

**FIRST AMENDED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
RESORT COUNTRY, SECTION TWO (2)**

**THE STATE OF TEXAS   §  
                                  §  
COUNTY OF POLK       §**

**KNOW ALL MEN BY THESE PRESENTS:**

WHEREAS, on the 18th day of June, 1969, LIVINGSTON LANDS, INC., a Texas Corporation (hereinafter referred to as "Declarant"), executed certain restrictive covenants upon RESORT COUNTRY, SECTION TWO (2), a subdivision of approximately 62.25 acres and being part of the William Moore Survey, said subdivision being called Resort Country, Section Two (2), Polk County, Texas; and said restrictive covenants were recorded in Volume 247, Page 616 and Volume 253, Page 203 of the Deed Records of Polk County, Texas;  
and

WHEREAS, paragraph (22) of said restrictions provides, in pertinent part, as follows:  
"(22) *Duration of restrictions.*

- (a) The restrictions and covenants herein provided for and adopted shall remain in full force and effect until December 1, 1995.
- (b) At the end of the term provided in (22)(a) above, and at the end of each ten (10) year extension herein provided the restrictions and covenants herein provided for shall be automatically renewed and extended for succeeding periods of ten (10) years each, unless, with six (6) months prior to the date such restrictions and covenants would otherwise be automatically extended, an instrument shall have been signed by the then owners of a majority of the lots in the Subdivision and shall have been recorded in the office of the County Clerk of Polk County, Texas, agreeing to change said restrictions and covenants, in whole or in part. ..."

WHEREAS, the undersigned parties are the Owners of a majority of the Lots in RESORT COUNTRY, SECTION TWO (2) Subdivision of Polk County, Texas; and

NOW, THEREFORE, the undersigned desire to amend the Restrictions for RESORT COUNTRY, SECTION TWO (2) Subdivision, to be effective on December 2, 1995 in accordance with the original dedication, as follows:

**ARTICLE I**

**DEFINITIONS**

SECTION 1.01. "Association" shall mean and refer to RESORT COUNTRY PROPERTY OWNERS ASSOCIATION, INC., a Texas nonprofit corporation formed or to be formed and its successors and assigns.

SECTION 1.02. "Common Area" shall mean all real property (including the improvements thereon) owned or to be owned by the Association for the common use and enjoyment of the Owners, regardless of whether such common area was previously designated as a Lot on any recorded plat or replat.

SECTION 1.03. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map or plat of the Property, excluding properties which constitute common areas owned or which may be owned by the Association.

SECTION 1.04. "Member" shall mean and refer to every person or entity who holds membership in the Association.

SECTION 1.05. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 1.06. "Property" or "Properties" shall mean and refer to that certain real property comprising the Subdivision and any additions thereto as may hereinafter be brought within the Association's jurisdiction.

SECTION 1.07. "Subdivision" shall mean and refer to RESORT COUNTRY, SECTION TWO (2) and any additions thereto which may hereafter be brought within the scheme of these restrictive covenants.

SECTION 1.08. "Subdivision Plat" shall mean and refer to the map or plat of RESORT COUNTRY SECTION TWO, recorded in Book 3, Page 85 and Book 6, Page 38, of the Map Records of Polk County, Texas, or any replat of all or a portion thereof.

SECTION 1.09. "Architectural Control Committee" shall mean and refer to the Architectural Control Committee appointed by the Association's Board of Directors as provided for in Article IV hereof, said Committee having sole Architectural Control authority relative to new construction, as well as to modifications or alterations to existing residences, improvements or structures of any nature located in RESORT COUNTRY, SECTION TWO (2).

## **ARTICLE II**

### **RESERVATIONS, EXCEPTIONS AND DEDICATIONS**

SECTION 2.01. RECORDED SUBDIVISION MAP OF THE PROPERTY. The Plat dedicates for use as such, subject to the limitations as set forth therein, the streets and easements shown thereon, and the Plat further establishes certain restrictions applicable to the Property including, without limitation, certain minimum setback lines. All dedications, restrictions and reservations shown on the Plat or any replat of the Subdivision duly recorded shall be incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each contract, deed, or conveyance executed or to be executed by or on behalf of any Owner, conveying said Property or any part thereof whether specifically referred to therein or not.

