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DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
BRAZOS GARDENS
SECTION I

THE STATE OF TEXAS

COUNTY OF FORT BEND

THIS DECLARATION, made on the date hereinafter set forth by VENTANA DEVELOPMENT, Ltd., a Texas Limited Partnership.

WITNESSETH:

WHEREAS, VENTANA DEVELOPMENT, Ltd., a Texas Limited Partnership ("Declarant"), is the owner of that certain tract of land situated in Fort Bend County, Texas, which is more particularly described as follows:

BEING all of Lots 1 through 43 Block 1 and all of Lots 1 through 49 Block 2, located in BRAZOS GARDENS SECTION 1, a subdivision in Fort Bend County, Texas, according to the map or plat thereof recorded under Film Code #2293A and #2293B, of the Map or Plat Records of Fort Bend County, Texas:

WHEREAS, Declarant prior to the sale of any lot desires to impose the following Covenants, Conditions and Restrictions upon such Property.

NOW THEREFORE, Declarant, hereby declares that all the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall constitute covenants running with the real Property, shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof and the BRAZOS GARDENS OWNERS' ASSOCIATION, INC. ("Association").

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to BRAZOS GARDENS OWNERS' ASSOCIATION, INC., a Texas Non-Profit Corporation, its successors and assigns. The Association has the power to collect and disburse those maintenance assessments as described in Article IV.

Section 2. "Builder" shall mean any person, firm or entity, which purchases a developed lot(s) for the purpose of constructing a new dwelling unit for sale to the public.

Section 3. "Committee" shall mean and refer to the BRAZOS GARDENS Architectural Control Committee or any person or persons to whom the Architectural Control Committee delegates such responsibility provided for in Article II hereof.

Section 4. "Common Area" shall mean all Property owned by or under the control or jurisdiction of the Association for the use of the Association or for the common use and benefit of the Owners, together with such other Property as the Association may, at anytime or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plat filed of

record, and/or by virtue of prior grants or dedications. References herein to the "Common Area" shall mean and refer to Common Area as defined respectively in this Declaration and all Supplemental Declarations. "Common Area" shall also mean and refer to all existing and subsequently provided improvements or upon or within the Common Area, except those as maybe expressly excluded herein. Common Area may include, but not necessarily be limited to the following: structures for recreation, swimming pools, playgrounds, structures for storage or protection of equipment; fountains, statuary, sidewalks, gates, streets, fences, landscaping and other similar and appurtenant improvements. The Association may issue rules and regulations for use, maintenance, and operation of the Common Areas and the Association or Developer may assign the costs or responsibilities for maintenance of certain Common Areas to one or more Section Association(s).

Section 5. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for BRAZOS GARDENS Section 1, as filed, amended or supplemented.

Section 6. "Developer" shall mean and refer to Declarant.

Section 7. "green belt(s)" shall mean any Property in the Subdivision, owned by the Developer or Association or any Section Association, which is designated as a Recreation Area or Landscape Area.

Section 8. "Landscape Areas" shall mean and refer to all Common Areas located:

- (a) within all esplanades located upon or within major thoroughfares located on the Property;
- (b) within Landscape Reserves;
- (c) between the outside edge of the paving of the roadway of any major thoroughfare within the Property and the right-of-way line thereof;
- (d) project identity tracts located at any street intersection in the properties.

Section 9. "Lot" shall mean and refer to any subdivided parcel of land designated as a Lot or shown upon any recorded Subdivision map or plat of the Property with the exception of Property designed thereon as "Public Streets", "Reserves", "Commercial Reserves", "Unrestricted Reserves", "Landscape Reserves", "Common Area" or "Recreational Areas", if any. Lots are to be used for residential purposes only.

Section 10. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot or parcel of land, which is a part of the Property, including executory contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Property" shall mean and refer to: (a) that certain real Property first therein above described as BRAZOS GARDENS Section 1, and (b) such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 12. "Reserve Lot" shall mean any Lot having any common boundary with a Reserve for Common Area, Recreational, Green Belt, Subdivision project identity signs or landscaping.

Section 13. "Section Associations" shall mean and refer to any Texas non-profit corporation established to govern any individual or group of further subdivided sections of BRAZOS GARDENS that may be platted or formed out of the Property described above and governed also by this Declaration.

Section 14. "BRAZOS GARDENS" shall mean all currently existing and future developments and/or Subdivisions generally known as "BRAZOS GARDENS" as reflected by the Map or Plat Records of Fort Bend County, Texas, and as administered by the Association.

Section 15. "Subdivision" shall mean and refer to BRAZOS GARDENS Section I and any additional Sections which may here after be brought within the scheme of this

Declaration pursuant to the provisions set forth herein and hereafter brought within the jurisdiction of the Association.

ARTICLE II ARCHITECTURAL CONTROL

Section 1. Architectural Control. No buildings, landscaping, improvements or fences of any character shall be erected or placed or the erection thereof begun, or changes made in the design, color, materials, size or additions, remodeling, renovation or redecoration of any portion of the exterior of any improvement on a Lot before or after original construction until the construction plans and detailed specifications and survey or original plot plans showing the location of the structure or improvements have been submitted to and approved in writing by the Committee, or its duly authorized representative, as to compliance with this Declaration, quality, type, and color of material, harmony of external design with existing and proposed structures and as to location with respect to topography, setbacks, and finish grade elevation. All new construction shall be in accordance with BRAZOS GARDENS design guidelines, Section design guidelines, and this Declaration. The Committee shall be comprised of three (3) members. The initial members of the Committee shall be appointed by Declarant. If there exists at any time one or more vacancies in the Committee, the remaining members of such Committee may designate successor member(s) to fill such vacancy or vacancies provided that Declarant, may from time to time, without liability of any character for so doing, remove and replace any such members of the Committee as it may in its sole discretion determine. Declarant, the Committee and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. The Association shall indemnify and hold the members of the Committee harmless for any claims and shall insure them under the association Directors' and Officers' liability insurance policy. In the event the Committee fails to indicate its approval or disapproval within thirty (30) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied. Approval by Committee non-response shall not apply to any request which would (1) violate any setback or easement set out in the Declaration or recorded Plat, or (2) violate any express provision of this Declaration, such requests shall be deemed to be automatically disapproved. Declarant hereby retains its rights to assign all or part of the duties, powers and responsibilities of the Committee to the Association and its Board of Directors and the term "Committee" herein shall include the Association, as such assignee.

Anything contained in this Paragraph or elsewhere in this Declaration to the contrary notwithstanding, the Committee, and its duly authorized representatives, are hereby authorized and empowered, at its sole and absolute discretion, to make and permit reasonable modifications of and deviations from any of the requirements of this Declaration relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Subdivision Lot and of the size and location of any such building or improvement when, in the sole and final judgment and opinion of the Committee, or its duly authorized representative, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Subdivision and its improvements as a whole. This variance provision shall not apply to required set backs, easements, and fences or obstructions along Green Belts or Common Areas.

The Committee may require the submission to it of such documents and items including as examples, but without limitation, written request for and description of the construction modification or variance requested, plans, specifications, plot plans, surveys, and samples of materials as it shall deem appropriate, in connection with its consideration of a request for an approval, modification, or a variance. If the Committee shall approve such request, the Committee may evidence such approval and grant its permission only by written instrument, addressed to the Owner of the Lot(s), expressing the decision of the Committee describing (when applicable) the conditions on which the application has been approved (including as examples, but

without limitation, the type of alternate materials to be permitted, and alternate fence height approved or specifying the location, plans and specifications applicable to an approved outbuilding), and signed by a majority of the then members of the Committee (or by the Committee's duly authorized representative).

Any request for a variance from the express provisions of this Declaration shall be deemed to have been disapproved for the purposes hereof in the event of either (a) Written notice of disapproval from the Committee; or (b) Failure by the Committee to respond to the request for variance. In the event the Committee or any successor to the authority thereof shall not then be functioning and/or the term of the Committee shall have expired and the Association shall not have succeeded to the authority thereof as herein provided, no variances from the Covenants of this Declaration shall be permitted, it being the intention of Declarant that no variances be available except at the discretion of the Committee, or if it shall have succeeded to the authority of the Committee in the manner provided herein, the Association. The Committee shall have no authority to approve any variance except as expressly provided in this Declaration.

The Committee or Association may charge a reasonable fee for review of all Architectural Control Applications ("Applications").

Section 2. Minimum Construction Standards. The Committee may from time to time promulgate an outline of minimum acceptable construction standards, provided, however that such outline will serve as a minimum guideline and the Committee shall not be bound thereby.

