner, shall be confined indoors or removed upon request of the Board. If the Owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Each Owner shall be obligated to clean up after his or her animals. At all times whenever they are outside any fenced portion of a Lot dogs shall be confined on a leash held by a responsible person and in strict compliance with any and all applicable ordinances, laws and rules. **No pets or other animals except seeing eye dogs, may enter the Country Club Property at any time.**

13.10 Quiet Enjoyment and Offensive Activities. No portion of the Residential Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Residential Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property, in each case as determined by the Board in its sole discretion. No noxious or offensive activity shall be conducted on or from any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance to the occupants of the surrounding property. The Board, in its sole discretion, shall determine what constitutes a noxious or offensive activity.

13.11 Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specially, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Residential Property. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (12) hours.

13.12 Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception or transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Residential Property, including any Lot, without the prior written consent of the Architectural Review Committee, unless completely contained within the dwelling on the Lot so as not to be visible from outside the dwelling. Such approval by the Architectural Review Committee may be conditioned upon appropriate screening of such apparatus. The Declarant and the Association shall each have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Residential Property.

13.13 Clotheslines, Garbage Cans, Collection and Other Items. No clotheslines shall be erected or installed on the exterior portion of any Lot and no clothing, linens or other material shall be aired or dried on the exterior portion of any Lot. All garbage cans, trash receptacles, above-ground storage tanks, mechanical equipment, woodpiles, yard equipment and other similar items on Lots shall be located or screened so as not to be visible from outside the boundaries of the Lot, unless otherwise approved by the Architectural Review Committee in writing. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the City of Bryan, Texas, and/or the Association, in connection with the storage and removal of trash and garbage. All Lots shall at all times be kept in a healthful, sanitary condition. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers which shall be constructed of metal, plastic or masonry materials, with tightly-fitting lids, and which shall be maintained in a clean and sanitary condition. The immediately preceding sentence shall not be deemed to prohibit the maintenance on a Lot of areas to store and create compost and other organic gardening materials for use on such Lot, so long as such areas are screened by fences, trees or shrubbery so as not to be generally visible from outside the boundaries of the Lot. No Lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which unused materials shall be promptly either removed from the Lot, or stored in a suitable enclosure on the Lot.

13.14 Firearms. The discharge of firearms within the Residential Property is prohibited. The term "firearms" includes B-B guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, neither the Association nor the Declarant shall be obligated to take action to enforce this Section, nor shall they have any liability to any Person for their failure to do so.

13.15 Tents, Mobile Homes and Temporary Structures. Except as may be permitted by the Declarant or the Architectural Review Committee in connection with the sale of Lots during initial construction within the Residential Property, no tent, shack, mobile, modular or prefabricated home, or other structure of a temporary nature shall be placed upon a Lot or any part of the Residential Property, and no residence house, garage or other structure appurtenant thereto shall be moved upon any Lot from another location. The foregoing prohibition shall not apply to restrict the construction or installation of a single utility or similar building to be permanently located on a Lot, provided it receives the prior approval of the Architectural Review Committee, in accordance with Article XII hereof. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Architectural Review Committee.

13.16 Swimming Pools. No above ground swimming pools shall be permitted except upon the prior written approval of the Architectural Review Committee. All pool service equipment shall be fenced and, in the case of any Lot, shall be located in either (i) a side yard between the front and rear boundaries of the principal dwelling, or (ii) the rear yard.

13.17 Tennis Courts. No tennis court shall be constructed except upon the prior written approval of the Architectural Review Committee.

13.18 External Sculpture, Gazebos, Greenhouses and Other Structures. No exterior sculpture, fountains, flags, outdoor furnishings, gazebos, pool pavilions, trellises, greenhouses, children's playhouses, treehouses, storage sheds or similar accessories or structures which are visible from outside the boundaries of the Lot shall be constructed without the prior written approval of the Architectural Review Committee. IN NO EVENT OR CIRCUMSTANCE WILL ANY NETTING, SCREENING OR OTHER BARRIER OF ANY TYPE OR NATURE, BE EITHER

PERMANENTLY OR TEMPORARY ERECTED OR CONSTRUCTED ON ANY PORTION OF A GOLF COURSE LOT.

13.19 Maintenance of Landscaping and Sprinkler System. Each improved Lot shall have and contain an underground water sprinkler system for the purpose of providing sufficient water to all landscaped areas. The sprinkler system for each Lot shall be designed and installed to adequately irrigate the area (the "Curbside Area") between the boundary of such Lot and the curb of any street which immediately adjoins such Lot. Each Owner of a Lot shall be responsible for the proper and adequate irrigation and maintenance of the Curbside Area which immediately adjoins such Lot, except to the extent such irrigation or maintenance is expressly undertaken by the Association. Weather permitting, areas appurtenant to buildings shall be fully landscaped within ninety (90) days from the date the building is substantially completed, or as soon thereafter as may be reasonably possible. Each Owner of a Lot shall be responsible for the landscaping and maintenance of such Lot and the landscaped areas located between such Lot and adjacent streets unless maintenance responsibility and an easement for such is conveyed to the Association and accepted by it.

13.20 Drainage Systems. Catch basins and drainage areas are intended for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. No Owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any drainage ditch, stream, pond or lake within the Residential Property or the Country Club Real Property.

13.21 Tree Removal.

(1) In General; Significant Trees. No trees shall be removed from any Lot, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article XII of this Declaration. In addition to, but not in lieu of, the foregoing, no living Significant Tree shall be purposely killed or removed from any Lot without prior written approval of the Architectural Review Committee; provided, however, that living Significant Trees may be removed from a Lot if (i) such Significant Trees are located within five (5) feet of the foundation pad or driveway areas shown on plans previously approved for such Lot by the Architectural Review Committee, or (ii) if such removal is noted on landscaping plans for the applicable Lot which have been approved in writing by the Architectural Review Committee. No Owner shall take any action that could reasonably be expected to result in the death of a Significant Tree. In the event of an intentional or unintentional violation of this Section 13.21(1), the violator may be required, by the Board, to replace the removed tree with one (1) or more comparable trees of such size and number, and in such locations, as the Board may determine necessary, in its sole discretion, to mitigate the damage.

(2) Street Trees. In addition to the requirements of Section 13.21(1), the following requirements shall apply to Street Trees. As used herein, "Street Trees" shall mean ornamental trees placed by Developer or the Association immediately adjacent to public or private streets within the Residential Property, whether within the public rights-of-way or on any Lot or portion of the Residential Property. Notwithstanding anything in Section 13.21(1) to the contrary, in no event shall an Owner purposely kill or remove a Street Tree from a Lot or any other portion of the Residential Property. No Owner shall take any action that could reasonably be expected to result in the death of a Street Tree. In the event a Street Tree becomes diseased or dies from any cause whatsoever, the Association shall replace such Street Tree with a similar sized tree of a like type and nature and the cost thereof shall be a Common Expense of the Association unless the death of such Street Tree was caused by an Owner or such Owner's tenants, guests, invitees, or licensees, in which case the cost thereof shall be assessed against such Owner as a Specific Individual Assessment pursuant to Section 11.5.

13.22 Sight Distance at Intersections. All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

13.23 Air Conditioning Units. Any air conditioning unit installed in a Lot shall be located or screened so as not to be visible from outside the boundaries of the Lot.

13.24 Lighting. As contemplated by Section 6.5, the Architectural Review Committee may require that certain exterior illumination on each Lot be equipped with sensors which cause such

lights to illuminate automatically (including, without limitation, lighting attached to the improvements on a Lot or which are intended to illuminate landscaping). Except for dignified displays of traditional holiday decorative lights, which may be displayed for one (1) month prior to and one (1) week after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved in accordance with Article XII of this Declaration. Notwithstanding the foregoing, no exterior light shall be installed or maintained within the Residential Property, which light is found to be objectionable by the Architectural Review Committee. Upon being given notice by the Committee that any exterior light is objectionable, the Owner of the Lot on which same is located will immediately remove said light or shield such exterior light in such a way that it is no longer objectionable.

13.25 Setback Lines. All structures constructed on any portion of a Lot shall comply with the stricter of (a) the then applicable planning and zoning codes of the City of Bryan, Texas with respect to front, side and rear setback lines and (b) the front, side and rear setbacks lines set forth in this Declaration, including on any Exhibits or Annexes hereto.

13.26 Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Residential Property. No exterior sculpture, fountains, flags, windsocks, banners, permanent or temporary flagpoles, birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted unless approved in accordance with Article XII of this Declaration, except (a) dignified displays of traditional holiday decorative embellishments, which may be displayed for one (1) month prior to and one (1) week after any commonly recognized holiday for which such embellishments are traditionally displayed, and (b) dignified displays of flags on a temporary basis in connection with holidays, sporting events or other similar special occasions. Notwithstanding the foregoing, no decorative embellishments shall be installed or maintained within the Residential Property, which decorative embellishments are found to be objectionable by the Architectural Review Committee. Upon being given notice by the Committee that any decorative embellishments are objectionable, the Owner of the Lot on which same is located will immediately remove said decorative embellishments.

13.27 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee pursuant to Article XII hereof. No windmills, wind generators or other apparatus for generating power from the wind shall be erected or installed on any Lot.

13.28 Prohibition Against Fishing, Swimming and Boating and Other Activities. Fishing, swimming, any boating of any type or nature, or any other activities of any type or nature, in any wetlands, streams, rivers, lakes, ponds, or other bodies of water that from time to time exist within the Residential Property, the Common Areas or the Country Club Real Property is all times strictly prohibited unless otherwise then currently agreed to, from time to time, by the Association or the Country Club Property Owner, as applicable. Any such use permitted shall be subject to such rules and regulations as may be promulgated by the Association or the Country Club Property Owner, as applicable. Neither the Association, the Declarant nor the Country Club Property Owner shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of wetlands, streams, rivers, lakes, ponds, or other bodies of water that from time to time exist within the Residential Property, the Common Areas or the Country Club Real Property. No docks, piers, or other structures shall be constructed on or over any body of water within the Residential Property or the Country Club Real Property, except such as may be constructed by the Declarant, the Association, or the Country Club Property Owner.