SECTION 2.02. EASEMENTS. Perpetual easements are reserved over and across the Lots in the Subdivision for the purpose of installing, repairing and maintaining or conveying to proper parties so that they may install, repair and maintain, electric power, water, sewage, gas, telephone, and similar utility facilities and services, for all the Lots and Properties in the Subdivision as follows: All easements shown on the recorded plat of the Subdivision, or stated in said plat, are adopted as part of these restrictions; and in

instances in which surrounding terrain may necessitate the location of lines outside the precise areas designated as easement area, access may be had at all reasonable times thereto, for maintenance, repair and replacement purposes, without the Lot-Owner being entitled to any compensation or redress by reason of the fact that such maintenance, repair or replacement work has proceeded. There is also reserved and dedicated hereby for the use of any public or private utility company an unobstructed aerial easement five feet (5') wide from a plane twenty feet (20') above the ground upward, located adjacent to and above all dedicated utility easements as shown on the map or plat of the Subdivision. Those areas between property lines and building lines (as referenced in Section 3.03 hereof) may be used at the direction of the Architectural Control Committee for utility easement areas. The easements reserved and dedicated under the terms and provisions hereof shall be for the general benefit of the Subdivision as herein defined and any other land in the vicinity thereof annexed into the Subdivision, if any, and shall also inure to the benefit of and may be used by any public or private utility company entering into and upon said property for the aforesaid purpose, without the necessity of any further grant of such easement rights to such utility companies.

**SECTION 2.03. TITLE SUBJECT TO EASEMENTS.** It is expressly agreed and understood that the title conveyed to any of the Property by contract deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone purposes. The Owners of the respective Lots shall not be deemed to separately own pipes, wires, conduits or other service lines installed by any public or private utility company running through their Lots which are utilized for or service other Lots, but each Owner shall have access to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot.

### **ARTICLE III**

#### **USE RESTRICTIONS**

**SECTION 3.01. SINGLE FAMILY RESIDENTIAL CONSTRUCTION AND USE.** No building shall be erected, altered, or permitted to remain on any Lot other than one detached single family dwelling used for residential purposes only with private off-street parking facilities for not less than two (2) cars. As used herein, the term "single family residential purposes" shall be deemed to specifically prohibit, by way of illustration but without limitation, the use of any Lot for a duplex apartment, a garage apartment or any other apartment for any multi-family use or for any business, educational, church, professional or other commercial activity of any type; provided, however, that notwithstanding any provision contained herein to the contrary an Owner may use a portion of his residence as a personal office for a profession or occupation, provided:

- (a) the public is not invited, permitted, or allowed to enter the residence or any structure or Improvement upon such Lot and conduct business therein;
- (b) there is no increase in traffic in the community affiliated in any respect with the personal office ;
- (c) no signs advertising such profession or business are permitted;
- (d) no on-site employees are permitted;
- (e) no offensive activity or condition, noise and/or odor are permitted;
- (f) no residential address may be utilized for advertising purposes or referenced in the business directory of a telephone book;

(g) the outward appearance of a residence shall not evidence in any manner such profession or business; and

(h) such use in all respects complies with the laws of the State of Texas, local ordinances, and the laws, rules and regulations of any regulatory body or governmental agency having authority and jurisdiction over such matters, and conforms to public policy considerations.

The term "single family residential purposes" shall also be defined as: (a) one or more persons related by blood, marriage, or adoption, which may include only parents, their children (including foster children and wards), their dependent brothers and sisters, their dependent parents, their dependent grandparents, and their domestic servants; and (b) no more than two (2) unrelated persons living together as a single housekeeping unit and their children (including foster children and wards), their dependent brothers or sisters, their dependent parents, their dependent grandparents, and their domestic servants.

No building of any kind or character (including, but not limited to, trailer houses, portable buildings and pre-fabricated housing) shall ever be moved onto any Lot within said subdivision, it being the intention that only new construction shall be placed and erected thereon.

SECTION 3.02. MINIMUM SQUARE FOOTAGE WITHIN IMPROVEMENTS. The living area of the main residential structure (exclusive of porches, garages and servants quarters) shall be not less than One Thousand Five Hundred (1,500) square feet The minimum square footage requirement contained herein shall not apply to previously existing residences located in the Subdivision so long as such residences were not in violation of the restrictive covenants in effect at the time of enactment of this Declaration.