Section 3. No Liability. Neither the Committee nor the Association or the respective agents, employees and architects of each, shall be liable to any Owner or any other party for any loss, claim or demand asserted on account of the administration of this Declaration or the performance of the duties hereunder, or any failure or defect in such administration and performance. This Declaration can be altered or amended only as provided herein and no person is authorized to grant exceptions or make representations contrary to the intent of this Declaration. No approval of plans and specifications and no publication of minimum construction standards shall ever be construed as representing such plans, specifications or standards will, if followed, result in a properly designed residential structure. Such approvals and standards shall in no event be construed as representing or guaranteeing any residence will be built in a good, workman like manner. The approval or lack of disapproval by the Committee shall not be deemed to constitute any warranty or representation by such Committee including, without limitation, any warranty or representation relating to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations. The acceptance of a deed to a residential Lot by the Owner in the Subdivision shall be deemed a Covenant and agreement on the part of the Owner, and the Owner's heirs, successors and assigns, that the Committee, the Association, as well as their agents, employees and architects, shall have no liability under this Declaration except for willful misdeeds.

Section 4. Single Family Residential Construction. No building shall be erected, altered or permitted to remain on any Lot other than one (1) detached single-family residential dwelling not to exceed two and one-half (2 1/2) stories in height, a private garage for not more than three (3) cars and bona fide servants' quarters which structures shall not exceed the main dwelling in height and which structure may be occupied only by a member of the family occupying the main residence on the Lot or by domestic servants employed on the premises and no room(s) in the dwelling and no space in any other structure shall be let or rented. This shall not preclude the main residential structure from being leased or rented in its entirety as a single residence to one family or person. This provision shall not apply to the Recreation Areas, Common Areas, any unrestricted Reserves or Reserves or Property designated for commercial development as shown on any Plat or Map of the Property, or any amendment thereto.

Section 5. Minimum Square Footage Within Improvements. The living area on the ground floor of a main residential structure (exclusive of porches, garages and servants' quarters) shall be not less than one thousand two hundred (1,200) square feet for one-story dwellings. The total living area for a multi-story dwelling shall be not less than one thousand four hundred (1,400) square feet. The Committee, at its sole discretion, is hereby permitted to approve deviations in any building area herein prescribed in instances, which in its sole judgment such deviation would result in a more common beneficial use. Such approvals must be granted in writing and when given will become part of these restrictions to the extent of the particular Lot involved.

Section 6. Exterior Materials. The exterior materials of residential structures and any attached garage and servants' quarters shall be not less than thirty percent (30%) brick on the ground floor with the remainder being either brick or masonry siding or "hardiplank", unless otherwise approved by the Committee.

Section 7. New Construction Only. No building of any kind with the exception of lawn storage or children's playhouses (which shall require Committee approval), shall ever be moved onto any Lot within said Subdivision, it being the intention that only new construction shall be placed and erected thereon, except with the prior written consent of the Committee.

Section 8. Roofs and Roofing Materials. The roofs of all buildings on the Property shall be constructed or covered with asphalt dimensional composition shingles or fiberglass composition shingles with a minimum manufacturer guarantee of twenty (20) years and "Weatherwood" color. The color of any replacement shingles, if the original color shall become unavailable, shall be subject to written approval by the Architectural Control Committee prior to installation. The roofs of all buildings shall contain a roof pitch of not less than four inches (4") per each vertical twelve inches (12") of roof. Roofs on attached porches may have a lesser pitch as may be determined by the Committee.

Section 9. Location of the Improvements Upon the Lot. No building, structure, or other improvements shall be located on any Lot nearer to the front Lot line or nearer to the street sideline than the minimum building setback line shown on the recorded plat. No building, structure, or other improvement shall be located on any Lot nearer than ten (10) feet to any side street line. No building shall be located nearer than five (5) feet to any interior Lot line with the exception of detached garages, where allowed, may have a three (3) foot side-yard building line. For the purposes of this Declaration, steps and unroofed Gardens shall not be considered as part of a building, provided however, that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot, Landscape area or any Common Area.

Section 10. Composite Building Site. Any Owner of one or more adjoining Lots (or portions thereof) may consolidate such Lots or portions into one single-family residence building site, with the privilege of placing or constructing improvements on such site, in which case setback lines shall be measured from the resulting side Property lines rather than from the Lot lines shown on the recorded plat. Any such proposed composite building site(s) must be approved by the Committee.

No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Association. Declarant however, hereby expressly reserves the right to re-plat any Lot(s) owned by Declarant. Any such division, boundary line change, or re-platting shall not be in violation of the applicable Subdivision and zoning regulations. No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 11. Utility Easements. Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded Plat and no structure of any kind shall be erected upon any of said easements. Utility easements

are for the distribution of electrical, telephone, gas, water, and cable television service. In some instances, sanitary sewer lines are also placed within the utility easement. Utility easements are typically located along the rear Lot line, although, selected Lots may contain a side Lot utility easement for the purpose of completing circuits or distribution systems. Both the recorded Subdivision Plat and the individual Lot survey should be consulted to determine the size and location of utility easements on a specified Lot. Generally, interior Lots contain a utility easement along the rear line. Perimeter Lots or Lots that back up to drainage facilities, pipeline easements, property boundaries and non-residential tracts typically contain a utility easement. Encroachment of structures upon a utility easement is prohibited. Neither the Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees' servants to shrubbery trees, flowers or improvements of the Owner located on the land within or affected by said easements.

Section 12. Reservation of Easements, Declarant expressly reserves for the benefit of all of the Property reciprocal easements for access, ingress and egress for all Owners to and from their respective Lots, for installation and repair of utility services; for encroachments of improvements constructed by Declarant and participating builders or authorized by the Committee over the Property, for drainage of water over, across and upon adjacent Lots, Common Areas and the Property resulting from the normal use of adjoining Lots, Common Areas or Property and for necessary maintenance and repair of any improvement. Such easements may be used by Declarant, its successors, purchasers, the Association, and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot, Common Areas or the Property.

Section 13. Garages. No garage on a lot with a residential dwelling shall ever be changed, altered or otherwise converted for any purpose inconsistent with the housing of a minimum of two (2) automobiles at all times. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize garages for the garaging of vehicles belonging to them. Detached garages are not permitted on Lots that back on to a Green Belt or Recreational Area. When the side of the Lot is exposed to a Green Belt or Recreational Area, a detached garage may be allowed provided that the garage is on the side of the Lot opposite the Green Belt or Recreational Area.

Section 14. Landscape Areas. The Association shall have the right to conduct landscaping activities upon and within the Landscape Areas. Lot Owners shall maintain the easement between their Lot and all street or road right of ways. The Association shall have the right, but not the obligation, to install, operate, maintain, repair and/or replace public street lighting, hike and bike trails, irrigation, jogging paths, walkways and other similar improvements, provided such lighting, trails, paths, walkways and other improvements must be constructed within the rights-of-way of thoroughfares, or the Association may assign such maintenance and operation to Section Associations.

Section 15. Sidewalks. Before the dwelling house is completed and occupied, the Builder shall construct a concrete sidewalk four (4) feet in width parallel to the street curb two (2) inches back from the Property lines of the Lot into the street right-of-way. Builders on corner Lots shall install such a sidewalk both parallel to the front Lot line and parallel to the side street Lot line. Such sidewalks shall comply with all Federal, State and County Laws, ordinances, or regulations respecting construction and/or specifications, if any. Locations of sidewalks are not to be varied except when required to avoid existing trees. The committee may set requirements as to color, width and surface texture of sidewalks.

Section 16. Housing Plan and Elevation Repetition. The following three scenarios represent the guidelines of BRAZOS GARDENS for purposes of determining when a plan and elevation can be repeated within a Subdivision:

- (1) When building the same plan, different elevation, on the same side of the street, one (1) Lot must be skipped;

- (2) When building the same plan, different elevation, on both sides of the street, one (1) Lot must be skipped.
- (3) When building the same plan, same elevation, on the same side of the street, two (2) Lots must be skipped.

Section 17. Landscaping. The residential Lot Builder is responsible for landscaping all front yards, including the portion of the street right-of-way between the Property line and the street curb and the rear yards of lots adjacent to Green Belts or Recreational Areas. Installation of all landscaping must occur immediately upon occupancy of the house or within thirty (30) days after completion of construction, whichever occurs first. Installation of landscaping, including materials and workmanship, must be in conformance with acceptable industry standards.

FRONT YARDS - ALL LOTS

Minimum planting bed specifications include:

- a. Minimum planting bed width of three (3) feet from the house foundation. Curvilinear planting beds are encouraged;
- b. Shrubs are to be planted in a pleasing, organized design; and
- c. The number of plants utilized shall be appropriate for the size of the planting bed. A maximum of seven (7) different species of planting may be utilized within a front yard.

Planting bed edging is not required, but is encouraged for maintenance purposes and to define the shape of planting beds. Loose brick, plastic, concrete scallop, corrugated aluminum, wire wicket, vertical timbers, and railroad ties are not in character with the desired landscape effect and are prohibited. Acceptable edging is ryerson steel, brick set in mortar, horizontal timber (2 inches by 4 inches, 2 inches by 6 inches, 4 inches by 4 inches, and 4 inches by 6 inches), stone laid horizontally in continuous and concrete bands.