13.29 Playground Equipment. Without the express, prior written approval of the Committee, no jungle gyms, basketball goals, swing sets or similar playground equipment shall be erected or installed on any Lot, and in all cases when so approved the same shall be located in the rear or side yard of a Lot and may not be visible from the street in front of such Lot. Any playground or other play areas or equipment furnished by the Association or erected within the Residential Property shall be used at the risk of the user, and the Association shall not be held liable to any person for any claim, damage, or injury occurring thereon or related to use thereof.

13.30 Lawns, Fences and Retaining Walls.

(1) Lawns. Each of the front, side and backyards of each Golf Course Lot shall use only a hybrid zoysia grass variety specified by the Committee. The grass variety for any Lot other than a Golf Course Lot shall be subject to the approval of the Committee.

(2) Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Lot except as approved in accordance with Article XII of this Declaration. Screening walls shall be incorporated into and be harmonious with the overall landscaping plan developed for the Lot, as approved by the Committee. No chain link fence, wire or other open fencing will be allowed unless expressly approved by the Committee. No fence, wall or hedge shall exceed eight (8) feet in height without the prior approval of the Committee unless specifically required by the City of Bryan, Texas. Without limiting the generality of the foregoing or any other requirements in this Declaration with regard to fences, the Committee may specify the type of any “see-through” fencing required or proposed to be constructed on any Lot, including the material, gauge, weight, style and manufacturer of such “see-through” fencing, and may require that any such “see-through” fencing be constructed of aluminum or such other material as is expressly approved by the Committee in writing.

(3) Retaining Walls. Retaining walls may be employed to achieve even grades for swimming pools, driveways or foundations. The design, location and composition of all retaining walls shall be subject to approval by the Architectural Review Committee. Such retaining walls must be uniform in height with a flat top and must be constructed of materials which are consistent with the overall appearance of the associated structures. Any retaining wall with a height in excess of four (4) feet shall be constructed in accordance with plans and specifications prepared and sealed by a licensed professional engineer. No railroad ties or landscape timber shall be utilized in any areas which are within public view.

13.31 Business Use. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Residential Property; and (c) the business activity is consistent with the residential character of the Residential Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Residential Property, as may be determined in the sole discretion of the Board.

The terms “business” and “trade,” as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, manufacturing, industry, wholesale or retail business, or other activity undertaken on an ongoing basis which involves the provision or distribution of goods or services to persons other than the provider’s family, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; (iii) a license is required therefor; or (iv) such business or trade is operated by or through a non-profit legal entity or otherwise or is a non-profit business, trade or other non-profit activity. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Residential Property or its use of any Lots which it owns within the Residential Property or a business office maintained by the Association.

13.32 On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Residential Property except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association and the Country Club Property Owner shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

13.33 Golf Carts. No golf carts shall be operated within the Residential Property, any dedicated streets, or the Country Club Real Property except by Declarant, the Country Club Property Owner, members of the Country Club, or the guests or invitees of any of the foregoing (subject to satisfaction of any specification and licensing requirements and payment of any trail fees as may be required by the Country Club Property Owner from time to time).

13.34 Leasing of Lots.

(1) Definition. "**Leasing**", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

(2) Leasing Provision.

(a) General. Lots may be rented only in their entirety; no fraction or portion may be rented. All leases shall be in writing and shall be for an initial term of no less than thirty (30) days, except with the prior written consent of the Board. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing. In no event or circumstance can any "guest house" or "servants quarters" erected on any portion of a Lot, or any room or other portion of a residence be leased separate from the lease of a Lot and all the improvements thereon.

(b) Compliance with Declaration, By-Laws and Rules and Regulations. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, any applicable Supplemental Declaration, and the rules and regulations adopted pursuant to the foregoing, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any such violation.

13.35 Single Family Occupancy. No Lot shall be occupied by more than a single family. For purposes of this restriction, a single family shall be defined as (a) any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household unit, or (b) no more than two (2) persons who are not so related living together as a single household unit, and the household employees of either such household unit.

13.36 Doors and Windows. No burglar bars, steel or wrought iron bars, or similar fixtures, whether designed for decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any dwelling. No signs, numerals or other writing shall be written on or placed in the doors, windows or exterior walls of any dwelling, either temporarily or permanently, except for permanent address signs, and except that the Architectural Review Committee may, in its discretion, permit house numbers to be written temporarily on a single window of a dwelling while occupants are moving in, provided such numbers are removed within Seventy-two (72) hours after the occupants have taken occupancy. All windows of an occupied dwelling on a Lot (including, without limitation, those within or comprising part of a garage) which are visible from outside the boundaries of the Lot shall have draperies, curtains, blinds or other permanent interior window treatments, and all portions thereof which are visible outside the dwelling shall be white or off-white in color, unless otherwise approved in writing by the Architectural Review Committee. Sheets or similar temporary window treatments may be used for a short time after taking occupancy of a dwelling, provided they are removed and replaced with permanent window treatments within a reasonable time after taking occupancy of the dwelling, as determined in the sole discretion of the Architectural Review Committee.

13.37 Construction Standards. All residential structures constructed on any Lot shall meet the following requirements (except as may be otherwise permitted by approval of the Architectural Review Committee):

(1) Foundations. The foundation system shall be designed by a registered professional engineer based on recommendations given in a soils report prepared by a soils engineering firm. The soils investigation and analysis, and the design of the foundation system, shall be submitted to the Committee for approval. Any portion of the foundation that is exposed shall be covered or otherwise screened in a manner approved by the Architectural Review Committee.

(2) Roofs. The use of various roofing materials within the Residential Property shall be permitted; however, no roofing material shall be used without first obtaining the Architectural Review Committee's approval of same. All roofing materials shall be of high grade and quality and consistent with the exterior design, color and appearance of other improvements within

the Residential Property. The roof pitch on all structures constructed or placed on any Lot shall be five (5) feet by twelve (12) feet or steeper.

(3) Exterior Building Materials. Exterior building materials and colors must be approved by the Architectural Review Committee prior to installation. In addition, the exterior of improvements shall conform to the following:

(a) Improvements shall not be adorned with stylistic ornamentation or details that are out of character with the community image.

(b) Exterior wall surface materials shall be limited to two approved materials, excluding trim, unless otherwise approved in writing by the Architectural Review Committee.

(c) Brick exterior walls must be of hard fired face brick.

(d) Stucco exterior portions, to the extent permitted by the Architectural Review Committee, shall be the traditional three (3) coat process unless another process is specifically approved by the Architectural Review Committee.

(e) Chimneys shall be clad in brick, stone or other materials approved in writing by the Architectural Review Committee. No bare metal flume shall be permitted.

(f) The exterior walls of each building constructed or placed on a Lot, exclusive of glass areas, shall be comprised, in the aggregate, of at least seventy-five percent (75%) brick, brick veneer, stone, stone veneer or masonry. For purposes of the immediately preceding sentence and the other portions of this Declaration, the term "masonry" shall include stucco.

(4) Mailboxes. A plan showing the location and design of all mailboxes must be approved by the Architectural Review Committee. Housing for mailboxes shall be architecturally integrated with the individual residential project and shall be of similar construction, materials, design and form to said residential project. Any street side individual or dual service mailboxes shall be clad with brick, stone or other approved exterior material identical to the house(s) being served. Notwithstanding the foregoing, the use of cluster mailboxes and dual service mailboxes shall be required as necessary to comply with United States Postal Services requirements, and Declarant reserves the right to otherwise require the use of cluster mailboxes within all or certain portions of the Residential Community.

(5) Screening of Service Equipment. A plan showing the location and screening of all exterior utility meters, transformers and other exterior mechanical equipment must be approved by the Architectural Review Committee. No roof mounted mechanical equipment shall be permitted unless properly screened from public view or otherwise approved by the Architectural Review Committee.

(6) Utilities.

(a) Improvements situated on a Lot shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot boundary line. No privy, cesspool or septic tank shall be placed or maintained upon or in any Lot. The installation and use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type, shall require the prior written approval of the Architectural Review Committee.

(b) All telephone, electric, cable or other service lines shall be installed underground and shall meet all requirements of the City of Bryan, Texas.

(c) Grading plans shall be submitted for approval to the Architectural Review Committee prior to commencement of construction.

(7) Paint. Painted portions of all improvements and other structures on each Lot shall be repainted by the Owner thereof at his sole cost and expense as often as is reasonably necessary to insure the attractiveness and aesthetic quality of such Lot and such improvements and structures. Notwithstanding anything to the contrary contained herein, the approval of the Architectural Review Committee shall not be required for such repainting so long as neither the color scheme nor the arrangement of the colors of any improvements, nor the color of any paint

thereon is altered; but prior written approval by the Architectural Review Committee shall be required with respect to any change in the exterior colors of any improvements or the arrangement of such exterior colors from the colors or arrangement previously approved by the Architectural Review Committee.

(8) Construction Period. Once commenced, construction shall be diligently pursued to the end that it may not be left in a partially completed condition any longer than reasonably necessary.

(9) Garages. The principal dwelling on any Lot shall provide attached or detached garage space for a minimum of two (2) conventional automobiles. Garages for four (4) or more automobiles shall be permitted only with the prior written approval of the Architectural Review Committee. Except as otherwise permitted or required by this Declaration (including any Annexes hereto), each garage shall open only to the side or back of the Lot so as not to directly face a residential street; provided, however, that where the configuration of such Lot and the principal dwelling located thereon do not, in the opinion of the Architectural Review Committee, reasonably permit such garage to open directly to the side or back of such Lot, the Architectural Review Committee may permit (a) the garage on such Lot to face a residential street so long as the garage is fully or partially screened from such street in a manner acceptable to the Architectural Review Committee, (b) the garage on such Lot to open at an angle, so as to face between the front and the side of such Lot. Each garage shall include one or more doors; and no carports or similar open enclosures shall be permitted on any Lot. The immediately preceding sentence shall not be deemed to prohibit porte-cocheres which are included in addition to, and not as a substitute for, the garage on any Lot.