SECTION 3.03. LOCATION OF IMPROVEMENTS UPON THE LOT. No buildings, fences, walls or other improvements shall be located on any Lot nearer to the front line or nearer to the street side line than the minimum building setback line shown on the Plat or any replat; however, in no instance shall a building be located nearer to the front property line than ten (10) feet The main residential structure shall be located not less than ten (10) feet from the rear property line. No residence or other structure (e.g., a detached garage) shall be located nearer than five (5) feet to an interior lot line. For purposes of this covenant, eaves, steps, and open porches shall be considered as part of a residential structure.

SECTION 3.04. COMPOSITE BUILDING SITE. Subject to the approval of the Architectural Control Committee, any Owner of one or more adjoining Lots or portions thereof may consolidate or redivide such Lots or portions into one or more building sites with the privilege of placing or constructing improvements on such resulting sites, in which case the side setback lines shall be measured from the resulting side property lines rather than from the Lot lines as indicated on the Plat Any such resulting building site must have a frontage at the building setback lines of not less than the minimum frontage of the Lots on the same Street.

SECTION 3.05. PROHIBITION OF OFFENSIVE ACTIVITIES. No activity, whether for profit or not shall be carried on any Lot which is not related to single family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be or become an annoyance or a nuisance to the neighborhood. The Board of Directors of the Association (sometimes herein referred to as the "Board") shall have discretion to determine what constitutes a nuisance or annoyance. Activities expressly prohibited, without limitation, include (1) the use or discharge of firearms, firecrackers or other fireworks within the Property, or (2) other activities which may be offensive by reason of odor, fumes, dust,

smoke, noise, vision, vibration or pollution, or which are hazardous by reason of excessive danger, fire or explosion.

**SECTION 3.06. USE OF TEMPORARY STRUCTURES.** No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently; provided, however, that the Association's Board of Directors reserves the exclusive right to allow a builder to erect, place and maintain such facilities in or upon any portions of the Property as in the Board's sole discretion may be necessary or convenient while constructing residences and constructing other improvements upon the Property. Such facilities may include, but not necessarily be limited to construction offices, storage areas, and portable toilet facilities.

**SECTION 3.07. STORAGE OF VEHICLES OR EQUIPMENT.** No motor vehicle or non-motorized vehicle, boat, camper, marine craft, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement, right-of-way, or Common Area unless such vehicle or object is completely concealed from public view inside a garage or other approved enclosure. Passenger automobiles, passenger vans, motorcycles, or pickup trucks that are in operating condition, having current license plates and inspection stickers, are in daily use as motor vehicles on the streets and highways of the State of Texas and which do not exceed eight feet in height, or seven feet six inches in width, or twenty-one feet in length, and boat and trailer combinations and boat trailers in operating condition are exempt. No vehicle shall be parked on a yard or in a manner that obstructs or blocks a public road or walk. No vehicle, boat, trailer or other device may be repaired on a Lot where such vehicle is not concealed inside a garage or other approved enclosure, except for minor repairs or maintenance completed in less than forty-eight (48) hours and which are conducted in an innocuous manner.

This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, repair or maintenance of a house in the immediate vicinity.

**SECTION 3.08. MINERAL OPERATIONS.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or on any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or on any Lot. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

**SECTION 3.09. ANIMAL HUSBANDRY.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other common household pets may be kept provided that they are not kept, bred or maintained for commercial purposes. No more than three (3) of each type animal shall be kept as household pets. No resident of any Lot shall permit any dog, cat or other domestic pet under his ownership or control to leave such resident's Lot unless leashed and accompanied by a member of such resident's household.

**SECTION 3.10. WALLS AND FENCES.** No wall or fence shall be erected or maintained nearer to the front Lot line than the walls of the dwelling existing on such Lot. No side or rear fence, wall or hedge shall be more than six feet (6') high; provided, however, that the Architectural Control Committee may grant a variance in height up to a maximum of eight feet (8'). No fencing shall be constructed, placed or erected without strict compliance with Article IV of this Declaration. The Architectural Control Committee shall have authority relative to establishing standards for fence construction, including materials, height and location

thereof.

**SECTION 3.11. VISUAL OBSTRUCTION AT THE INTERSECTIONS OF PUBLIC STREETS.** No planting or object which obstructs sight lines at elevations between two (2) feet and six (6) feet above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points twenty-five (25') feet from the intersection of the street property lines or extension thereof shall be placed, planted or permitted to remain on any corner Lots.