All planting beds are to be mulched with shredded pine bark, or shredded hardwood.

The use of gravel or rock in front yard planting beds is prohibited, except as a border when set in and laid horizontally as quarried or utilized for drainage purposes. Specimen boulders are permitted.

The front lawn of each completed residence shall be completely sodded with St. Augustine grass or a hybrid thereof. Seeding, and/or sprigging is prohibited.

All landscaping is required to be maintained in a healthy and attractive appearance. Proper maintenance includes:

- a. Adequate irrigation. Automatic irrigation systems are encouraged;
- b. Appropriate fertilization;
- c. Pruning;
- d. Mowing;
- e. Weed control in lawns and planting beds;
- f. Seasonal mulching of planting beds;
- g. Insect and disease control;
- h. Replacement of diseased or dead plant materials; and,

A minimum of one (1) tree must be planted in the front yards. The tree must have a minimum three (3) inch caliper when measured six (6) inches above grade. The minimum tree height for the three-inch caliper tree must be seven (7) feet. Trees must be planted in an informal manner.

Shrubs shall include a minimum of five (5) larger species (minimum five (5) gallon), ten (10) small species (minimum one (1) gallon).

CORNER LOTS

Supplemental landscaping specifications for all corner Lots include the following:

Two (2) trees selected from the front yard trees are to be planted along the side street portion of corner Lots.

The trees must be a minimum of two (2) inches in caliper and the minimum tree height for the three-inch caliper must be six (6) feet. The three trees are to be planted informally and not aligned in a straight row.

MASTER PLANT LIST

A Master Plant List to be used by Builders and Owners is attached hereto as Exhibit "A".

Section 18. Landscape Plan. A plot plan showing all fence locations, all required trees and shrubs with size, location, and species noted shall be submitted to the Committee before installation by all Owners.

Section 19. Underground Electric Service. An underground electric distribution system will be installed in that part of BRAZOS GARDENS ("Underground Residential Subdivision"), which underground service area shall embrace all Lots in BRAZOS GARDENS. The Owner of each Lot in the Underground Residential Subdivision shall, at his own cost furnish, install, own and maintain (all in accordance with the requirement of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the Property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition the Owner of each such Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 110/220 volt three wire, 60 cycle, alternating current.

The electric company has installed the underground electric distribution system in the Underground Residential Subdivision at no cost to Developer (except for certain conduits, where applicable) upon Developer's representation that the Underground Residential Subdivision is being developed for single-family dwellings of the usual and customary type, constructed upon the premises, designed to be permanently located upon the Lot where originally constructed and built for sale to bona fide purchasers (such category of dwelling expressly excludes, without limitation, mobile homes and duplexes). Therefore, should the plans of Lot Owners in the Underground Residential Subdivision be changed so that dwellings of a different type will be permitted in such Subdivision, the electrical company shall not be obligated to provide electric service to a Lot where a dwelling of a different type is located unless (a) Developer has paid to the electrical company an amount representing the excess in cost for the entire Underground Residential Subdivision of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision, or (b) the Owner of such Lot, or the applicant for service, shall pay to the electric company for the additional service, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such Lot, plus (2) the cost of re-arranging and adding any electric facilities serving such Lot, which rearrangement and/or addition is determined by the electric company to be necessary.

Section 20. BULK COMMUNICATION SERVICES. IN THE SOLE DISCRETION OF THE DEVELOPER, AS LONG AS DEVELOPER IS IN CONTROL, AND THEREAFTER, IN THE SOLE DISCRETION OF THE ASSOCIATION, THE ASSOCIATION SHALL HAVE THE EXCLUSIVE RIGHT AND OPTION TO PROVIDE AND BILL EACH LOT OWNER FOR THE FOLLOWING COMMUNICATION SERVICES EITHER INDIVIDUALLY OR IN BUNDLED PACKAGES:

- a. TELEPHONE SERVICES (LOCAL AND LONG DISTANCE)
- b. CLOSED CIRCUIT TELEVISION
- c. CABLE TELEVISION
- d. SATELLITE TELEVISION
- e. INTERNET CONNECTION
- f. COMMUNITY INTERNET
- g. FIRE OR BURGLAR ALARM MONITORING
- h. ON DEMAND VIDEO
- i. VOICE MAIL FIBER OPTIC SERVICES

THESE SERVICES SHALL BE BILLED IN ACCORDANCE WITH ARTICLE VI, SECTION 7a.

Section 21. BULK UTILITY SERVICES. IN THE SOLE DISCRETION OF THE DEVELOPER, AS LONG AS THE DEVELOPER IS IN CONTROL, AND THEREAFTER, IN THE SOLE DISCRETION OF THE ASSOCIATION, THE ASSOCIATION SHALL HAVE THE EXCLUSIVE RIGHT AND OPTION TO PROVIDE AND BILL EACH LOT OWNER FOR THE FOLLOWING UTILITY SERVICES FROM THE ASSOCIATION EITHER INDIVIDUALLY OR IN BUNDLED PACKAGES:

- a. ELECTRICAL POWER
- b. NATURAL GAS
- c. BUNDLED SERVICES

Section 22. Grading and Drainage. Each Lot shall be graded so that storm water will drain to the abutting street(s) and not across adjacent Lots. Minimum grade shall be 1.0 percent. Exceptions will be made in those instances where existing topography dictates an alternate Lot grading plan. The Committee must approve all exceptions.

Section 23. Driveways. The Builder is required to build driveways into the street right-of-way and connect to the pavement. All driveway locations must be approved by the committee. To the extent possible, driveways are to be de-emphasized highlighting instead the landscape and pedestrian environment. Concrete driveways are to be a minimum four (4) inches thick over a sand base and shall comply with applicable county or city specifications. County or City specifications regarding driveway cuts and curb returns at driveway openings shall be adhered to. Driveways may be paved with concrete or unit masonry although use of materials should be consistent with the architectural character of the entire neighborhood. Asphalt paving is prohibited. Driveways should not be constructed over inlets or manholes. In instances where this is unavoidable, compliance with County or City regulations, which may require inlet adjustment and/or elevation, will be necessary. Driveways shall be located no closer than two (2) feet from the side Property line. Driveways serving residences with attached side or rear loaded garages and/or detached garages shall be a minimum of ten (10) feet in width at the street and may taper to a width not less than the total width of the garage as measured at the vehicle doors. Driveways serving attached two car garages facing the street shall be sixteen (16) feet in width. Driveway slopes should be uniform with smooth transitions between areas of varying pitch. The use of circular drives is discouraged and will only be allowed by the Committee in instances where the width of the Lot is sufficient to accommodate such driveways while leaving a significant amount of green space. Under no circumstances may an entire front yard be paved as a driveway.

Section 24. Outdoor Lighting. All outdoor lighting must conform to the following standards and be approved by the Committee. Floodlighting fixtures may be attached to the house or an architectural extension. Floodlighting shall not illuminate areas beyond the limits of the Property line. Ornamental or accent lighting is allowed but should be used in moderation and compliment the associated architectural elements. Moonlighting or up lighting of trees is allowed, but the light source must be hidden. Colored lenses on low voltage lights, colored light bulbs, fluorescent and neon lighting is prohibited. Mercury vapor security lights,

when the fixture is visible from public view or from other Lots, is prohibited. Mercury vapor lights, when used for special landscape lighting affect (such as hung in trees as up and down lights) is permissible.

Section 25. Screening. For all Corner Lots mechanical and electrical devices, garbage containers and other similar objects visible from a Public Street, Reserve or a Common Area or located on property boundaries, must be screened from view by either fences, walls, plantings, or a combination thereof Screening with plants is to be accomplished with initial installation, not assumed growth at maturity.

Section 26. Walls, Fences and Hedges. No wall, fence or hedge shall be erected or maintained nearer to the front Lot line than ten feet (10') behind the front building line on such Lot, nor on Corner Lots nearer to the side Lot line than the building line parallel to the side street. No side or rear fence, wall or hedge shall be more than six (6) feet in height from the Grading Plan for the Lot, except for street and perimeter fences selected by the Developer or the Association which may be eight (8) feet in height. All fences must be constructed of wood, concrete, ornamental wrought iron, or masonry. No chain link fence type construction will be permitted on any Lot. Any wall, fence or hedge, except for Subdivision perimeter walls, and boulevard walls erected on a Lot by Declarant, or its assigns, shall pass ownership with title to the Lot and it shall be Owner's responsibility to maintain said wall, fence or hedge thereafter.