(10) Construction Access to Lot. Upon commencement of construction of a residence on any Lot, the Owner of such Lot shall require such Owner's builder to utilize the area designated for the construction of the garage driveway for such Lot as the primary means of access between the street providing access to such Lot and the construction site on such Lot, and to take such other reasonable measures as may be required to prevent damage to improvements constructed by Declarant within or adjacent to such Lot (e.g., sidewalks, trees, grass, sprinklers, irrigation pipes). Each Owner shall be liable to the Association for any damage caused to such improvements by such Owner's builder.

(11) Individual Design and Consideration of Other Properties. In connection with review by the Architectural Review Committee of the design, colors, and composition of exterior building materials, the Architectural Review Committee may consider the conformity of such materials to those in structures located on other Lots and the similarity of such materials to those in structures located on adjacent or nearby Lots; and the Architectural Review Committee may refuse to approve the design, colors or composition proposed for the exterior of any structure (notwithstanding previous approval by the Architectural Review Committee of identical or similar materials) if the Architectural Review Committee determines that the color, materials and/or composition of the proposed exterior materials are not generally compatible with the structures located on adjacent or nearby Lots or that the proposed exterior materials are too similar in design, color, composition or general appearance to those of structures located on adjacent or nearby Lots. It is intended that each residence located on a Lot shall be of unique design and appearance and shall be specifically designed for the Lot upon which it will be situated, taking into account the topography, tree location and shape of such Lot; and the Architectural Review Committee may refuse approval of any proposed design on the basis that the proposed design is too similar in appearance to that of an existing residence located on a Lot, a design previously approved by the Architectural Review Committee with respect to another Lot or a published plan or "stock" builder design.

13.38 Additional Construction Standards for Improvements Constructed on Lots. Notwithstanding anything to the contrary contained herein, the following restrictions and standards shall apply to improvements constructed on Lots contained within the real property described on **Exhibit A** to this Declaration (the "Original Property"); but, notwithstanding anything to the contrary contained in this Declaration, the restrictions and standards set forth in this Section 13.38 shall apply only with respect to improvements constructed on Lots contained within the Original Property and shall not apply to any other property which is subsequently subjected to this Declaration pursuant to any Supplemental Declaration unless otherwise expressly provided to the contrary in such Supplemental Declaration:

(1) Minimum Floorspace. Subject to the express provisions of this Section 13.38(1), no residential dwelling constructed on any Lot shall contain a floor area (exclusive of all porches, garages and breezeways attached to such dwelling, and exclusive of servants quarters which are not contiguous to the main quarters of the residence), determined using measurements to the outside face of the applicable walls or windows, which is smaller than the applicable minimum number of square feet for such Lot as set forth on Annex A-1 through Annex A-7 to this Declaration:

Notwithstanding the foregoing provisions of this Section 13.38(1), the residential dwelling constructed on a Lot may contain a floor area less than that prescribed above if the Architectural Review Committee determines that the design, finish treatments and overall character of the proposed residential dwelling are of such a superior quality, character and value that a lesser floor area will not adversely affect the overall quality and character of the Residential Property as a whole; provided, however, that such determination shall be within the sole, absolute and unfettered discretion of the Architectural Review Committee, and in no event shall the Owner of any Lot be entitled to obtain reduction in the minimum floor area prescribed for such Lot (absent such determination by the Architectural Review Committee), regardless of any demonstration of the superior quality, character and value of the residential dwelling proposed for such Lot; further provided, that in no event may the Architectural Review Committee, in the exercise of the discretion permitted in this paragraph, approve a reduced minimum floor area for the residential dwelling on any Lot which is less than ninety percent (90%) of the minimum floor area prescribed above (at least sixty percent (60%) of which shall be contained with the first floor of such dwelling).

(2) Front Setback. No portion of any structure or dwelling constructed on any Lot shall be located nearer to the front boundary of such Lot than the distance for such Lot as set forth on Annex A-1 through Annex A-7 to this Declaration. As used in the immediately preceding sentence, the "front boundary" of any Lot shall mean the boundary of any Lot which borders on a public or private street; provided, however, where a Lot borders on more than one public or private street, the Architectural Review Committee shall determine which boundary of such Lot constitutes the "front boundary" of such Lot for purposes of this Section 13.38(2).

(3) Rear Setbacks. No portion of any structure or dwelling constructed on any Lot shall be located nearer to the rear boundary of such Lot than the distance for such Lot as set forth on Annex A-1 through Annex A-7 to this Declaration. As used in the immediately preceding sentence, the "rear boundary" of any Lot shall mean the boundary of any Lot which is most nearly opposite of, and parallel to, the front boundary of such Lot, and any dispute or ambiguity concerning the identification of the rear boundary shall be resolved by the Architectural Review Committee.

(4) Side Setbacks. No portion of any structure or dwelling constructed on any Lot shall be located nearer to the side boundaries of such Lot than the distance for such Lot as set forth on Annex A-1 through Annex A-7 to this Declaration. As used in the immediately preceding sentence, the "side boundaries" of any Lot shall mean the boundaries of any Lot which are not the front boundary or the rear boundary of such Lot, and any dispute or ambiguity concerning the identification of the side boundaries shall be resolved by the Architectural Review Committee.

(5) Residence Orientation. The orientation of the principal residential dwelling on any Lot shall be subject to the approval of the Architectural Review Committee. It is intended that the front of each such principal residence shall face in the direction of the front boundary of such Lot as determined in accordance with Section 13.38(2); provided, however, that the Architectural Review Committee, in its sole discretion, may permit a different orientation. The Architectural Review Committee shall determine which face of a residence constitutes the "front" of such residence, for purposes of this Section 13.38(5).

(6) Garage Access. The location and configuration of the garage driveway on any Lot shall be subject to the approval of the Committee.

(7) Specific Requirements for Golf Course Lots.

(a) Fences. No wood fences shall be constructed or erected on any portion of a Golf Course Lot without the prior written approval of the Architectural Review Committee. No fence shall be constructed or erected on or adjacent to (i) any portion of any boundary of a Golf Course Lot that shares a common boundary with the Country Club Real Property, or (ii) the side boundaries (as determined in accordance with Section 13.38(4)) of any Golf Course Lot, for a distance measured from the rear boundary (as determined in accordance with Section 13.38(3)) of such Golf Course Lot to the point of any residential structure constructed on

such Golf Course Lot that is located closest to the rear boundary of such Golf Course Lot; provided, however, that subject to the prior written approval of the Architectural Review Committee and the requirements of Section 13.30(2), “see-through” fences may be constructed or erected on or adjacent to such boundaries, so long as (i) such fences do not exceed fifty-four inches (54”) in height overall (measured from existing grade), and (ii) such fences are constructed or erected in accordance with plans and specifications approved in advance, in writing, by the Architectural Review Committee; provided, further, that the Architectural Review Committee may specify the type (including material, gauge, weight, style and manufacturer) of “see-through” fences that may be constructed or erected on any Golf Course Lot, and may require that any such “see-through” fences be constructed of aluminum or such other material as is expressly approved by the Architectural Review Committee in writing.

(b) Golf Course Lot Setback Area. It is intended that the setback area associated with any boundary of a Golf Course Lot that shares a common boundary with the Country Club Real Property (the “Golf Course Lot Setback Area”) shall be kept free and clear of any and all structures, fences, landscaping (exclusive of existing native trees and other flora) and improvements of any type which would obstruct the view across the Golf Course Lot Setback Area. Accordingly, no structures, landscaping or other improvements which project more than two and one-half feet (2½’) above the existing grade level of the Golf Course Lot Setback Area shall be placed, constructed, installed or permitted to exist in the Golf Course Lot Setback Area; no berms or other changes of grade which increase by more than six inches (6”) the existing grade level of the Golf Course Lot Setback Area shall be made or performed; and no fences, walls or hedges shall be placed, grown, constructed or erected in the Golf Course Lot Setback Area; provided, however, that fences may be constructed or erected in the Golf Course Lot Setback Area in accordance with Section 13.31(7)(a); further provided, that the Architectural Review Committee, in its sole and absolute discretion may, by prior written agreement, permit (i) the placement, construction, erection, or existence in the Golf Course Lot Setback Area of structures, fences, landscaping and improvements, or (ii) berms or changes in grade within the Golf Course Lot Setback Area which would otherwise be prohibited by this Section 13.38(7) if the Architectural Review Committee reasonably determines that the applicable structure, fence, landscaping, improvement, berm or change of grade does not substantially impair the view across the applicable portion of the Golf Course Lot Setback Area and is consistent with the general aesthetics of the Golf Course Lot Setback Area and the adjoining portions of the Common Area.

(8) Additional Requirements. Each Lot shall comply with such additional restrictions and standards as may be set forth for such Lot on Annex A-1 through Annex A-7 to this Declaration.

ARTICLE XIV **EASEMENTS**

14.1 Easements for Development. There are hereby reserved unto Declarant, so long as the Declarant, or any Affiliate of Declarant, owns any of the Residential Property or the Country Club Real Property, the Association, the Country Club Property Owner and the designees of each (which may include, without limitation, the City of Bryan, Texas, Brazos County, Texas, and any utility) non-exclusive access and maintenance easements upon, across, over, and under all of the Residential Property to the extent reasonably necessary for the purpose of operating, replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, ponds, wetlands, water wells and systems, irrigation systems, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing within the Residential Property (including within easements designated for such purposes on recorded Plats of the Residential Property). The Declarant so long as the Declarant, or any Affiliate of Declarant, owns any of the Residential Property or the Country Club Real Property, reserves the exclusive right and power to grant such additional specific easements with respect to the Residential Property as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any Residential Property or the Country Club Real Property.