**SECTION 3.12. LOT AND EXTERIOR MAINTENANCE.** The Owners or occupants of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner and shall in no event use any Lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted. No lot shall be used or maintained as a dumping ground for trash. Trash, garbage or other waste materials shall be kept in clean and sanitary containers awaiting immediate garbage collection. No burning of household garbage is permitted on any Lot. New building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time of construction so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

Without limiting the generality of the foregoing obligations for exterior maintenance, each Owner shall repair and maintain in good condition:

(a) The exterior woodwork, paint, roof, awnings and rain gutters on a residence and any other approved structures, including all doors, windows and windowsills, so that they remain intact, neat and aesthetic in appearance;

(b) All fences or walls erected on a Lot so that all holes and cracks are repaired as they appear and no wooden portion thereof is permitted to decay beyond normal weathering;

(c) Any bulkheads, boathouses, piers (and other associated structures on land or over water) so that they remain intact, neat and aesthetic in appearance; and

(d) All septic tanks or other approved sanitary devices so that they remain functional, neat, healthful and aesthetic in appearance and are not allowed to fall into a state of disrepair. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements or any of them such default continuing after ten (10) days written notice thereof, the Association, may without liability to Owner or any occupants, in trespass or otherwise, but without being under any duty to do so, enter upon said Lot, cut, or cause to be cut, such weeds and grass and remove or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof. The sum due shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such sums are due and the Association may reflect such charges on an Owner's assessment account and may exercise all remedies in the collection thereof as set forth in Section 6.09 of this Declaration.

**SECTION 3.13. SIGNS, ADVERTISEMENTS AND BILLBOARDS.** With the exception of the entrance signs located on Lots one hundred thirty-nine (139) and one hundred forty (140) (and such other signs as the Association may cause to be installed), no sign, advertisement or billboard, or advertising structure of any kind other than a normal "For Sale" sign not to exceed nine (9) square feet in total size may be erected or maintained on any Lot in said Subdivision. The Association, or its assigns, will have the right to remove any sign advertisement or billboard or structure that does not comply with the above, and in so doing shall not be subject to any liability of trespass or other sort in the connection therewith or arising with respect to such removal.

**SECTION 3.14. CONTROL OF SEWAGE EFFLUENT.** No outside toilets will be permitted, and no installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried directly or indirectly into the streets, surface areas or into any body of water. A septic tank or similar or improved sanitary method of sewage disposal may be utilized which must meet the requirements of and be approved by the proper governmental authorities having jurisdiction with respect thereto.

**SECTION 3.15. NO ABOVE GROUND UTILITIES.** With the exception of junction boxes and other such facilities which must be installed above ground, all utility installations shall be below ground, including, but not limited to, water, electricity, gas and/or cable television, as the case may be.

**SECTION 3.16. RESIDENCES AND IMPROVEMENTS DAMAGED BY FIRE OR OTHER CASUALTY.** Any buildings or other improvements within the Subdivision that are destroyed partially or totally by fire, storm, or any other casualty, shall be repaired or demolished within a reasonable period of time, and the Lot and improvements thereon, as applicable, restored to an orderly and attractive condition.

**SECTION 3.17. COMMON AREA.** Any Common Area shall be used only for streets, paths, recreational amenities, meeting facilities, boat ramps, green belt areas or drainage purposes, and Lot purposes reasonably connected therewith or related thereto: provided, however, no residential, professional, commercial, educational or church use shall be made of any Common Area.

**SECTION 3.18. OPERATION OF WATER COMPANY.** Notwithstanding anything contained herein to the contrary, a water company may operate within the Subdivision with such wells, equipment, exterior facilities, signs, office facilities and telephone listings as are reasonably necessary or required by Federal, State or local laws, rules and regulations. Accordingly, to permit the efficient and legal operation of such water company providing public water to the subdivision, reasonable and necessary exceptions to the requirements of Sections 3.01 and 3.13 are herein granted.