Section 27. Lot Privacy Fences. For Lots 1 and 2, Block 1; Lots 45 through 49, Block 2, six foot (6') high wood fences shall be installed between all Lots and enclosing the rear yard on all lots except where Association alternative materials have been herein specified. Wood fences shall be constructed "good neighbor style", (alternating panels) using six inch (6") notched cedar pickets with a minimum of three (3) rails of two inch (2") x four inch (4") treated wood, a top rail of two inch (2") x six inch (6") x four inch (4") and four inch (4") x four inch (4") treated wood posts at a maximum spacing of eight feet (8') on center. All wood fences shall be constructed using galvanized nails, six (6) per picket minimum. Wood fences that face any street shall have all pickets facing the street. All wood fences shall be subject to Committee approval prior to construction.

For all Lots except Lots 1 and 2 Block 1 and Lots 45 through 49 Block 2, Wood fences shall be constructed "good neighbor style", (alternating panels) using four inch (4") notched cedar pickets with a minimum of two (2) rails of two inch (2") x four inch (4") treated wood and four inch (4") x four inch (4") treated wood posts at a maximum spacing of eight feet (8') on center. All wood fences shall be constructed using galvanized nails, four (4) per picket minimum. Wood fences that face any street shall have all pickets facing the street. All wood fences shall be subject to Committee approval prior to construction.

Section 28. Fence Maintenance. All fences herein shall be maintained in good condition at all times by the Owner of the Lot. The Association is granted an easement over and across any lot upon which a fence or wall owned by the Developer or the Association is constructed for the purpose of maintenance, replacement or staining.

Section 29. Other Requirements. The Deed Restrictions of the various sections of the Property may contain more restricted provisions or additional requirements (such as by way of illustration, require larger building sizes, more brick or masonry siding or different types of building materials). In such cases the Section Declaration shall apply to further restrict usage or enlarge building requirements but shall not apply to limit the Declaration set out herein or lessen the building size or standards each of which shall be considered minimum requirements.

Section 30. Authority. In the event of any dispute arising under the provisions of this Section, the Committee shall have full and complete authority in handling said dispute and the decision of the Committee shall be final.

ARTICLE III
USE RESTRICTIONS

Section 1. 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 may become, an annoyance or a nuisance to the neighborhood. No loud noises or noxious odors shall be permitted on the Property, and the Association shall have the right to determine if any such noise, odor or activity constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Lot Owner in the Property, shall be located, used or placed on any portion of the Property or exposed to the view of other Lot Owners without the prior written approval of the Association. No television, sound or amplification system or other such equipment shall be operated at a level that can be heard outside of the building in which it is housed. This Restriction is waived in regard to the normal sales activities required to sell homes in the Subdivision and the lighting effects utilized to display the model homes.

Section 2. Use of Temporary Structures or Outbuildings. 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, with the exception of lawn storage or children's playhouses which have received Committee approval except that Sales trailers and construction trailers are permitted during the initial construction phase and Sales phase of the Subdivision development.

Provided the express written consent of the Committee is secured prior to installation and placement on a Lot, one (1) lawn storage building and/or one (1) children's playhouse, each limited in maximum height to eight (8) feet from ground to highest point of structure, no more than one hundred (100) square feet each, may be placed on a Lot behind the main residential structure. In no case can the outbuilding be placed in a utility easement; within five feet of side Property line; nor ten feet of the back Property line. Additionally, no outbuilding structure of any type is permitted unless the specific Lot involved is completely enclosed by fencing. Otherwise, no outbuilding or temporary structure of any kind shall ever be moved onto or erected on any Lot. It is intended hereby that, unless otherwise specifically approved, only new construction shall be placed and erected on any Lot within the Property.

Section 3. Automobiles, Boats, Trailers, Recreational Vehicles and Other Vehicles. No vehicle may be parked or stored on any part of any Lot, easement, street right-of-way, or Common Area or in the street adjacent to any Lot easement right-of-way or Common Area unless:

(a). Such vehicle does not exceed either six feet six inches in height, and/or seven feet six inches in width and/or twenty-one feet in length, and Such vehicle is concealed from public view inside a garage or other approved enclosure on the Owner's Lot.

Only passenger automobiles, passenger vans (the term "passenger vans" specifically excludes motor homes and recreation vehicles), motorcycles, pick-up trucks, or pick-up trucks with attached-bed covers are permitted provided that they are:

- a. In operating condition;
- b. Have current license plates and inspection stickers;
- c. Are in daily use as motor vehicles on the streets and highways of the State of Texas; and, Do not exceed either six feet six inches in height, and/or seven feet six inches in width and/or twenty-one feet in length.

No non-motorized vehicle, trailer, boat, marine craft, hover craft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, driveway, easement, street right-of-way, or Common Area or in the street adjacent to such Lot easement, street right-of-way, or Common Area unless such object is concealed from public view inside a garage or other approved enclosure on the Owner's Lot. The phrase "approved enclosure" as used in this paragraph shall mean any fence, structure or other improvement approved by the Committee. No one shall park store or keep within or adjoining the Property any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck, tractor or tractor trailer, boat trailer and any other vehicle equipment, mobile or otherwise, deemed to be a nuisance by the Board), or any recreational vehicle (camper unit, motor home, truck, trailer, boat mobile home or other similar vehicle deemed to be a nuisance by the Association).

No one shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any street, driveway, Lot or portion of the Common Areas, except for repairs to the personal vehicles of the residents conducted exclusively in the enclosed garage and provided such personal vehicle repairs do not cause excessive noise or disturb the neighbors at unreasonable hours of the night.

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

No vehicle shall be parked on streets or driveways so as to obstruct ingress or egress by other Owners, their families, guests and invitees or the general public using the streets for ingress and egress in the Subdivision. The Association may designate areas as fire zones, or no parking zones or guest parking only zones. The Association shall have the authority to tow any vehicle parked or situated in violation of these Restrictions or the Association rules, the cost to be at the vehicle owner's expense.

No motorbikes, motorcycles, motor scooters, "go-carts" or other similar vehicles shall be permitted to be operated in the Subdivision, if, in the sole judgment of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance or jeopardize the safety of any Owner, his tenants, and their families. The Association may adopt rules for the regulation of the admission and parking of vehicles within the Subdivision, the Common Areas, and adjacent street right-of-ways, including the assessment of charges and fines to Owners who violate, or whose invitees violate, such rules after notice and hearing. If a complaint is received about a Violation of any part of this section, the Association will be the Final authority on the matter.

Section 4. Advertisement and Garage Sales. The Association shall have the right to make rules and regulations governing and limiting the advertisement of and holding of garage sales.

Section 5. Air Conditioners. No window or wall type air conditioner shall be installed, erected, placed, or maintained on or in any building without prior written permission of the Committee.

Section 6. Window and Door Coverings. No aluminum foil or similar reflective material shall be used or placed over doors or on windows.

Section 7. Unsightly Objects. No unsightly objects which might reasonably be considered to give annoyance to neighbors of ordinary sensibility shall be placed or allowed to remain on any yard, street or driveway. The Association shall have the sole and exclusive discretion to determine what constitutes an unsightly object.

Section 8. Pools and Playground Equipment. No above ground pools are permitted at all on any Lots. Playhouse or fort style structures or pool ancillary structures are limited to a maximum overall height of eight (8) feet and an above ground grade deck maximum height of twenty four (24) inches. The intent of this provision is to offer optimum private enjoyment of adjacent properties. Additionally, playground equipment of any type or amenity structures of any type are

permitted only when the specific Lot involved is completely enclosed by fences.

Section 9. Mineral Operation. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot or Common Areas, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot or Common Area. No derrick or other structures designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or Common Area.

Section 10. 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 in reasonable numbers, provided that they are not kept, bred or maintained for commercial purposes. No Owner shall allow any pets to become a nuisance by virtue of noise, odor, dangerous proclivities, excessive pet debris or unreasonable numbers of animals. If common household pets are kept they must be confined to a fenced backyard (such fence shall encompass the entire backyard) or within the house. When away from Lot, pets must be on a leash at all times. It is the pet Owner's responsibility to keep the Lot clean and free of pet debris and to keep pets from making noise which disturbs neighbors. Pet Owners shall not permit their pets to defecate on other Owners' Lots, on the Common Areas, Landscape Areas Recreational Areas or on the streets, curbs or sidewalks.