(1) These easements shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing structure on a Lot, and any damage to a Lot resulting from the exercise of these easements shall promptly be repaired by, and at the expense of the Person exercising the easement. The exercise of these easements shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(2) Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Residential Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the structures on any Lot then existing, nor shall any utilities be installed or relocated on the Residential Property, except as approved by the Board or Declarant.

(3) Notwithstanding anything to the contrary contained in this Section, no above ground sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Residential Property except (a) as may be approved by the Declarant, as long as it has the unilateral right to subject additional property to this Declaration, or by the Board, after the expiration of such right, (b) as may be constructed as a part of the original development and/or sales activities of the Declarant, or (c) as may be permitted by the terms of any easement affecting the Residential Property and recorded prior to the recording of this Declaration.

(4) The easements provided for in this Section shall in no way adversely affect any other recorded easement on the Residential Property, nor shall they be exercised in any manner which materially restricts or interferes with the use and development of the Residential Property.

14.2 Easements to Serve Additional Property. The Declarant hereby reserves for itself, the Country Club Property Owner, and their respective duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of: (i) the property described on **Exhibit A**, (ii) any property described in any Supplemental Declarations, (iii) such additional real property whether or not such property is made subject to this Declaration, and (iv) the Country Club Real Property. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such properties. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property.

14.3 Easements for Cross-Drainage. The Residential Property shall be burdened with easements for drainage of storm water runoff from other portions of the Residential Property and the Country Club Real Property; provided, however, no Person shall alter the drainage on any Lot so as to materially increase the drainage of storm water onto adjacent portions of the Residential Property or the Country Club Real Property without the consent of the owner of the affected property.

14.4 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot (a) for emergency, security, and safety reasons, (b) to perform maintenance pursuant to this Declaration, (c) to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, and rules applicable to the Residential Property, and (d) to carry out the functions, duties and obligations of the Association hereunder, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard, including, but not limited to flooding of the Residential Property or the Country Club Real Property, in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any structure on a Lot without permission of the Owner, except by emergency personnel acting in their official capacities.

14.5 Watering Easement. Any portion of the Residential Property immediately adjacent to any watered area of the Country Club Real Property is hereby burdened with a non-exclusive easement in favor of the Country Club Real Property for overspray of water from the watering system serving the Country Club Real Property. Under no circumstances shall any Lot Owner, the Association, Declarant or the Country Club Property Owner have any responsibility or be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

14.6 Retrieval of Golf Balls. There is hereby reserved to the Country Club Property Owner and its employees, representatives, members and invitees a nonexclusive easement for ingress and egress over all portions of the Residential Property for flight and retrieval of golf balls including, without limitation, the right to enter a Lot or any Common Area for the purpose of

retrieving a golf ball.

14.7 Maintenance of Walls. Declarant contemplates the construction by Declarant of brick walls (the "Walls") on portions of Lots which border on certain public streets within the Residential Property or on certain Common Areas. Declarant and the Association shall have a perpetual easement over and across each Lot for the placement, construction, repair, maintenance, and replacement of the Walls, and no Owner shall have the right (a) to object to the placement of any Wall upon such Owner's Lot, provided that such Wall is constructed within three feet (3') of the boundary line between such Lot and the applicable street right-of-way line or Common Area, (b) to destroy or alter any Wall, or (c) without the prior written consent of the Board, to construct, place or erect any structure or improvement, or to install any landscaping, within the area located between any Wall and the right-of-way line of such public streets or such Common Area. Following the initial construction of any Wall by Declarant, the Association shall be responsible for the repair, maintenance and replacement of such Wall and for the maintenance, care and replacement of any landscaping located between any Wall and the applicable right-of-way or Common Area; and the Association shall have a perpetual easement over and across such portions of each Lot as may be reasonably necessary for the performance of such obligations. Declarant shall have no obligation to construct any Walls; and neither the establishment of the right to construct such Walls, nor the construction of some Walls by Declarant, shall be construed as an obligation on the part of Declarant to construct any Walls or additional Walls.

ARTICLE XV **DECLARANT'S RIGHTS**

15.1 Right of Transfer. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Records.

15.2 Construction and Sale Activities. So long as construction and initial sales of Lots shall continue on any portion of the Residential Property, the Declarant may maintain and carry on upon portions of the Residential Property such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant shall have easements for access to and use of such facilities.

15.3 No Recording Without Declarant's Consent. No person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Residential Property without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

15.4 Option to Dedicate Certain Property. Notwithstanding any contrary provision of this Declaration, Declarant shall have the right from time to time, without the consent of any other party, to dedicate to the City of Bryan, Texas, or the applicable political subdivision thereof, for use as a public park or similar purposes, or for public street purposes, all or any portion of the Residential Property which is owned by Declarant and which is not contained within any Lot or Lots. Neither the Association nor any Owner shall be entitled to any consideration as a result of any such dedication by Declarant. The right of Declarant to dedicate portions of the Residential Property, as provided in this Section 15.4, shall apply only with respect to portions of the Residential Property which are owned by Declarant; and in no event shall Declarant or the Association be permitted to dedicate for public use any portion of the Residential Property which is owned by the Association or by any Owner other than Declarant except as otherwise provided in Section 5.8. Declarant shall not have any obligation to dedicate any property for public use pursuant to this Section 15.4, and any election to do so shall be at the sole and absolute discretion of Declarant.

15.5 No Amendment or Modification Without Declarant's Consent. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of this Declaration, any Supplemental Declaration, any guidelines promulgated by the Architectural Review Committee, or any rules established by the Board (whether pursuant to Section 5.3, Section 13.2 or otherwise) shall be effective without prior notice to and the written approval of Declarant so long as the Declarant, or any Affiliate of Declarant, owns any portion of the Residential Property or the Country Club Real Property. This Article may not be amended without the written consent of the Declarant. The rights

contained in this Article shall terminate 40 years from the date this Declaration is recorded in the Records, or when the Country Club Property is no longer used as the Country Club, whichever is the later to occur. In the event of any conflict or inconsistency between: (i) this Section 15.5, and (ii) any other provisions of this Declaration, the provisions of this Section 15.5 shall control.

ARTICLE XVI

ADDITIONAL GOLF COURSE DISCLAIMERS

16.1 Disclaimers Regarding Golf Course. Except as may be specifically provided in this Declaration, all Lot Owners are hereby advised that no representations or warranties have been or are made by Declarant, any Affiliate of Declarant, the Country Club Property Owner or the Association with regard to the present or future ownership, operation, use or configuration of the golf course constructed or to be constructed upon the Country Club Real Property, whether or not depicted on any plat or any land use plan, sales brochure or other marketing display or material and no purported representation or warranty, written or oral, in such regard shall ever be effective without an amendment hereto executed by the parties hereto or their respective successors.

16.2 Disturbances, Nuisances and Operation of the Country Club. Each Owner and resident of any portion of a Lot or the Residential Property, acknowledges and agrees that: (a) portions of the Residential Property, including, but not limited to, Golf Course Lots, are adjacent to or near the Country Club Real Property, the Country Club and related facilities; (b) the clubhouse, parking lots and other related facilities, which are part of the Country Club Property, have exterior lighting and amplified exterior sound, may be used for entertainment and social events on various days of the week, including weekends, during various times of the day, including without limitation, early morning and late evening hours; (c) golf course-related activities, including without limitation, regular course play, may be allowed during all daylight hours hereof up to seven (7) days a week, and golf tournaments may be conducted at any time during the year; (d) from time to time golf course-related activities, including without limitation, tournaments and special events, may be allowed during nighttime and early-morning hours; (e) large numbers of people may be entering, exiting and using the Country Club Property and the Country Club during various times of the day, including early morning and late evening hours, seven (7) days a week; (f) water hazards, the clubhouse, maintenance facilities and other installations located on the Country Club Real Property may be attractive nuisances to children. Each Owner and resident of a Lot or portion of the Residential Property, acknowledges and agrees that the operation and maintenance of the Country Club Property and Country Club will require that maintenance personnel and other workers who operate, service and maintain the Country Club Property may commence work relating to the operating and maintenance of the golf course before sunrise and after sunset on a daily basis, and that the operation, maintenance and use of the Country Club Property may entail the operation and use of the following: (a) noisy power equipment such as tractors, lawn mowers and blowers on various days of the week, including weekends, during various times of the day, including, without limitation, early morning and late evening hours, and for seasonal maintenance, such as golf course overseeding, which may be performed from time to time, twenty-four hours a day; (b) sprinkler and other irrigation systems, some using effluent, in operation during the day and at night; (c) electric, gasoline or other power driven vehicles and equipment used by maintenance and operations personnel; (d) application of pesticides and fertilizing chemicals; and (f) refuse removal trucks, delivery trucks, service vehicles, golfer's vehicles and other vehicles entering and exiting the Country Club Real Property on various days of the week, including weekends, during various times of the day, including, without limitation, early morning and late evening hours. Each Owner and resident of any Lot or any portion of the Residential Property, acknowledges that due to the proximity of portions of the Residential Property to the Country Club Property, nuisances, hazards or injuries to persons and property may occur on the Residential Property as a result of use of the Country Club Property, or as a result of any other golf course-related activities and that play on the golf course may result in damage or injury to persons or property as a result of golf balls leaving the golf course, including, without limitation, damage to windows and exterior areas of the improvements constructed upon the Residential Property, damage to automobiles and other personal property of Owners, injury to residents living within the Residential Property and/or their guests, whether outdoors or within any improvements to the Lots. Each Owner and resident of a Lot or any portion of the Residential Property covenants and agrees for himself, herself or itself, its family members, guests, tenants, successors and assigns that he, she or it does knowingly and voluntarily assume all risks associated with the foregoing, including, but not limited to, the risks of nuisance, inconvenience and disturbance, as well as property damage or personal injury arising from errant golf balls or actions or omissions incidental to the use of the Country Club Property for any golf course-related activities and hereby releases and holds harmless and agrees to defend the Declarant, Affiliates of Declarant, the Country Club Property Owner and the Association, and their respective partners, owners, directors, officers, employees, agents, members, invitees, licensees, contractors,

successors and/or assigns, from time to time, or at any time, from all claims, causes of action, losses, damages, costs or expenses (including attorneys' fees and costs of investigation and litigation) associated therewith; and that neither Declarant, any Affiliate of Declarant, the Country Club Property Owner, the Association, nor any of their respective partners, owners, directors, officers, employees, agents, members, invitees, licensees, contractors, successors and/or assigns shall be responsible or accountable for, or shall have any liability for any claims, causes of action, losses, damages, costs or expenses (including attorneys' fees and costs of investigation and litigation) arising in connection with or associated with any nuisance, inconvenience, disturbance, property damage or personal injury arising from errant golf balls, the application of pesticides, fertilizing chemicals and the use of effluent to irrigate the Country Club Real Property, or actions or omissions incidental to golf course-related activities or any other activities on or about the Country Club Property.