## **ARTICLE IV**

### **ARCHITECTURAL CONTROL COMMITTEE**

**SECTION 4.01. APPROVAL OF BUILDING PLANS.** No building, structure or improvement, including, but not limited to, residences, garages, sheds, storage buildings, other outbuildings, fences, walls, bulkheads, piers, boathouses (and other associated structures on land or over water), shall be erected, placed or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the structure have been approved in writing as to harmony of exterior design and color with

existing structures, as to location with respect to topography and finished ground elevation and as to compliance with minimum construction standards. A copy of the construction plans and specifications and a plot plan, together with such information as may be deemed pertinent, shall be submitted to the Architectural Control Committee, or its designated representative, prior to commencement of construction. In the event the Architectural Control Committee fails to approve or disapprove such plans and specifications within ten (10) days after the same are submitted to and received by it, approval will not be required and the requirements of this Section will be deemed to have been fully complied with.

SECTION 4.02. COMMITTEE MEMBERSHIP. The Architectural Control Committee members shall be three (3) in number and shall be appointed by the Board of Directors. The Architectural Control Committee may, by majority vote, designate a representative to act for them. The President of the Association shall at all times be a member of said Committee and serve as Chairperson thereof. The other two (2) members of the Committee shall not be directors or officers of the Association.

SECTION 4.03. REPLACEMENT. In the event of death or resignation of any member or member of the Association's Architectural Control Committee, the remaining member or members shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications and plot plans submitted or to designate a representative with like authority. With the exception of the Association's President, the other two (2) Committee members may be replaced at any time by a majority vote of the Association's Board of Directors with or without cause.

SECTION 4.04. MINIMUM CONSTRUCTION STANDARD. The Architectural Control Committee referenced hereinabove may from time to time, with approval of the Board of Directors, promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and such Architectural Control Committee shall not be bound thereby. The Architectural Control Committee may also stipulate reasonable time constraints relative to completion of any such improvements. If as a result of inspections or otherwise, the Architectural Control Committee finds that any residential construction has been done contrary to approved plans and specifications, the Architectural Control Committee shall act reasonably and diligently in notifying the owner or builder of the particulars of the noncompliance and must recommend action to be taken to cure such deficiencies as further stated in Section 4.08 (Noncompliance).

SECTION 4.05. INSPECTION. In order to control the quality of construction and to reasonably insure that all residential construction (including the construction of the residence and all other improvements on the Lot) are constructed in accordance with (a) the Plat or any replat, (b) this Declaration, (c) Polk County regulations, (d) minimum acceptable construction standards as promulgated from time to time by the Architectural Control Committee, and (e) Architectural Control Committee regulations and requirements, the Architectural Control Committee or its representatives may conduct certain building inspections of the improvements being constructed by the Builders and/or Owners, in accordance with inspection procedures established from time to time by the Architectural Control Committee. A reasonable fee in an amount to be determined by the Architectural Control Committee, may be charged by the Association prior to architectural approval, or at such other time as designated by the Architectural Control Committee, to defray the expense of such building inspections, and the use of architects, engineers, attorneys or other consultants to assist the Committee.

SECTION 4.06. EFFECT OF APPROVAL BY COMMITTEE. The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion, by the Committee, that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and Plat; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and Plat or in the event that such building and/or improvements are constructed in accordance with such plans and specifications and Plat, but nevertheless fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercise thereof.

SECTION 4.07. VARIANCES. The Architectural Control Committee, with the approval of the Board of Directors, may authorize variances from compliance with any of the architectural related provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Architectural Control Committee, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Control Committee. If any such variances are granted, no violation of the provisions of this Declaration, shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot and the Plat.

SECTION 4.08. NONCOMPLIANCE. If, as a result of inspections or otherwise, the Architectural Control Committee finds that any residential construction has been done without obtaining the approval of the Architectural Control Committee or was not done in conformity with the approved plans and specifications and Plat, the Architectural Control Committee shall notify the Owner in writing of the noncompliance, which notice shall recommend appropriate action to be taken to cure any such deficiencies. The Association may proceed with any or all available remedies at law, in equity, or under this Declaration to require that such noncompliance be cured.

SECTION 4.09. NO IMPLIED WAIVER OR ESTOPPEL. No action or failure to act by the Architectural Control Committee or by the Association's Board of Directors shall constitute a waiver or estoppel with respect to future action by the Architectural Control Committee or Board of Directors with respect to the construction of any improvements within the Subdivision. Specifically, the approval by the Architectural Control Committee or by the Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications or other material submitted with respect to any other residential construction by such person or otherwise.