Section 11. Visual Obstruction at the Intersection of Public Streets. No object or thing 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 12. Lot and Building Maintenance. The Owners or occupants of all Lots shall at all times keep all weeds and grass thereof cut in a sanitary, healthful and attractive manner, weed free and shall edge curbs that run along the Property lines, 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. All fences and buildings (including but not limited to the main residence and garage if any, which have been erected on any Lot) shall be maintained in good repair and condition, by Owner, and Owner shall promptly repair or replace or repair or restrain the same in the event of partial or total destruction or ordinary deterioration, wear and tear. Each Owner shall maintain in good condition and repair all structures on the Lot including, but not limited to, all windows, doors, garage doors, roofs, siding, brickwork, stucco, masonry, concrete, driveways and walks, fences, trim, plumbing, gas and electrical. By way of example, not of limitation, wood rot, damaged brick, fading, peeling or aged paint or stain mildew, broken doors or windows, rotting or falling fences shall be considered violations of this Declaration, which the Owner of a Lot shall repair or replace upon Association demand. The drying of clothes in full public view is prohibited. All walks, driveways, carports and other areas shall be kept clean and free of debris, oil or other unsightly matter. The Association shall be the final authority of the need for maintenance or repair. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. No waste materials shall be dumped or drained into any Landscape Area or Common Area. Containers for the storage of trash, garbage and other waste materials must be stored out of public view except on trash collection days when they may be placed at the curb not earlier than 7:00 p.m. of the night prior to the day of scheduled collections and must be removed by 7:00 p.m. on the day of collection. No Lot shall be used or maintained as a dumping ground for trash, nor will the accumulation of garbage, trash or rubbish of any kind thereon be permitted. Burning of trash, garbage, leaves, grass or anything else will not be permitted. Equipment for storage or disposal of such waste materials shall be kept in a clean and sanitary condition and shall be stored out of public view. New building materials used in the construction of improvement erected upon 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 undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable approved enclosure on the Lot.

In the event of default on the part of the Owner or Owners of any Lot in observing the above requirements or any of them, such default continuing after Association has served ten (10) days written notice thereof, being placed in the U. S. Mail without the requirement of certification, then Association, by and through its duly authorized agent may, without liability to the Owner or Occupant in trespass or otherwise, enter upon said Lot and cut the grass, edge and weed the lawn, cause to be removed 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. The Association 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 occupancy of a Lot to pay for such work immediately upon receipt of a statement thereof. In the event of failure by the Owner or Occupant to pay such statement within fifteen (15) days from the date mailed, the amount thereof may be added to the annual maintenance charge provided for herein and the collection of such additional maintenance charge shall be governed by Article VI of this Declaration.

Section 13. Signs, Advertisements, Billboards. Except for signs owned by Builders or Developer advertising lots or their model homes during the period of original construction and home sales, no sign, poster, advertisement or billboard or advertising structure of any kind other than one normal "For Sale" sign, not to exceed five (5) square feet in total size may be erected or maintained on any Lot in said Subdivision or be placed in any Common Area, Landscape Area, adjacent Lot or Recreational Area. Owner shall also have the right to maintain on their Lot not more than two (2) signs not to exceed five (5) square feet each advertising a political candidate in any local, state, or Federal election. These political advertisement signs may be maintained for three (3) weeks prior to the election and must be removed within two (2) days after the election. The Association will have the right to remove any sign, advertisement billboard, or advertising 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 such removal. This provision shall not apply to Association or Developer project identity signs, nor Association signs for recreational rules or Association informational signs.

Section 14. No Business or Commercial Use. Subject to the provisions of this Declaration and the Association By-Laws, no part of the Property may be used for purposes other than single family residential housing and the related common purposes for which the Property was designed. Each Lot and structure shall be used for single-family residential purposes or such other uses permitted by this Declaration, and for no other purposes. No Lot or structure shall be used or occupied for any business, commercial trade or professional purpose or as a church either apart from or in connection with, the use thereof as a residence, whether for profit or not. The foregoing restrictions as to residence shall not however, be construed in such manner as to prohibit an Owner from:

- a. Maintaining a personal professional library:
- b. Keeping personal business or professional records or accounts; or
- c. Handling personal business or professional telephone calls or correspondence, which uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions, provided such activity is not apparent by traffic, sight, sound or smell or such outside the Lot and does not involve visitation to the Lot by customers, suppliers or other business invitees.

Section 15. Holiday Decorations. Exterior Thanksgiving decorations may be installed November 10 of each year and must be removed by December 1 of each year. Exterior Holiday decorations may be installed the day after Thanksgiving each year and must be removed by January 5 of the new year. Holiday decorations shall not be

so excessive as to cause a nuisance to neighborhood residents. The Association shall have the sole and exclusive authority to decide if holiday decorations are causing a nuisance.

Section 16. Visual Screening on Lots. The drying of clothes in public view is prohibited. All yard equipment, woodpiles or storage piles shall be kept screened by a service yard or other similar facility so as to conceal them from view of neighboring Lots, Streets, Green Belts or other Property.

Section 17. Dishes and Antennae. No electronic antenna or devise of any type other than an antenna or dish for receiving normal television or satellite signals shall be erected, constructed, placed or permitted to remain on any Lot, houses or buildings. Television antenna must be located to the rear of the roof ridge line, gable or center line of the principal dwelling. Freestanding antennae and dishes must be located behind the rear wall of the main residential structure and dishes shall not be larger than one (1) meter in diameter. Ground level dishes or antennae on Green Belt Lots shall be screened from public view with landscaping. No antennae, either freestanding or attached, shall be permitted to extend more than five (5) feet above the roof of the main residential structure on the Lot, or shall be erected on a wooden-pole. No dish shall be permitted to extend above the roof of the main residential structure on the Lot. These rules are subject to variance by the Committee, provided that any variance granted provides for screening deemed sufficient by the Committee to insure that no such antennae or dish shall be visible from the street which runs in front of said Lot or the street which runs on the side of any corner Lot or Green Belt.

Section 18. Roads. All roads and esplanades within the Subdivision designated as esplanades on the Map or Plat of the Subdivision and deeded to the Association shall be maintained and regulated by the Association. The Association shall have the right to establish rules and regulations concerning all such roads including, but not limited to, speed limits, curb parking, fire lanes, and alleys, stop signs, traffic directional signals and signs, speed bumps, crosswalks, traffic directional flow, stripping, signage, curb requirements, and other matters regarding the roads, curbs and esplanades and their usage by Lot Owners, family members, guests, and invites.

Section 19. Drainage and Septic Systems. Catch basins and drainage areas are 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 re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserved for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow, provided, the exercise of such easement shall not materially diminish the value or interfere with the use of any adjacent Property without the consent of the owner thereof. Septic tanks and drain fields, other than those installed by or with consent of the Declarant are prohibited within the Property. 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, storm sewer or storm drain or Landscape Areas within the Property.

Section 20. Fireworks and Firearms. The discharge of fireworks or firearms within the 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, the Association shall not be obligated to take action to enforce this Section.

Section 21. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Property except that up to five (5) gallons of fuel in approved containers may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment

ARTICLE IV
BRAZOS GARDENS OWNERS' ASSOCIATION, INC. ("Association")

Section 1. Purpose. The purpose of the Association shall be to provide for maintenance, preservation and architectural control of the residential Lots within its Subdivision, including any Recreational and Common Areas, if any.

Section 2. Membership and Voting Rights. Every Owner of a Lot in BRAZOS GARDENS Section I whose Lot is subject to a maintenance charge Assessment by the Association shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which subject to Assessment. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership.

Section 3. Non-Profit Corporation. The Association, a non-profit corporation, has been organized; and it shall be governed by the Articles of Incorporation of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 4. By-Laws. The Association may make whatever rules or By-Laws it may choose to govern the organization; provided, however, that same are not in conflict with the terms and provisions hereof

Section 5. Ownership Information. The Property Owner is required at all times to provide the Association with written notice of proper mailing information should it differ from the Property address relative to ownership. Further, when an alternate address exists, Owner is required to render notice of tenant, if any, or agency, if any, involved in the management of said Property. The Owner is required and obligated to maintain current information with the Association or its designated management company at all times.

Section 6. Inspection of Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times for any proper purpose during normal business hours, in accordance with the requirements of the Texas Non-Profit Corporation Act.

ARTICLE V
ASSOCIATION MEMBERS AND VOTING RIGHTS

Section 1. Association Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Classes of Voting Membership. The Association shall have two classes of voting membership; Class A. Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. If more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they direct, but in no event shall more than one vote be cast with respect to any Lot. Holders of future interests not entitled to present possession shall not be considered as Owners for the purposes of voting hereunder. Class B. The Class B member(s) shall be Declarant, or their successors or assigns and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier in time:

- a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership including duly annexed areas; or
- b. on January 1, 2021.

Section 3. DEVELOPER CONTROL. SECTIONS 1 AND 2 OF ARTICLE V NOTWITHSTANDING, AND FOR THE BENEFIT AND PROTECTION OF THE LOT OWNERS AND ANY FIRST MORTGAGEES OF RECORD FOR THE SOLE PURPOSE OF INSURING A COMPLETE AND ORDERLY BUILD OUT OF BRAZOS GARDENS AND ALL ANNEXATIONS THERETO, AS WELL AS A TIMELY SELLOUT OF THE PROJECT, THE DECLARANT WILL RETAIN CONTROL OF AND OVER THE ASSOCIATION FOR A MAXIMUM PERIOD NOT TO EXCEED DECEMBER 31, 2020 OR WHEN IN THE SOLE OPINION OF THE DECLARANT, BRAZOS GARDENS, INCLUDING ALL ANNEXATIONS THERETO, BECOMES VIABLE, SELF-SUPPORTING AND OPERATIONAL. IT IS EXPRESSLY UNDERSTOOD, THE DEVELOPER WILL NOT USE SAID CONTROL FOR ANY ADVANTAGE OVER THE OWNERS BY WAY OF RETENTION OF ANY RESIDUAL RIGHTS OR INTEREST IN THE ASSOCIATION OR THROUGH THE CREATION OF ANY MANAGEMENT AGREEMENT WITH A TERM LONGER THAN ONE (1) YEAR WITHOUT MAJORITY ASSOCIATION APPROVAL UPON RELINQUISHMENT OF DEVELOPER CONTROL. AT THE END OF THE DEVELOPER CONTROL PERIOD, THE DEVELOPER, THROUGH THE ASSOCIATION, SHALL CALL THE FIRST ANNUAL MEETING OF THE ASSOCIATION.