ARTICLE XVII

GENERAL PROVISIONS

17.1 Term. This Declaration shall run with and bind the Residential Property, and shall inure to the benefit of and shall be enforceable by the Association, any Owner, or the Country Club Property Owner, their respective legal representatives, heirs, successors, and assigns, for a term of forty (40) years from the date this Declaration is recorded in the Records. After such time, this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by Owners holding at least sixty-seven percent (67%) of the total Class A Membership votes (determined in accordance with Section 4.4 hereof), has been recorded in the Records within the year preceding each extension, agreeing to terminate this Declaration, in which case this Declaration shall be terminated as specified therein.

17.2 Amendment.

(1) By Declarant. Until conveyance of the first Lot by Declarant to any Person, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration, if such amendment is (i) for the purpose of revising the description of the Country Club Real Property as set forth on **Exhibit B** hereto to include additional real property within the Country Club Real Property or to otherwise make such changes in the configuration of the Country Club Real Property as Declarant may desire at any time and from time to time so long as such changes do not materially adversely affect any Lot or portion of the Residential Property not owned by Declarant (unless such other Owner consents), (ii) necessary to correct typographical errors, (iii) necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (iv) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (v) required by an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans to enable it to make, purchase, insure or guarantee Mortgage loans on the Lots; or (vi) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Furthermore, so long as the Declarant, or any Affiliate of Declarant, owns any part of the Residential Property or the Country Club Real Property, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right or obligation of any Owner.

(2) By Owners. Except as provided in Section 17.2 (1) above, but subject to Section 15.5, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners holding at least sixty-seven percent (67%) of the total Class A Membership votes (determined in accordance with Section 4.4 hereof); provided, however, that any amendment to this Declaration that has a material adverse effect upon any right or obligation of the Country Club Property Owner shall require the written approval of the Country Club Property Owner.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

17.3 Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Records, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of

conditions or circumstances operate to amend any provisions of this Declaration. If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

17.4 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications, and this Declaration shall be construed as if such invalid provision had never comprised a part of this Declaration. Furthermore, in lieu of such invalid provision, there shall automatically be added to this Declaration a provision as similar in terms to such invalid provision as may be possible and still be valid.

17.5 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 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

17.6 Mortgagee Rights. Notwithstanding any other provision contained in this Declaration:

In the event that any Owner or Mortgagee furnishes a written request to the Association specifying the name and address of the Mortgagee and of the Lot in which it holds an interest, the Association shall give written notice to the Mortgagee of any default of the Owner of such Lot in performing or observing any of the terms, conditions, or agreements contained in this Declaration prior to taking any enforcement action. The Mortgagee shall have the right (but not the obligation) to remedy the default. Neither the Declarant nor the Association shall take any action with respect to the default, including, without limitation, any action to impose or enforce a lien against the property of the defaulting Owner, unless the default remains unremediated for a period of 30 days after the Mortgagee's receipt of the written notice. If, however, the default is not reasonably susceptible of being remedied within 30 days after the Mortgagee's receipt of the notice, the Mortgagee shall have such additional time to remedy or cause the remedy of the default as may be reasonable not to exceed 90 days, provided that the Mortgagee has given written notice to the Association of its intent to remedy the default and has commenced efforts to remedy the default within the initial 30-day period and is thereafter diligently prosecuting such cure to completion.

17.7 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the Declarant (so long as Declarant, or an Affiliate of Declarant, owns any portion of the Residential Property or the Country Club Real Property), or thereafter by a vote of Owners holding at least sixty-seven percent (67%) of the total Class A Membership votes (determined in accordance with Section 4.4 hereof). This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article XI; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

17.8 Compliance and Nonwaiver. Every Owner and occupant of any Lot or any portion of the Residential Property shall comply with this Declaration. Failure to comply with this Declaration shall be grounds for an action to recover sums due, for damages or injunctive relief (including specific performance), or for any other remedy available at law or in equity, by the Declarant, the Country Club Property Owner, the Association or, in the proper case, by any aggrieved Owner(s), subject to the limitations otherwise set forth in this Declaration. Failure by the Declarant, the Country Club Property Owner, the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter with respect to the same or any subsequent breach or violation of the applicable covenant, condition or restriction.

17.9 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to such Owner's Lot, or any portion thereof or interest therein, shall give the Board at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor

shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the later of the date of transfer of title and the date upon which such notice is received by the Board, notwithstanding the transfer of title.

17.10 Notices. Any notice or communication required or permitted to be provided hereunder by the Association or Declarant to any Owner will be effectively given only if in writing and shall be deemed received two (2) days after depositing in the United States Mail, postage prepaid, addressed to the Owner at the address then shown (as of the date of such deposit) on the books and records of the Association; provided, however, that in lieu of such notice by United States Mail, the Declarant or the Association may effect the same by personal delivery to such address of the Owner as is shown on the books and records of the Association. Each Owner shall have the right to change his or her address by notice to the Association given in accordance with the By-Laws.

Any notice or communication required to be given hereunder by an Owner to the Declarant or the Association shall be effectively given only if in writing and shall be deemed received two (2) days after deposit in the United States Mail, registered or certified mail, postage prepaid, return receipt requested, addressed to Declarant and the Association as follows:

If to Declarant:

TAC Realty, Inc.
1111 Briarcrest Drive, Suite 300
Bryan, Texas 77802
Attention: President

If to the Association:

Miramont Residential Community Owners Association, Inc.
1111 Briarcrest Drive, Suite 300
Bryan, Texas 77802
Attention: President

The Declarant and the Association shall have the right to change the respective addresses hereunder for purposes of notices by filing an instrument in the Records pursuant to Section 209.004 of the Texas Property Code, as amended from time to time, referring to this Declaration and setting forth the new address to which notices are to be forwarded pursuant to Section 209.004 of the Texas Property Code, as amended from time to time.

17.11 Management Certificates. The Association shall record in Brazos County, Texas, such management certificate, and amendments thereto, as are required under Section 209.004 of the Texas Property Code, as amended from time to time.

17.12 Books and Records and Other Information Regarding the Association. The books and records of the Association shall be made available to an Owner for inspection in accordance with the provisions of Section 209.005 of the Texas Property Code, as amended from time to time. The Association shall provide such information as is required pursuant to the terms of Sections 207.003-207.005 of the Texas Property Code, as amended from time to time. The Association may charge a reasonable fee to the Owner on whose behalf such information is being provided.

17.13 Limitation of Restrictions on Declarant. Declarant is undertaking the work of developing land and construction of incidental improvements upon the Residential Property. The completion of that work and the sale or other disposal of such developed land is essential to the establishment and welfare of the Residential Property as a residential development. In order that said work may be completed and the Residential Property be established as a fully occupied residential development as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its Affiliates, its contractors, or subcontractors from doing to the Residential Property or any other property encumbered by this Declaration, whatever is reasonably necessary or advisable in connection with the completion of said work; or
- (b) Prevent Declarant, or its Affiliates, or its representatives from erecting, constructing and maintaining on any part or parts of the Residential Property, such structures as may be reasonable and necessary for the conduct of its business or completing said work

and establishing the Residential Property as a residential development and disposing of the same in parcels by sale, lease, or otherwise; or

(c) Prevent Declarant or its Affiliates, from conducting on any part of the Residential Property such business or completing said work; or

(d) Prevent Declarant, or its Affiliates, from maintaining such sign or signs on any of the Residential Property as may be necessary for the sale, lease or disposition thereof.

The foregoing limitations of the application of the restrictions to Declarant and Declarant's Affiliates, shall terminate upon the sale or conveyance of Declarant's entire interest in the Residential Property. Any action taken by Declarant pursuant to any provision of this Section 17.13 will not unreasonably interfere with any Owner's rights and use of his Lot.

17.14 Termination of Responsibility of Declarant. If Declarant should convey all, or substantially all, of its right, title and interest in and to the Residential Property to any partnership, individual or individuals, corporation or corporations, that is not an Affiliate of Declarant, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant and shall succeed to all of the rights and powers of the Declarant hereunder.

17.15 Construction. The headings contained in this Declaration are for reference purposes only and shall not constitute substantive material for purposes of construing the meaning of the terms and provisions of this Declaration. Except as expressly otherwise set forth herein, references in this Declaration to numbered Articles and Sections refer to the applicable Articles and Sections of this Declaration. The word "including" shall mean "including, without limitation."

17.16 Disputes. Matters of dispute or disagreement between Owners, or between any Owner and the Association, with respect to interpretation or application of the provisions of this Declaration, shall be determined by the Board of Directors, whose reasonable determination shall be final and binding upon all Owners.