SECTION 4.10. DISCLAIMER. No approval of plans and specifications and no publication or designation of architectural standards shall ever be construed as representing or implying that such plans, specifications or standards will result in a properly designed structure or satisfy any legal requirements.

## ARTICLE V

### RESORT COUNTRY PROPERTY OWNERS ASSOCIATION, INC.

**SECTION 5.01. MEMBERSHIP.** Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from any ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquired title to any Lot which is a part of the Property, through judicial or nonjudicial foreclosure, shall be a member of the Association. The Association shall have one (1) class of voting membership, which shall be all those Owners as defined in Section 5.01. Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**SECTION 5.02. NON-PROFIT CORPORATION.** RESORT COUNTRY PROPERTY OWNERS ASSOCIATION, INC., a non-profit corporation, has been or will be organized and it shall be governed by the Articles of Incorporation ("Articles") of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

**SECTION 5.03. BYLAWS.** The Association may adopt (and subsequently amend or modify) whatever rules ("Rules and Regulations") or Bylaws it may choose to govern the organization; provided, however, that same are not in conflict with the terms and provisions hereof, as they may be amended from time to time.

**SECTION 5.04. INSPECTION OF RECORDS.** The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during normal business hours, as further provided in the Association's Articles of Incorporation or in its By-Laws.

**SECTION 5.05. MEMBERS' RIGHT OF ENJOYMENT.** Every member shall have a beneficial interest of use and enjoyment in and to the Common Area and such right shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and right to use of the Common Area by a member for any period during which any assessment against his Lot remains unpaid; and the right to suspend the voting rights and right to use of the Common Area by a member for a period not to exceed sixty (60) days for any infraction of the Rules and Regulations relating to the use of the Common Area: and

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility, for such purposes and subject to conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by members entitled to cast two-thirds (2/3) of a quorum of the membership present in person or by proxy at a special meeting of the membership called for the purpose of considering such proposed dedication, sale or transfer and such instrument has been recorded.

**SECTION 5.06. DELEGATION OF USE.** Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his guests, his tenants, or contract purchasers who reside on the Property.

**SECTION 5.07. RENTAL AND LEASING.** Owners must notify the Association if their Lots are leased. The Association needs to know the name of the tenant and also the correct mailing address of the Owner of the Property. In no event, however, shall any leasing be allowed except pursuant to written agreement that affirmatively obligates all tenants and other residents of the Lot to abide by the Declaration, Bylaws, and Rules and Regulations of the Association.

## **ARTICLE VI**

### **MAINTENANCE ASSESSMENTS**

**SECTION 6.01. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.** The Owners, for each Lot owned within the Property, hereby covenant, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association annual assessments or charges to be fixed, established, and collected from time to time as hereinafter provided. The annual assessments, together with such interest and late charges thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such assessment is made. In order to secure the payment of the assessments hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the owner to the purchaser of each lot or portion thereof, which lien shall be enforceable through appropriate judicial or non-judicial proceedings by the Association. As additional security for the payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association an assessment lien on such Lot.

In addition to enforcing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through its Board of Directors, upon thirty (30) days prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas, if any, and Recreational Facilities in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

**SECTION 6.02. NOTICE OF LIEN.** In addition to the right of the Board of Directors to enforce assessments, the Board of Directors may file a claim or lien against the Lot of the delinquent Owner or member by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest, late charges and costs of collection which have accrued thereon, (c) the legal description And street address of the Lot against which a lien is claimed and (d) the name of the Owner thereof, thereby evidencing the Owner's non-payment of the assessments or charges provided for herein. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amount secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon

payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

SECTION 6.03. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Property and in particular for any improvement or services in furtherance of these purposes and maintenance of the Common Area. The use of the annual assessments for any of these purposes, as well as the accumulation of a reserve fund, is permissive and not mandatory. It is understood that the judgment of the Association's Board of Directors as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

SECTION 6.04. BASIS AND MAXIMUM OF ANNUAL ASSESSMENT. Until January 1, 2001, the maximum annual assessment shall be Fifty and No/100 Dollars (\$50.00) per Lot. From and after January 1, 2001, the maximum annual assessment may be increased as the needs of the Association require by a majority vote of the Association's Board of Directors by utilizing either of the following methods, whichever is greater, and which increase may be cumulative:

- (i) the Consumer Price Index published by the U. S. Department of Labor, specifically the Consumer Price Index for Urban Wage Earners and Clerical Workers, U. S. City Average, all items, unadjusted for seasonal variation (CPI-u). The maximum assessment for any year shall be determined by (a) taking the dollar amount specified above in the first sentence of this Section, (b) multiplying that amount by the published CPI-U number for the second (2nd) year prior to the beginning of the subject year and (c) dividing that resultant by the published CPI-U number for the second (2nd) year prior to the effective date of this Amended Declaration; or
- (ii) at intervals of five (5) years or more, the maximum annual assessment may be increased above the amount referenced in (i) above, provided no such increase shall be effective unless agreed to by the affirmative vote of a majority of the Association members who are voting in person or by proxy at a meeting duly called for this purpose, at which a quorum is established, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

From and after January 1, 2001, the maximum annual assessment may be increased above the amount established by the formula described in (i) or (ii) above by the affirmative votes of two-thirds (2/3) of a quorum of the Association's members who are voting in-person or by proxy at a meeting duly called for this purpose, at which a quorum is established, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments resulting from a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment.

**SECTION 6.05. SPECIAL ASSESSMENTS.** In addition to the annual assessment authorized above, the association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any unexpected expense described in Section 6.03, or the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of a quorum of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. Any such special assessments shall be payable (and the payment thereof may be enforced) in the manner herein specified for the payment and enforcement of the annual assessments, with the due dates for such special assessments being established by the Board of Directors.

**SECTION 6.00. UNIFORM RATE OF ASSESSMENT.** Annual assessments shall be fixed at a uniform rate for all Lots within the Subdivision. Composite building sites pursuant to Section 3.04 hereof, shall incur a minimum of one full assessment. However, should such a composite building site(s) result in a reduction in the number of Lots referenced in the recorded Subdivision Plat, the annual assessment therefore may be increased on a percentage basis above the full assessment rate for a platted Lot.

**SECTION 6.07. QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 6.04 AND 6.05.** At the first meeting called, as provided in Sections 6.04 and 6.05 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (600/0) of all the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, without notice other than announcement at the meeting, and the presence at the meeting of members or of proxies entitled to cast thirty percent (300/0) of all of the votes shall constitute a quorum at any such subsequent meeting which may be held at any time not more than sixty (60) days following the preceding meeting.

**SECTION 6.08. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. DUE DATES.** The annual assessments provided for herein shall commence as to all Lots on January 1, 1996. From that point on, annual assessments shall be due and payable in advance on January 1 of each succeeding year. The Board of Directors shall fix the annual assessment against each Lot at least forty-five (45) days in advance of each annual assessment period; however, the failure by the Board of Directors to fix an annual assessment for any year shall not be deemed a waiver with respect to any of the provisions of this Declaration or release of the liability of any member to pay assessments, or any installment thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the annual assessments established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid within forty-five (45) days after receipt of a statement therefore. Written notice of the annual assessment shall be sent to every Owner subject thereto, to the address reflected for such Owner(s) in the Association's ownership records.

**SECTION 6.09. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within forty-five (45) days after the due date, the assessment shall bear interest from the date of the delinquency at the rate of ten percent (100/0) per annum, the Association may impose a reasonable late charge for late payments of assessments and the Association may bring an action at law against the Owner personally obligated to pay the same, or enforce the lien against the Property. Interest, late charges, costs

and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

SECTION 6.10. EXEMPT PROPERTY. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; and (b) the Common Area, including all Reserves shown on the Plat.

## **ARTICLE VII**

### **ANNEXATION OF ADDITIONAL PROPERTY**

Additional land contiguous to, or in the proximity of, RESORT COUNTY, SECTION TWO (2) may be annexed by a two-thirds (2/3) vote of the Association's Board of Directors, in its sole discretion, and without the consent of members within ten (10) years of the date of this instrument and shall be a part of a general plan. Thereafter, such property may be annexed with the consent of two-thirds (2/3) of a quorum of the members of the Association at a duly called meeting of the Association's membership for that purpose. Any additions (annexations) authorized under this and succeeding subsections, shall be made by filing of record a Declaration of Covenants, Conditions and Restrictions and Annexation Agreement (which Declaration and Annexation Agreement need not be approved by the Association's membership in the event of an annexation pursuant to sub-paragraph (a) hereinabove) with respect to the additional properties which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to such property. Such Declaration must impose annual maintenance charges and assessments on the property covered thereby, on a uniform, per lot basis, substantially equivalent to the maintenance charges and assessments imposed by this Declaration. Although it is anticipated that future sections will be annexed, the Association is under no obligation to do so.