ARTICLE VI
ANNUAL MAINTENANCE ASSESSMENTS ("Assessments")

Section 1. The Maintenance Fund. All funds collected as hereinafter provided for the benefit of the Association from the regular and/or special maintenance charges, for capital improvements, shall constitute and be known as the 'Maintenance Fund'. The Assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents in the Property and for the development, improvement, maintenance, and acquisition of Common Areas, Reserves, storm water detention lakes, and easements. The responsibilities of the Association may include, by way of example, but without limitation, at its sole discretion, any and all of the following: maintaining, repairing or replacing parkways, streets, curbs, perimeter fences, esplanades, maintaining repair or replacing of the walkways, steps, entry gates, or fountain areas, Landscape Areas, project identity signs, landscaping if any; maintaining rights-of-way, easements, esplanades and other public areas, if any; construction, installation, and operation of street lights; purchase and/or operating expenses of recreation areas, pools, playgrounds, clubhouses, tennis courts, jogging tracks and parks, if any, collecting garbage, insecticide services; payment of all legal and other expenses incurred in connection with operation of the association, the enforcement of all recorded charges and Assessments, Covenants, Restrictions, and conditions affecting the Properties to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and Assessment; employing policemen and watchmen; employing CPAs and Property management firms, attorneys, porters, lifeguards, or any type of service deemed necessary or advisable by the Association, caring for vacant Lots and doing any other thing necessary or desirable in the opinion of the Association to keep the properties in the Subdivision neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property.

It is understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

The Association shall also annually prepare a reserve budget to take into account the number and nature of depreciable assets, the expected life of each asset and the expected repair or replacement cost. The Association shall set the required capital budget contribution in an amount sufficient to permit meeting the projected needs of the Association as shown on the budget, with respect both to amount and timing by annual Assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of Assessments.

Section 2. Creation of the Lien and Personal Obligation of Assessments. Each Lot in the Property is hereby subjected to the annual maintenance charge as set out in this Article, and each Owner of any Lot by acceptance of a deed or title, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Assessments or charges, (2) Special Assessments for such Assessments to be established and collected as hereinafter provided; and (3) any

charge back for costs, fees, expenses, attorney's or other charges incurred by the Association in connection with enforcement of these Declarations, the Association By-Laws, or Rules and Regulations. The Assessments and Special Assessments and charge backs, together with the interest, costs, late charges, and reasonable attorney's fees, shall be charged on the Lot and shall be a continuing lien upon the Property against which such Assessments are made. All such Assessments as to a particular Property, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the Assessments fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by them, however the property shall pass subject to lien.

Section 3. Payment of Assessments. The Assessments shall be paid by the Owner or Owners of each Lot in the Association, in annual installments. The annual periods for which maintenance charges shall be levied shall be January 1 through December 31, with payment being due by January 15, of year for which the assessment is levied. The rate at which each Lot shall be assessed shall be determined annually, shall be billed in advance, shall be due and payable in advance and may be adjusted from year to year by the Board of Directors of the Association as the needs of the Subdivision may, in the judgment of the Association, require; provided that such Assessments shall be uniform for all residential lots. The Association's Assessments, annual and special herein above described may be increased by majority vote of its members at any meeting duly called for that purpose.

Section 4. Maximum Annual Assessment. Association Maintenance Fund ("AMF") Until January 1, 2003, maximum annual Association Assessment shall be THREE HUNDRED DOLLARS (\$300.00) per Lot, per annum. The Association may fix the annual Assessment at any amount not in excess of the maximum. From and after January 1, 2003, the maximum annual assessment may be increased each year not more than twenty percent (20%) above the maximum Assessment for the previous year without a vote of the membership. The Association may, at its discretion, accumulate and assess the increase in a later year(s). The maximum annual Assessment may be increased above the twenty percent (20%) increase described above only by approval of at least two-thirds (2/3) of each class of the members in the Association present and voting in person or by proxy, at a meeting duly called for that purpose at which a quorum is present.

Section 4(a) Transfer Fees. The Association may charge a fee for transferring ownership of a Lot. The fee shall be set by the Board of Directors but shall not exceed one third (1/3) of the annual Assessment. Transfer fees are not counted toward the lots annual on special assessment and do not count toward the maximum assessment.

Section 4(b) Bulk Service Fees. Assessments for Bulk Services are not covered toward a lot's annual assessment and do not count toward the maximum assessment.

Section 5. Special Assessments. In addition to the Assessments authorized above, the Association may levy, in any Assessment year, a Special Assessment applicable to the current year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, street, curbs, storm sewers, sidewalk, Recreational Areas, including fixtures and personal property related thereto, or for any other purpose approved by the membership, provided any such Assessment shall have the approval of at least two-thirds (2/3) of the votes of those members of each class who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present.

Section 6. Notice and Quorum. Written notice of any membership meeting called for the purpose of increasing the maximum annual Assessment or raising any Assessment or Special Assessment, shall be mailed (by U.S. first class mail) to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such meeting, the presence of members or of proxies entitled to cast at least thirty-three and one third percent (33 1/3%) percent of the votes of each class of

membership shall constitute a quorum.

Section 7. Rate of Assessment. All developed Lots in BRAZOS GARDENS Section I shall commence to bear their applicable maintenance fund assessment simultaneously and Lots owned by Declarant are not exempt from Assessment. All developed Lots shall be subject to the Assessments determined by the Association in accordance with the provisions hereof. Developed Lots in BRAZOS GARDENS Section I which are owned by the Developer shall be assessed at one-quarter (1/4) of the annual assessment. Developed Lots in BRAZOS GARDENS Section 1 which are owned by Builders shall be assessed at one-half (1/2) of the Assessment for twelve (12) months after Closing and then the full rate shall be assessed. The rate of Assessment for an individual Lot, within a calendar year, can change as the character of ownership and the status of occupancy by a resident changes, and the applicable Assessment for such Lot shall be prorated according to the rate required during each type of ownership and paid in advance.

Section 7(a) Bulk Services. In the event that the Association contracts for bulk communication or power services, such costs shall be billed directly to each occupied home as a monthly or quarterly assessment, as the Association may elect, such additional Assessments shall be separately itemized and shall be collected in the same manner as regular Assessments, except that Assessments billed hereunder shall be due on the first day of the month or quarter when billed, shall be late if not paid by the tenth (10th) day of the month or quarter billed and shall be subject to TWENTY-FIVE (\$25.00) or FIVE (5%) late charge, whichever is less, which shall not be considered interest, if not paid by the late date. The Provisions of Article VI, Section 8 shall apply to non-payment of these fees. These fees may be billed as flat rate per Lot metered, or per service, or any combination thereof, as determined in the sole discretion of the Developer or the Association. Bulk Service Assessments may be set or changed by the Board of Directors on a monthly basis and are effective immediately. Bulk Service Assessments shall be reviewed and ratified by the Developer/membership at least annually.

Section 8. Effect of-Non Payment of Assessments. Any Assessment not paid within thirty (30) days after the due date shall bear interest at the rate of ten percent (10%) per annum Or the maximum rate allowed by law whichever is less. The Association may in addition charge a late charge for Assessments paid more than fifteen (15) days after the due date. The Association may bring an action of law against the Owner personally obligated to pay same, or foreclose the liens against the Property or both. Interest, costs, late charges and attorneys fees incurred in any such collection action shall be added to the amount of such Assessment or charge. An Owner by his acceptance of a deed or title to a Lot, hereby expressly vests in the Association and 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 enforcement of such liens, including, specifically, non judicial foreclosure pursuant to the Texas Property Code (or any amendment or- successor statute) and each such Owner expressly grants to the Association a Power of Sale in connection with said lien. The Association shall have the right and power to appoint a Trustee(s) to act for and in behalf of the Association to enforce the lien. The lien provided for in this section shall be in favor of the Association for the benefit of all Lot Owners. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Fort Bend County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required

by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Fort Bend County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees, costs of collection, interest, late fees, and reasonable trustees fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of default and, third, the remaining balance, if any, shall be paid to such owner. Following any such foreclosure each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of possession thereunder. The Association shall also have the right to maintain deficiency suit in the event the sale proceeds are less than the amount of assessments, interest, late fees, attorney's fees, and costs incurred by or owed to the Association.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any Assessment, the Association may, upon ten (10) days prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the right of such nonpaying Owner to use the Common Areas, if any, 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.