17.17 Interest. Nothing contained in this Declaration shall authorize the collection of interest in excess of the maximum amount permissible under applicable law. If from any circumstance whatsoever, interest would otherwise be payable in amounts which exceed the maximum lawful rate, the applicable interest payable shall be reduced to the maximum amount permitted under applicable law; and if from any circumstances the Association or any other party shall ever receive pursuant to this Declaration anything of value deemed to be interest by applicable law which is in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of principal and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the party paying the same. All interest paid or agreed to be paid under the terms of this Declaration shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the applicable indebtedness so that the interest thereon does not exceed the maximum amount permitted by applicable law. The term "applicable law", as used herein shall mean applicable laws of the State of Texas or the applicable laws of the United States of America, whichever laws allow the greater rate of interest.

17.18 Conflicts. In the event of any conflicts or inconsistencies between the terms of the Articles of Incorporation, the By-Laws and the terms of this Declaration, the terms of this Declaration shall control and govern.

17.19 Use of Word "Miramont". No Owner, tenant, or licensee of any Owner or occupant of any Lot, other than the Declarant, shall use the words "Miramont" or any combination or derivative thereof in the name of any commercial or residential building or any commercial or residential business or enterprise or in any printed or promotional material without the prior written consent of (a) the Country Club Property Owner and (b) (i) the Declarant, during the period prior to the date (the "Divestiture Date") upon which title to all Lots previously owned by Declarant has been conveyed by Declarant to third parties (other than any third party which has acquired substantially all of Declarant's interest in the Residential Property and has expressly assumed Declarant's obligations hereunder), or (ii) the Association, during the period from and after the Divestiture Date; provided, however, without such consent, Owners, tenants, licensees, or occupants of any portion of the Residential Property may use the terms "Miramont" in printed or promotional material, where

such term is used solely to specify that such Owner's residence is located within the Miramont subdivision or on a street which includes the name Miramont.

The undersigned Declarant has executed this Declaration this 1st day of July, 2003.

Declarant:

TAC Realty, Inc., a Texas corporation

By: _____

Name: Donald A. Adam

Title: Chairman and Chief Executive Officer

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 1st day of July, 2003, by Donald A. Adam, the Chairman and Chief Executive Officer of TAC Realty, Inc., a Texas corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

EXHIBIT A

(Legal Description of Residential Property)

EXHIBIT B

(Legal Description of Country Club Real Property)

[ANNEX A-]

Additional Construction Standards for Miramont Section 5

The Block and Lot designations set forth in this Annex A- shall mean and refer to the designations for such Blocks and Lots set forth on the Final Plat (the "Plat") for Miramont Section 5, recorded on _____, 2003, in Volume _____, Page _____ of the Records.

1. Minimum Floorspace.

<u>Lots</u>	<u>Minimum Floor Area</u>
Block 14, Lots 1-5, 7-14	5,000 square feet, at least 3,000 square feet of which shall be contained within the first floor
Block 14, Lots 6, 15-16	4,000 square feet, at least 2,400 square feet of which shall be contained within the first floor

2. Front Setbacks.

<u>Lots</u>	<u>Front Setbacks</u>
Block 14, Lots 1-16	35 feet

3. Rear Setbacks.

<u>Lots</u>	<u>Rear Setbacks</u>
Block 14, Lots 1-16	45 feet

4. Side Setbacks.

<u>Lots</u>	<u>Side Setbacks</u>
Block 14, Lots 1-7	20 feet right setback 15 feet left setback
Block 14, Lots 8-16	15 feet right setback 20 feet left setback

The right setback shall be measured from the right boundary of the Lot, as viewed from the street which provides access to such Lot, and the left setback shall be measured from the left boundary of the Lot, as viewed from the street which provides access to such Lot. Any dispute or ambiguity concerning the identification of the right boundary and left boundary of a Lot shall be resolved by the Architectural Review Committee.

5. Garage Access. The location and configuration of the garage driveway on any Lot shall be subject to the approval of the Committee. Without limitation of the foregoing, the garage driveway for Block 14, Lots 1 through 7 shall be located within the right setback of such Lots, and the garage driveway for Block 14, Lots 9 through 16 shall be located within the left setback of such Lots.

6. Golf Course Lots. Block 14, Lots 1 through 16 are hereby identified as "Golf Course Lots" for the purposes of this Declaration.

ANNEX A-1

Additional Construction Standards for Miramont Section 6

The Block and Lot designations set forth in this Annex A-1 shall mean and refer to the designations for such Blocks and Lots set forth on the Final Plat (the "Plat") for Miramont Section 6, recorded on June 26, 2003, in Volume 5394, Page 283 of the Records.

1. Minimum Floorspace.

<u>Lots</u>	<u>Minimum Floor Area</u>
Block 15, Lots 1-10 Block 16, Lots 1-7	4,000 square feet, at least 2,400 square feet of which shall be contained within the first floor

2. Front Setbacks.

<u>Lots</u>	<u>Front Setbacks</u>
Block 15, Lots 1-10 Block 16, Lots 1-7	35 feet

3. Rear Setbacks.

<u>Lots</u>	<u>Rear Setbacks</u>
Block 15, Lots 1-10 Block 16, Lots 1-7	50 feet

4. Side Setbacks.

<u>Lots</u>	<u>Side Setbacks</u>
Block 15, Lots 1-4	20 feet right setback 20 feet left setback
Block 15, Lots 5-10	20 feet right setback 15 feet left setback
Block 16, Lots 1-7	20 feet right setback 20 feet left setback

The right setback shall be measured from the right boundary of the Lot, as viewed from the street which provides access to such Lot, and the left setback shall be measured from the left boundary of the Lot, as viewed from the street which provides access to such Lot. Any dispute or ambiguity concerning the identification of the right boundary and left boundary of a Lot shall be resolved by the Architectural Review Committee.

5. Garage Access. The location and configuration of the garage driveway on any Lot shall be subject to the approval of the Committee. Without limitation of the foregoing, the garage driveway for Block 15, Lots 1 through 10 and Block 16, Lots 1 through 7 shall be located within the left setback of such Lots.

6. Golf Course Lots. Block 15, Lots 1 through 10 and Block 16, Lots 1 through 7 are hereby identified as "Golf Course Lots" for the purposes of this Declaration.

ANNEX A-2

Additional Construction Standards for Miramont Section 9

The Block and Lot designations set forth in this Annex A-2 shall mean and refer to the designations for such Blocks and Lots set forth on the Final Plat (the "Plat") for Miramont Section 9, recorded on June 26, 2003, in Volume 5394, Page 286 of the Records.

1. Minimum Floorspace.

<u>Lots</u>	<u>Minimum Floor Area</u>
Block 2, Lots 1-17	3,000 square feet, at least 2,000 square feet of which shall be contained within the first floor

2. Front Setbacks.

<u>Lots</u>	<u>Front Setbacks</u>
Block 2, Lots 1-16	30 feet
Block 2, Lot 17	25 feet

3. Rear Setbacks.

<u>Lots</u>	<u>Rear Setbacks</u>
Block 2, Lots 1-7 and 17	25 feet
Block 2, Lots 8-16	30 feet

4. Side Setbacks.

<u>Lots</u>	<u>Side Setbacks</u>
Block 2, Lots 1-17	15 feet

5. Golf Course Lots. Block 2, Lots 7 through 17 are hereby identified as "Golf Course Lots" for the purposes of this Declaration.

ANNEX A-3

Additional Construction Standards for Miramont Section 10

The Block and Lot designations set forth in this Annex A-3 shall mean and refer to the designations for such Blocks and Lots set forth on the Final Plat (the "Plat") for Miramont Section 10, recorded on June 26, 2003, in Volume 5394, Page 284 of the Records.

1. Minimum Floorspace.

<u>Lots</u>	<u>Minimum Floor Area</u>
Block 3, Lots 1-11	3,000 square feet, at least 2,000 square feet of which shall be contained within the first floor

2. Front Setbacks.

<u>Lots</u>	<u>Front Setbacks</u>
Block 3, Lots 1-3, 7-11	30 feet
Block 3, Lots 4-6	25 feet

3. Rear Setbacks.

<u>Lots</u>	<u>Rear Setbacks</u>
Block 3, Lots 1-6	25 feet
Block 3, Lots 7-11	35 feet

4. Side Setbacks.

<u>Lots</u>	<u>Side Setbacks</u>
Block 3, Lots 1-11	15 feet

5. Golf Course Lots. Block 3, Lots 5 through 10 are hereby identified as "Golf Course Lots" for the purposes of this Declaration.

ANNEX A-4

Additional Construction Standards for Miramont Section 11

The Block and Lot designations set forth in this Annex A-4 shall mean and refer to the designations for such Blocks and Lots set forth on the Final Plat (the "Plat") for Miramont Section 11, recorded on June 26, 2003, in Volume 5395, Page 89 of the Records.

1. Minimum Floorspace.

<u>Lots</u>	<u>Minimum Floor Area</u>
Block 1, Lots 1-9	2,000 square feet, at least 1,500 square feet of which shall be contained within the first floor
Block 1, Lots 10-15	2,000 square feet, at least 1,400 square feet of which shall be contained within the first floor

In addition, no residential dwelling constructed on any Lot shall contain a floor area (exclusive of all porches, garages and breezeways attached to such dwelling, and exclusive of servants quarters which are not contiguous to the main quarters of the residence), determined using measurements to the outside face of the applicable walls or windows, which is larger than 4,000 square feet; provided, however, a residential dwelling constructed on a Lot may contain more than 4,000 square feet if the Architectural Review Committee determines that the design, finish treatments and overall character of the proposed residential dwelling will not adversely affect the overall quality and character of the Residential Property as a whole; provided, however, that such determination shall be within the sole, absolute and unfettered discretion of the Architectural Review Committee.