## **ARTICLE VIII**

### **INSURANCE AND CASUALTY LOSSES**

SECTION 8.01. INSURANCE. The Association's Board of Directors or its duly authorized agent shall have the authority to and, to the extent practicable, shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of the Common Area in the event of damage or destruction from any such hazard, and may contain a reasonable deductible. The Board, to the extent practicable, shall also obtain a public liability policy covering the Common Area and the Association for all damage or injury caused by the negligence of the Association or any of its members or agents, and may, at the discretion of the Board of Directors, obtain directors' and officers' liability insurance.

SECTION 8.02. DISBURSEMENT OF PROCEEDS. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area, or in the event no repair or reconstruction is made

after making such settlement, shall be retained by and for the benefit of the Association.

## ARTICLE IX

### GENERAL PROVISIONS

SECTION 9.01. TERM. The provisions hereof shall run with the Property and shall be binding upon all parties and all persons claiming under them until December 31, 2035, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each.

SECTION 9.02. AMENDMENTS DURING INITIAL TERM. The Covenants and Restrictions of this Declaration may be amended during the initial period by an instrument signed by not less than the Owners of two-thirds (2/3) of the Lots subject to this Declaration. Any amendment must be properly recorded in the Real Property Records of Polk County, Texas.

SECTION 9.03. AMENDMENTS DURING EXTENDED TERMS: The Covenants and Restrictions of this Declaration may be amended during any ten (10) year extension period by an instrument signed by not less than the Owners of a majority of the Lots subject to this Declaration.

SECTION 9.04. ENFORCEMENT. In addition to the remedies for enforcement provided for elsewhere in this Declaration, the violation or attempted violation of the provisions of the governing documents or the Rules and Regulations by an Owner, his family, guests, lessees or licensees shall authorize the Association's Board of Directors to avail itself of anyone or more of the following remedies:

(a) The imposition of a special charge not to exceed Fifty (\$50.00) Dollars per violation, or

(b) The suspension of an Owner's rights to use any Association property for a period not to exceed sixty (60) days per violation, or

(c) The right to cure or abate such violation and to charge the expense thereof, if any, to such Owner, or

(d) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorneys' fees and court costs.

Before the Board may invoke the remedies provided above, it shall give registered or certified mail, return receipt requested notice (to the applicable address contained in the Association's records) of such alleged violation to Owner, and shall afford the Owner a hearing before the Board, should the Owner request such a hearing. If a violation is found to exist after the hearing (if one is requested by Owner) or after a reasonable period of time referenced in the Notice, the Board's right to proceed with the listed remedies shall become absolute. The reasonableness of the time allowed to correct the violation is within the sole discretion of the Association's Board of Directors. Each day a violation continues shall be deemed a separate violation. Failure of the Association to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

In addition to the Association's right to enforce the provisions of this Declaration, the use restrictions contained in this Declaration are enforceable by each Owner of a Lot in the subdivision, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. In the event any action to enforce this Declaration is initiated against an Owner or occupant of a Lot by the Association or an Owner, the Association or Owner, as the case may be, shall be entitled to recover reasonable attorney's fees from the Owner or occupant of a Lot who violated this Declaration.

SECTION 9.05. SEVERABILITY. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

SECTION 9.06. MERGERS AND CONSOLIDATIONS. The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes in accordance with the Association's Articles of Incorporation.

Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, the properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations to the Association as surviving corporation pursuant to the merger. The surviving or consolidated association will be subject to the covenants and restrictions established by this Declaration within the Subdivision, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established by this Declaration with respect to the Subdivision, except as changed by amendment of this Declaration.

SECTION 9.07. LIBERAL INTERPRETATION. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

SECTION 9.08. SUCCESSORS AND ASSIGNS. The provisions hereof shall be binding upon and inure to the benefit of the Owners and the Association, and their respective heirs, executors, administrators, successors and assigns.

This instrument may be executed in counterpart originals, each of which shall be an original as to those parties executing the same.