In addition the Association shall adopt rules for the termination of Bulk Services to any lot for non payment of Assessments whether annual special Bulk Services or other.

It is the intent of the provisions of this Section to comply with the provisions of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of the Texas Property Code hereafter, the President or Vice-President of the Association, acting without joinder of any other Owner or Mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Fort Bend County, Texas, amend the provisions hereof so as to comply with said amendments to the Texas Property Code.

No Owner may waive or otherwise escape liability for the Assessments provided herein by non-use of the facilities or services provided by the Association or by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. To secure the payment of the Maintenance Fund all annual and Special Assessments established hereby and to be levied on individual residential Lots, there is hereby reserved in each Deed (whether specifically stated therein or not), a Vendor's Lien and a Contract Lien for benefit of the Association are retained, said liens to be enforceable as set forth in Article VI hereof by the Association on behalf of such beneficiary; provided, however, that each such liens shall be secondary, subordinate and inferior to all liens, present and future given, granted and created by or at the request of the Owner of any such Lot to secure the payment of monies advanced on account of the purchase price and/or the construction of improvements on any such Lot to the extent of any such maintenance fund charge or regular Assessments or Special Assessments accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien; and further provided that as a condition precedent to any proceeding by the Association to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, for the aforesaid purpose or purposes. The sale or transfer of any Lot pursuant to purchase money or construction loan mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer. Mortgagees are not required to collect Assessments. Failure to pay Assessments does not constitute a default under an insured mortgage. This provision does not cut off the personal liability of the owner.

Section 10. Date of Commencement of Annual Assessments Due Dates. The Assessments provided for herein shall commence as to all developed Lots in BRAZOS

GARDENS Section 1, on the date the first Lot is transferred to a Builder by the Developer. The Assessments shall be adjusted according to the number of months remaining in the then current calendar years. The Association shall fix the amount of the Assessment against each Lot at least thirty (30) days in advance of each Assessment period. Written notice of the Assessment shall be mailed (by U.S. first class mail) to every Owner subject thereto. The payment dates shall be established by the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the Owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.

ARTICLE VII INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association, or its duly authorized agent, shall have the authority to and shall endeavor to obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket "all-risk" coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. The Association shall have no insurance responsibility for any part of any Lot or the improvements thereon.

The Board shall also obtain a general liability policy covering the Common Area, insuring the Association and its Members for all damage or injury caused by the negligence of the Association or any person for whose acts the Association is held responsible ("Liability Policy"). The Liability Policy shall provide coverage in an amount not less than Two Million (\$2,000,000.00) Dollar single person limit with respect to bodily injury and property damage, not less than Three Million (\$3,000,000-00) Dollar limit per occurrence, if reasonably available, and not less than Five Hundred Thousand (\$500,000-00) Dollar minimum property damage coverage.

Premiums for all insurance on the Common Area shall be a Common Expense, subject to the right of the Association to seek reimbursement for all or a portion of such expenses pursuant to this Declaration. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance satisfies the coverage required hereunder. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total. All insurance coverage obtained by the Association shall be governed by the following provisions:

- (a) All policies shall be written with a company, authorized to do business in Texas which holds a Best's rating of A or better and is assigned a financial size category of A+ or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available; -
- (b) All policies on the Common Area shall be for the benefit of the Association and its Members and shall be written in the name of the Association or for the benefit of the Association;
- (c) Exclusive authority to adjust losses under policies obtained on the Common Area shall be vested in the Association;
- (d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;
- (e) All Property insurance policies shall have an agreed amount endorsement, if reasonably available; and
- (f) The Association shall use reasonable efforts to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association and its Directors, officers, employees and manager, the Owner and occupants of Lots and their respective tenants, servants, agents, and guests;
a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash; a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled, invalidated suspended, or subject to non-renewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

(v) a statement that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(vi) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal. In addition to the insurance described above, the Association shall obtain, as a Common Expense, workers compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, and flood insurance, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment, but, if reasonably available, may not be less than one-sixth (1/6) of the annual Assessments on all Lots, plus Reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellations substantial modification, or non-renewal.

Section 2. Individual Insurance. By taking title to a Lot subject to this Declaration, each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry homeowners insurance on the Lot(s) and structures constructed thereon including liability coverage of not less than \$100,000 per person and \$300,000 per occurrence and property damage liability insurance of not less than \$50,000 plus fire and extended coverage for full replacement value. Owner further covenants and agrees that in the event of loss or damage to the structures comprising his Lot, the Owner shall either: (a) proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved by the Committee; or (b) clear the Lot of all damaged structures, debris slabs and ruins and thereafter maintain the Lot in a neat and attractive, landscaped condition consistent with the requirements of the Committee and the Board of Directors.

Section 3. Damage and Destruction.

(a) Immediately after damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment or all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total Class "A" vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said

period, then the period shall be extended until such funds or information shall be made available; provided, however such extension shall not exceed sixty (60) additional days. Except as expressly provided herein, no Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area or Common Property of the Association shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized then and in that event the affected portion of the Property shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive, landscaped condition.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repair or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction, or if no repair or reconstruction is made, any proceeds shall be retained by and for the benefit of the Association.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against the Owners of Lots sufficient to raise the additional funds necessary to restore the Common amenity. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE VIII NO PARTITION

Section 1. No Partition. Except as is permitted in the Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition unless the Property has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Association from acquiring and disposing of tangible personal property nor from acquiring title to real Property which may or may not be subject to this Declaration.

ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Association, any Section Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all Restrictions, Conditions, Covenants, Reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall not affect any other provision or provisions which shall remain in full force and effect.

Section 3. Texas Property Code. The Association shall have all of the rights provided under Texas Property Code, and the Common Law of Texas and the United States or any amended or successor statute.

Section 4. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any Recreational Area situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights and right to use of the Recreational Areas by an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations;
- (c) The right of the Association or the Developer 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 such conditions as may be agreed to by the members; and
- (d) The right of the Association to collect and disburse those funds as set forth in Article IV.

Section 5. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitation, Restriction, easement, Reservation, condition and Covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 6. Delegation of Use. Any Owner may delegate in accordance with the By-Laws of the Association his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Property.

Section 7. Amendment. This Declaration shall run with and bind the land, for a term of forty (40) years from the date this Declaration is recorded, after which time the shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by those Owners owning not less than seventy five percent (75%) of the Lots within BRAZOS GARDENS Section 1, and thereafter by an instrument signed by those Owners owning not less than sixty seven percent (67%) of the Lots within BRAZOS GARDENS Section 1. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the Official Public Records of Real Property of Fort Bend County, Texas.

Section 8. Dissolution. If the Association is dissolved, the assets shall be dedicated to a public body, or conveyed to a non-profit organization with similar purposes. Under no circumstances shall any asset devolve upon an individual member or for a profit entity.

Section 9. Common Area Mortgages or Conveyance. After the date hereof the Common Area cannot be mortgaged or conveyed without the consent of seventy five percent (75%) of the Lot Owners (excluding the Developer). If the ingress or egress to any residence is through the Common Area, any conveyance or encumbrance of such area shall be subject to the Lot Owner's easement.

Section 10. Books and Records. The books, records and papers of the Association shall, during reasonable business hours, be subject to inspection by any member for any proper purpose. The Articles of Incorporation, By-Laws of the Association, and this Declaration shall be available for inspection by any member at the principal office of the Association where copies may be purchased at a reasonable cost.

Section 11. Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

Section 12. Omissions. If any punctuation, word, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or

provision appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provisions shall be supplied by inference.

Section 13. Lienholder. Lienholder joins herein solely for the purpose of subordinating the lien of record upon the Properties to the covenants, conditions and restrictions hereby imposed by Declarant, with, however, the stipulation that such subordination does not extend to any lien or charge imposed by or provided for in this Declaration.

Section 14. Additional Requirements. So long as required by the Federal Home Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) percent of the first Mortgagees or Members representing at least sixty-seven (67%) percent of the total Association vote entitled to be cast thereon consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real Property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (A decision, including contracts, by the Board or provisions of any Declaration subsequently recorded on any portion of the Property regarding Assessments annexed or other similar areas shall not be subject to this provision where such decision or subsequent Declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Area (The Issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) fail to maintain insurance, as required by this Declaration,

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such Property, or to add to Reserves.

First Mortgagees may, jointly or singly, after thirty (30) days written notice to the Association, pay charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 15. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 16. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 17. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Association, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such

changes:

Section 18. Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, By-Laws, or Texas Law for any of the acts set out in this Article.