2. Front Setbacks.

<u>Lots</u>	<u>Front Setbacks</u>
Block 1, Lots 1-15	25 feet

3. Rear Setbacks.

<u>Lots</u>	<u>Rear Setbacks</u>
Block 1, Lots 1-8	25 feet
Block 1, Lots 9-15	30 feet

4. Location of Residential Dwellings on Lots.

(a) Definitions. As used in this Annex A-4, the following words shall, unless the context shall otherwise clearly indicates or prohibits, have the following meanings:

- (1) "Residence" shall mean the principal residential dwelling constructed or to be constructed on a Lot.
- (2) The "Left Side" of any Residence shall mean the left side of such Residence, as viewed from the front of such Residence; and the "Left Side" of any Lot shall mean the left side of such Lot, as viewed from the street which provides access to such Lot.
- (3) The "Right Side" of any Residence shall mean the right side of such Residence, as viewed from the front of such Residence; and the "Right Side" of any Lot shall mean the right side of such Lot, as viewed from the street which provides access to such Lot.

- (4) The “Courtyard Side” of any Residence shall mean, with respect to such Residence, the side of such Residence designated as the Courtyard Side pursuant to Section 4(b) of this Annex A-4. The Courtyard Side of a Residence shall be either the Left Side or the Right Side of such Residence.
- (5) The “Privacy Side” of any Residence shall mean, with respect to such Residence, the side of such Residence designated as the Privacy Side pursuant to Section 4(b) of this Annex A-4. The Privacy Side of a Residence shall be either the Left Side or the Right Side of such Residence, and shall be the side of such Residence which is opposite the Courtyard Side of such Residence.
- (6) The “Privacy Boundary” of any Lot shall mean the side boundary of such Lot which coincides with the Privacy Side of the Residence on such Lot. For example, if the Privacy Side of the applicable Residence is the Left Side of such Residence, the Privacy Boundary of such Lot shall be the Left Side of such Lot.
- (7) The “Courtyard Boundary” of any Lot shall mean the side boundary of such Lot which coincides with the Courtyard Side of the Residence on such Lot. For example, if the Courtyard Side of the applicable Residence is the Left Side of such Residence, the Courtyard Boundary of such Lot shall be the Left Side of such Lot.
- (8) The “Courtyard Area” of any Lot shall mean the area located between the Courtyard Side of the Residence on such Lot and the Courtyard Boundary of such Lot. The front boundary of the Courtyard Area shall coincide with the front of the Residence on such Lot, and the Courtyard Area shall extend back to the rear of such Lot.
- (9) The “Excluded Lots” shall mean Lots 8 and 9, Block 1.

(b) Determination of Privacy Side and Courtyard Side. The Privacy Side and Courtyard Side of each Residence shall be as follows:

<u>Lots</u>	<u>Privacy Side</u>	<u>Courtyard Side</u>
Block 1, Lots 1-7	Right Side	Left Side
Block 1, Lots 10-15	Left Side	Right Side

The Architectural Review Committee shall, upon request by any Lot Owner, furnish information to such Owner identifying the Courtyard Side and the Privacy Side of such Owner’s Lot.

- (c) Requirements for Courtyard Side. The Courtyard Side of any Residence and all walls and other structural elements of such Residence shall be located at least fifteen (15) feet from the Courtyard Boundary of the Lot upon which such Residence is situated (the “Courtyard Side Setback”); provided, however, that the eaves, roofs, gutters, and associated improvements of such Residence shall not project more than two (2) feet into such Courtyard Side Setback. No structure shall be constructed or erected within the Courtyard Area of any Lot except in compliance with all applicable fire and building codes (which compliance shall be the sole responsibility of the owner of such Lot).
- (d) Requirements for Privacy Side. The Privacy Side of each Residence shall be located immediately adjacent to the Privacy Boundary of the Lot upon which such Residence is situated. The Privacy Side of any Residence shall be designed and constructed without exterior doors or windows on such Privacy Side; provided, however, that the Architectural Review Committee may, in its sole and absolute discretion, permit installation of glass blocks, translucent glass and/or other window materials on the Privacy Side of a Residence, if the use of such materials complies with all applicable fire and building codes (which compliance shall be the sole responsibility of the owner of such Residence), and if the Architectural Review Committee reasonably

determines that such glass blocks, translucent glass and/or other window materials do not significantly and unreasonably impact the privacy of the Courtyard Area of the Lot adjacent to such Privacy Side.

- (e) Front of Residences. The front of each Residence shall be located as near as possible to the front setback line of the Lot upon which such Residence is situated. Notwithstanding the immediately preceding sentence, the Architectural Review Committee may, in its sole discretion, permit a Residence to be located back from the front setback line of the applicable Lot.
 - (f) Courtyard Walls. The Owner of each Lot shall construct a fence or wall (the "Courtyard Fence") comprised of brick and/or aluminum or wrought iron, as specified by the Architectural Review Committee, which Courtyard Fence shall be located along the front of the Courtyard Area of such Lot and shall span the full width of such Courtyard Area. Each Courtyard Fence shall comply in all respects with the provisions of this Declaration, including, without limitation, the provisions of Section 13.30(2) of this Declaration. Each Courtyard Fence shall be constructed contemporaneously with the completion of the Residence on the applicable Lot.
 - (g) Easement for Eaves, Gutters and Other Above-Ground Protrusions. Each Lot (the "Benefitted Lot") shall have an aerial easement along the side of the immediately adjoining Lot that is adjacent to the Privacy Boundary of the Benefitted Lot for the construction, placement and maintenance, at heights at least eight (8) feet above ground level, of eaves, roofs, gutters and associated improvements; provided that such eaves, roofs, gutters and associated improvements shall not project more than two (2) feet into the immediately adjoining Lot.
 - (h) Interpretation. All ambiguities and questions regarding the interpretation and application of this Section 4 shall be resolved by the Architectural Review Committee and such determination by the Architectural Review Committee shall be conclusively binding upon all owners of the applicable Lots, absent manifest error on the part of the Architectural Review Committee.
 - (i) Excluded Lots. Notwithstanding anything to the contrary contained herein, the provisions of this Section 4 shall not apply to the Excluded Lots; provided, however, that each Excluded Lot shall be burdened with an easement as described in Section 4(g) of this Annex A-4. Any Residence or other structure constructed on any portion of the Excluded Lots shall comply with the then applicable City of Bryan planning and zoning codes with respect to side setback lines (without allowance for variances); provided, however, that any Residence or structure constructed (A) on Lot 8, Block 1, shall be located at least fifteen (15) feet from the common boundary line between Lot 7 and Lot 8, Block 1, and (B) on Lot 9, Block 1, shall be located at least fifteen (15) feet from the common boundary line between Lot 9 and Lot 10, Block 1.
5. Height Restrictions. No structure or dwelling constructed on Lot 1, Block 1, shall exceed one story, excluding any basement. No portion of any structure or dwelling constructed on Lot 1, Block 1, shall exceed twenty-five feet (25') in height. For purposes of the foregoing, the height of any structure or dwelling shall be calculated as the vertical distance from the finished grade of the foundation of such structure or dwelling to the highest point of the roof structure of such structure or dwelling.
 6. Garages. The location and orientation of the garage on any Lot shall be subject to the approval of the Architectural Review Committee.
 7. Golf Course Lots. Block 1, Lots 9 through 15 are hereby identified as "Golf Course Lots" for the purposes of this Declaration.
 8. Fences. No wood fences shall be constructed or erected on any portion of any Lot.

ANNEX A-5

Additional Construction Standards for Miramont Section 12

The Block and Lot designations set forth in this Annex A-5 shall mean and refer to the designations for such Blocks and Lots set forth on the Final Plat (the "Plat") for Miramont Section 12, recorded on June 26, 2003, in Volume 5395, Page 90 of the Records.

1. Minimum Floorspace.

<u>Lots</u>	<u>Minimum Floor Area</u>
Block 4, Lots 1-43	2,000 square feet, at least 1,500 square feet of which shall be contained within the first floor

In addition, no residential dwelling constructed on any Lot shall contain a floor area (exclusive of all porches, garages and breezeways attached to such dwelling, and exclusive of servants quarters which are not contiguous to the main quarters of the residence), determined using measurements to the outside face of the applicable walls or windows, which is larger than 4,000 square feet; provided, however, a residential dwelling constructed on a Lot may contain more than 4,000 square feet if the Architectural Review Committee determines that the design, finish treatments and overall character of the proposed residential dwelling will not adversely affect the overall quality and character of the Residential Property as a whole; provided, however, that such determination shall be within the sole, absolute and unfettered discretion of the Architectural Review Committee.

2. Front Setbacks.

<u>Lots</u>	<u>Front Setbacks</u>
Block 4, Lots 1-8, 10-30, and 32-43	25 feet
Block 4, Lots 9 and 31	20 feet

3. Rear Setbacks.

<u>Lots</u>	<u>Rear Setbacks</u>
Block 4, Lots 1-8, 10-11, and 31-43	25 feet
Block 4, Lot 9	15 feet
Block 4, Lots 12-30	10 feet

4. Location of Residential Dwellings on Lots.

(a) Definitions. As used in this Annex A-5, the following words shall, unless the context shall otherwise clearly indicate or prohibit, have the following meanings:

- (1) "Residence" shall mean the principal residential dwelling constructed or to be constructed on a Lot.
- (2) The "Left Side" of any Residence shall mean the left side of such Residence, as viewed from the front of such Residence; and the "Left Side" of any Lot shall mean the left side of such Lot, as viewed from the public or private street bordering such Lot; provided, however, that any dispute or ambiguity concerning the identification of the Left Side of a Lot shall be resolved by the Architectural Review Committee.
- (3) The "Right Side" of any Residence shall mean the right side of such Residence, as viewed from the front of such Residence; and the "Right Side" of any Lot shall mean the right side of such Lot, as viewed from the public or private street bordering such Lot; provided, however, that any dispute or ambiguity concerning the identification of the Right Side of a Lot shall be resolved by the Architectural Review Committee.

- (4) The “Courtyard Side” of any Residence shall mean, with respect to such Residence, the side of such Residence designated as the Courtyard Side pursuant to Section 4(b) of this Annex A-5. The Courtyard Side of a Residence shall be either the Left Side or the Right Side of such Residence.
- (5) The “Privacy Side” of any Residence shall mean, with respect to such Residence, the side of such Residence designated as the Privacy Side pursuant to Section 4(b) of this Annex A-5. The Privacy Side of a Residence shall be either the Left Side or the Right Side of such Residence, and shall be the side of such Residence which is opposite the Courtyard Side of such Residence.
- (6) The “Privacy Boundary” of any Lot shall mean the side boundary of such Lot which coincides with the Privacy Side of the Residence on such Lot. For example, if the Privacy Side of the applicable Residence is the Left Side of such Residence, the Privacy Boundary of such Lot shall be the Left Side of such Lot.
- (7) The “Courtyard Boundary” of any Lot shall mean the side boundary of such Lot which coincides with the Courtyard Side of the Residence on such Lot. For example, if the Courtyard Side of the applicable Residence is the Left Side of such Residence, the Courtyard Boundary of such Lot shall be the Left Side of such Lot. Any dispute or ambiguity concerning the identification of the Courtyard Boundary of a Lot shall be resolved by the Architectural Review Committee
- (8) The “Courtyard Area” of any Lot shall mean the area located between the Courtyard Side of the Residence on such Lot and the Courtyard Boundary of such Lot. The front boundary of the Courtyard Area shall coincide with the front of the Residence on such Lot, and the Courtyard Area shall extend back to the rear of such Lot.
- (9) The “Excluded Lots” shall mean Lots 4, 9-12, and 39-40, Block 1.

(b) Determination of Privacy Side and Courtyard Side. The Privacy Side and Courtyard Side of each Residence shall be as follows:

<u>Lots</u>	<u>Privacy Side</u>	<u>Courtyard Side</u>
Block 4, Lots 1-3, 5-8, and 31-38	Right Side	Left Side
Block 4, Lots 13-30 and 41-43	Left Side	Right Side

The Architectural Review Committee shall, upon request by any Lot Owner, furnish information to such Owner identifying the Courtyard Side and the Privacy Side of such Owner’s Lot.

- (c) Requirements for Courtyard Side. The Courtyard Side of any Residence and all walls and other structural elements of such Residence shall be located at least fifteen (15) feet from the Courtyard Boundary of the Lot upon which such Residence is situated (the “Courtyard Side Setback”); provided, however, that the eaves, roofs, gutters, and associated improvements of such Residence shall not project more than two (2) feet into such Courtyard Side Setback. No structure shall be constructed or erected within the Courtyard Area of any Lot except in compliance with all applicable fire and building codes (which compliance shall be the sole responsibility of the owner of such Lot).
- (d) Requirements for Privacy Side. The Privacy Side of each Residence shall be located immediately adjacent to the Privacy Boundary of the Lot upon which such Residence is situated. The Privacy Side of any Residence shall be designed and constructed without exterior doors or windows on such Privacy Side; provided, however, that the Architectural Review Committee may, in its sole and absolute discretion, permit installation of glass blocks, translucent glass and/or other window materials on the Privacy Side of a Residence, if the use of such materials complies with all applicable fire and building codes (which compliance shall be the sole responsibility of the

owner of such Residence), and if the Architectural Review Committee reasonably determines that such glass blocks, translucent glass and/or other window materials do not significantly and unreasonably impact the privacy of the Courtyard Area of the Lot adjacent to such Privacy Side.

- (e) Front of Residences. The front of each Residence shall be located as near as possible to the front setback line of the Lot upon which such Residence is situated. Notwithstanding the immediately preceding sentence, the Architectural Review Committee may, in its sole discretion, permit a Residence to be located back from the front setback line of the applicable Lot.
 - (f) Courtyard Walls. The Owner of each Lot shall construct a fence or wall (the "Courtyard Fence") comprised of brick and/or aluminum or wrought iron, as specified by the Architectural Review Committee, which Courtyard Fence shall be located along the front of the Courtyard Area of such Lot and shall span the full width of such Courtyard Area. Each Courtyard Fence shall comply in all respects with the provisions of this Declaration, including, without limitation, the provisions of Section 13.30(2) of this Declaration. Each Courtyard Fence shall be constructed contemporaneously with the completion of the Residence on the applicable Lot.
 - (g) Easement for Eaves, Gutters and Other Above-Ground Protrusions. Each Lot (the "Benefitted Lot") shall have an aerial easement along the side of the immediately adjoining Lot that is adjacent to the Privacy Boundary of the Benefitted Lot for the construction, placement and maintenance, at heights at least eight (8) feet above ground level, of eaves, roofs, gutters and associated improvements; provided that such eaves, roofs, gutters and associated improvements shall not project more than two (2) feet into the immediately adjoining Lot.
 - (h) Interpretation. All ambiguities and questions regarding the interpretation and application of this Section 4 shall be resolved by the Architectural Review Committee and such determination by the Architectural Review Committee shall be conclusively binding upon all owners of the applicable Lots, absent manifest error on the part of the Architectural Review Committee.
 - (i) Excluded Lots. Notwithstanding anything to the contrary contained herein, the provisions of this Section 4 shall not apply to the Excluded Lots; provided, however, that each Excluded Lot shall be burdened with an easement as described in Section 4(g) of this Annex A-5. Any Residence or other structure constructed on any portion of the Excluded Lots shall comply with the then applicable City of Bryan planning and zoning codes with respect to side setback lines (without allowance for variances); provided, however, that any Residence or structure constructed (A) on Lot 4, Block 4, shall be located at least fifteen (15) feet from the common boundary line between Lot 3 and Lot 4, Block 4, (B) on Lot 9, Block 4, shall be located at least fifteen (15) feet from the common boundary line between Lot 8 and Lot 9, Block 4, (C) on Lot 10, Block 4, shall be located at least fifteen (15) feet from the boundary line of such Lot that borders on Miramont Boulevard, (D) on Lot 12, Block 4, shall be located at least fifteen (15) feet from the common boundary line between Lot 12 and Lot 13, Block 4, (E) on Lot 39, Block 4, shall be located at least fifteen (15) feet from the common boundary line between Lot 38 and Lot 39, Block 4, and (F) on Lot 40, Block 4, shall be located at least fifteen (15) feet from the common boundary line between Lot 40 and Lot 41, Block 4.
5. Garages. The location and orientation of the garage on any Lot shall be subject to the approval of the Architectural Review Committee.
6. Golf Course Lots. Block 4, Lots 12 through 28 are hereby identified as "Golf Course Lots" for the purposes of this Declaration.

ANNEX A-6

Additional Construction Standards for Miramont Section 13

The Block and Lot designations set forth in this Annex A-6 shall mean and refer to the designations for such Blocks and Lots set forth on the Final Plat (the "Plat") for Miramont Section 13, recorded on June 26, 2003, in Volume 5394, Page 285 of the Records.

1. Minimum Floorspace.

<u>Lots</u>	<u>Minimum Floor Area</u>
Block 5, Lots 1-14	3,000 square feet, at least 2,000 square feet of which shall be contained within the first floor

2. Front Setbacks.

<u>Lots</u>	<u>Front Setbacks</u>
Block 5, Lots 1-14	35 feet

3. Rear Setbacks.

<u>Lots</u>	<u>Rear Setbacks</u>
Block 5, Lots 1-13	50 feet
Block 5, Lot 14	35 feet

4. Side Setbacks.

<u>Lots</u>	<u>Side Setbacks</u>
Block 5, Lots 1-14	15 feet

5. Golf Course Lots. Block 5, Lots 1 through 14 are hereby identified as "Golf Course Lots" for the purposes of this Declaration.

ANNEX A-7

Additional Construction Standards for Miramont Section 14

The Block and Lot designations set forth in this Annex A-7 shall mean and refer to the designations for such Blocks and Lots set forth on the Final Plat (the "Plat") for Miramont Section 14, recorded on June 26, 2003, in Volume 5394, Page 288 of the Records.

1. Minimum Floorspace.

<u>Lots</u>	<u>Minimum Floor Area</u>
Block 6, Lots 1-21 Block 7, Lots 1-5	2,500 square feet, at least 1,500 square feet of which shall be contained within the first floor
Block 7, Lots 6-18	3,000 square feet, at least 2,000 square feet of which shall be contained within the first floor

2. Front Setbacks.

<u>Lots</u>	<u>Front Setbacks</u>
Block 6, Lots 1-21 Block 7, Lots 6-18	25 feet
Block 7, Lots 1-5	20 feet

3. Rear Setbacks.

<u>Lots</u>	<u>Rear Setbacks</u>
Block 6, Lots 1-21	25 feet
Block 7, Lots 1-4	35 feet
Block 7, Lots 5-18	50 feet

4. Side Setbacks.

<u>Lots</u>	<u>Side Setbacks</u>
Block 6, Lots 1-21 Block 7, Lots 1-18	15 feet

5. Golf Course Lots. Block 7, Lots 2 through 15 are hereby identified as "Golf Course Lots" for the purposes of this Declaration.

[ANNEX A-]

Additional Construction Standards for Miramont Section 21

The Block and Lot designations set forth in this Annex A- shall mean and refer to the designations for such Blocks and Lots set forth on the Final Plat (the "Plat") for Miramont Section 21, recorded on _____, 2003, in Volume _____, Page _____ of the Records.

1. Minimum Floorspace.

<u>Lots</u>	<u>Minimum Floor Area</u>
Block 13, Lots 1-4	4,000 square feet, at least 2,400 square feet of which shall be contained within the first floor

2. Front Setbacks.

<u>Lots</u>	<u>Front Setbacks</u>
Block 13, Lots 1-4	35 feet

3. Rear Setbacks.

<u>Lots</u>	<u>Rear Setbacks</u>
Block 13, Lot 1	35 feet
Block 13, Lots 2-4	50 feet

4. Side Setbacks.

<u>Lots</u>	<u>Side Setbacks</u>
Block 13, Lots 1-4	20 feet

5. Golf Course Lots. Block 13, Lots 1 through 4 are hereby identified as "Golf Course Lots" for the purposes of this Declaration.