Section 19. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 20. ANNEXATION. ADDITIONAL RESIDENTIAL PROPERTY OR COMMERCIAL PROPERTY AND COMMON AREA MAY BE ANNEXED TO THE PROPERTIES OR INCORPORATED INTO THE ASSOCIATION WITH THE CONSENT OF THE ASSOCIATION OR BY DECLARANT, WITHOUT APPROVAL BY THE MEMBERSHIP.

Section 21. Section Associations. Any provision foregoing notwithstanding unless any until the plat of a second or subsequent section of Brazos Gardens shall be recorded and approved, all provisions relating to "section associations" shall be quiescent and Brazos Gardens owners' Association, Individually shall be the sole and exclusive Association hereunder for Brazos Gardens Section 1.

EXECUTED this the 18th day of April, 2002.

DEVELOPER:

VENTANA DEVELOPMENT, Ltd.
A Texas Limited Partnership

VENTANA DEVELOPMENT BRAZOS, L.L.C., its General Partner

By: James B. Grover
James B. Grover Manager

LIENHOLDER:

TEXAS STATE BANK RIVERWAY

BY: Jim McIntyre
Jim McIntyre, Executive Vice-President

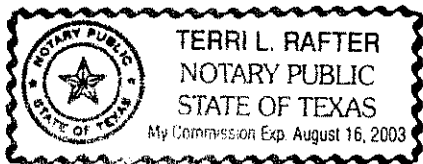
STATE OF TEXAS

COUNTY OF MATAGORDA

BEFORE, ME, the undersigned authority, on this day personally appeared JAMES BRUCE GROVER, Manager of Ventana Development Brazos, L.L.C, General Partner of Ventana Development, a Texas Limited Partnership Company, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation and In the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 18 day of April 2002.

Terri L. Rafter
Notary in and for the State of Texas

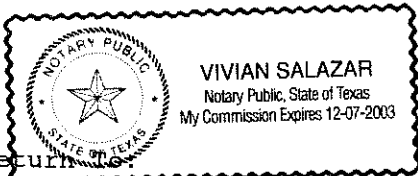


STATE OF TEXAS

COUNTY OF HARRIS

BEFORE, ME, the undersigned authority, on this day personally appeared JIM MCINTYRE, Executive Vice-President, Texas State Bank Riverway, a in Texas state bank, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation and In the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 19th day of 2002.



Returning to:
James B. Grover
Rt. 2 Box 200 C
Bay City, Texas

Vivian Salazar
Notary in and for the State of Texas

EXHIBIT "A"

RESIDENTIAL LOT MASTER PLANT LIST

TREES

Botanical Name

Common Name

Acer Rubrum
Betula Nigra
Carya Illinoensis & vars.
Cordia Canadensis & vars.
Crataegus Marshalli
Crataegus Spathulata
Fraxinus Pennsylvanica vars.
Ilex Decidua
Ilex Opaca & vars.
Ilex Vomitoria
Koeleria Paniculata
Lagerstroemia Indica vars.
Liquidambar Styraciflua
Ligustrum Japonicum (tree form)
Magnolia Grandiflora & vars.
Magnolia Soulangiana & vars.
Magnolia Virginiana
Myrica Cerifera
Parkinsonia Aculeata
Platanus Occidentalis
Prunella Caroliniana
Pyrus Calleryana & vars.
Quercus Falcata & vars.
Quercus Nigra
Quercus Nuttallii
Quercus Phellos
Quercus Shumardi
Quercus Texana
Quercus Virginiana
Sapindus Saponaria
Taxodium Distichum
Ulmus Crassifolia
Pinus Elliottii
Pinus Taeda

Red Maple
River Birch
Pecan
Redbud
Parsley Leaf Hawthorn
Little Hip Hawthorn
Green Ash
Possumhaw
American Holly
Yaupon Holly
Golden-rain Tree
Crape Myrtle
Sweetgum
Wax Leaf Ligustrum
Southern Magnolia
Saucer Magnolia
Sweet Bay Magnolia
Southern Bayberry
Rotunda
Sycamore
Cherry Laurel
Callery Pear
Southern Red Oak
Water Oak
Nuttall Oak
Willow Oak
Shumard Oak
Texas Red Oak
Live Oak
Chinese Tallow
Bald Cypress
Evergreen Elm
Slash Pine
Loblolly Pine

EXHIBIT "A" (CONT.)

RESIDENTIAL LOT MASTER PLANT LIST

GROUNDCOVERS

<u>Botanical Name</u>	<u>Common Name</u>
Ajuga Reptans	Ajuga
Asparagus Sprengerli	Sprengerli Asparagus Fern
Berbods Thungorgil "Crimson Pygmy"	Crimson Pygmy Barberry
Cyrtomium Falcaium	Holly Fern
Gardenia Jasminoides "Radicans"	Dwarf Gardenia
Hedera Canarionsis & vars.	Algerian Ivy
Hedera Helix & vars.	English Ivy
Juniperus & vars.	Juniper
Liriope Muscari & vars.	Liriope
Lonicera Japonica Chlaensis	Purple Japanese Honeysuckle
Lonicera Japonica "Halliana"	Hall's Honeysuckle
Nandina Domestica "Harbor Dwarf"	Harbor Dwarf Nanina
Ophlopagon Japonicus	Monkey Grass
Ophlopagon Japonicus "Nanus"	Dwarf Monkey Grass
Pyracantha "Red Elf"	Red Elf Pyracantha
Pyracantha "Ruby Mound"	Ruby Mound Pyracantha
Trachelospermum Asiaticum & vars.	Japanese Star Jasmine
Trachelospermum Jasminoides & vars.	Confederate Jasmine

GRASS

<u>Botanical Name</u>	<u>Common Name</u>
Cynodon Dactylon	Common Bermuda
Cynodon Hybrid	Hybrid Bermuda
Festuca Arundinacea	Tall Fescue KY-31
Lolium Multiflorum	Annual Rye Grass
Stenotaphrum Secundatum	St. Augustine Grass

VINES

<u>Botanical Name</u>	<u>Common Name</u>
Bigonia Capreolata	Crossvine
Clematis Dioscaorelfolia	Sweet Autumn Clemantis
Campsis Radicans	Trumpet Creeper

EXHIBIT "A" (CONT.)

RESIDENTIAL LOT MASTER PLANT LIST

VINES (CONT.)

Botanical Name

Common Name

Clytostoma Callisegloidea
Ficus Pumlia
Gelsemium Sempervirens
Lonicera Japonica Chinonsis
Lonicera Japonica "Halliana"
Lonicera Sempervirens & vars.
Millottia Roliculata
Rosa Banksiae
Wisteria Sinensis

Lavender Trumpet Vine
Climbing Fig Vine
Carolina Jessamine
Purple Japanese Honeysuckle
Hall's Honeysuckle
Trumpet Honeysuckle
Evergreen Wisteria
Yellow Lady Banks' Rose
Chinese Wisteria

PERENNIALS

Botanical Name

Common Name

Aster Frikarli
Chrysanthemum Maximums & vars.
Coreopsis & vars.
Cyclolium Falcaltim
Fern spp.
Gerbera jamesonii
Hymenocallis spp.
Hemerocallis vars.
Iris vars.
Tulbaghia Violacia

Frikarli Aster
Shasta Daisy
Coreopsis
Holly Fern
Fern
Gerber Daisy
Basket Flower
Daylily
Louisiana Iris
Society Garlic

ANNUALS

Spring Planting (March/April)

Fall Planting (October/November)

Geraniums
Lantana Montevidensis vars.
Periwinkle
Petunia (last only through May)
Pursiano
Scarlotta Begonia

Calendula
Pansy
Snapdragons
Dianthus
Mums

EXHIBIT "A" (CONT.)

RESIDENTIAL LOT MASTER PLANT LIST

WILDFLOWERS

Botanical Name

Rudbeckia Fulfida
Buchloe Dactyloides
Coreopsis
Trilollum Incarnatum
Phlox Drummondii
Liatris Pycnostachya
Gaillardia Pulcholla
Monarda Clididora
Monarda Clididora
Verbena Tenulsocia
Cassia Fasciculaia
Echinacea Purpurea
Lupinus Texensis
Castilloia Indivisa
Coreopsis Tinctoria

Common Name

Black-eyed Susan
Buffalo Grass
Coreopsis Varieties
Crimson Clover
Drummond Phlox
Gay Feather
Indian Blanket
Lemon Mint
Mexican hat
Moss Verbena
Partridge Pea
Purple Cornflower
Texas Bluebonnet
Texas Paintbrush
Tickseed

RETURNED AT COUNTER TO:

James B. Grover
R.R. 2 Box 200C
Bay City, TX 77414-9310

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dianne Wilson

2002 APR 23 10:25 AM 2002041860
LJ \$77.00
DIANNE WILSON, COUNTY CLERK
FORT BEND COUNTY, TEXAS