

## CLUB TRANSFER AGREEMENT

**THIS CLUB TRANSFER AGREEMENT** is made as of the 15th day of March, 2004, by and between **OLDE VINE GOLF CLUB LLC.**, a New York limited liability company (the "Company"), and **OLDE VINE GOLF CLUB, INC.**, a New York not-for-profit corporation (the "Club").

### STATEMENT OF BACKGROUND INFORMATION

The Club is a private equity club which has been organized to own and operate various golf, tennis, swimming, fitness and social facilities on behalf and for the benefit of its members and their families and guests.

A. The Company is the owner of real property located in Riverhead, New York, upon which the golf, tennis, swimming, fitness and social facilities, including an 18 hole golf course and clubhouse, as more particularly described in the Membership Documents will be constructed.

B. The Club is desirous of acquiring such real property, constructing the above facilities, and ultimately acquiring management and control of such facilities by its members, upon the terms and conditions as are hereinafter more particularly set forth.

C. The Company is desirous of transferring the real property, and of ultimately turning over management and control thereof and the facilities to the members of the Club upon the terms and conditions as are hereinafter more particularly set forth.

### STATEMENT OF AGREEMENT

In consideration of the foregoing premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties intending to be legally bound hereby agree as follows:

#### 0. DEFINITIONS

The following terms when used in this Agreement shall have the meanings indicated below:

( ) "Agreement" shall mean this Agreement together with all exhibits attached hereto.

( ) "Board of Directors" shall mean the Board of Directors of the Club established from time to time in accordance with the Membership Documents.

( ) "Cherry Creek Facilities" shall mean and refer to the golf courses, driving range and clubhouses at the Cherry Creek Club and The Woods at Cherry Creek.

( ) "Cherry Creek License Agreement" shall mean and refer to that certain license agreement between NF Development, LLC, a New York limited liability company ("NF Development") and the owner of the Cherry Creek Facilities, a copy of which is attached hereto as Exhibit "C", pursuant to which Equity Members and their immediate family may use the Cherry Creek Facilities.

( ) "Club" shall mean Olde Vine Golf Club, Inc., a New York not-for-profit corporation, d/b/a Olde Vine Golf Club.

( ) "Club Memberships" shall mean the Equity Memberships and the Non-Equity Memberships retained by the Club pursuant to the terms hereof.

( ) "Club Facilities" shall mean, collectively, the Real Property as described on Exhibit "A", incorporated herein and attached hereto, the Club Improvements, and the Personal Property, as further described in the Membership Documents.

( ) "Club Improvements" shall mean all buildings, fixtures and improvements constructed and to be constructed on the Real Property.

( ) "Community" shall mean The Estates at Olde Vine located in Riverhead, New York together with any property designated by the Company to be included in the definition of Community that may be developed by the Company, its affiliates, or their successors or assigns, in the future.

( ) "Company" shall mean Olde Vine Golf Club LLC, a New York limited liability company, or its successors or assigns.

( ) "Company Memberships" shall mean memberships in the Club transferred to the Company in accordance with Section 9, entitled "Consideration for Club Facilities".

( ) "Contracts" shall mean all leases, employee contracts, service agreements, equipment leases and all other agreements and contracts entered into primarily for the operation of the Club Facilities.

( ) "Equipment" shall mean machinery and equipment used primarily in the operation of the Club Facilities.

( ) "Equity Member" shall mean the holder of a Founder Membership or a Golf Membership in the Club.

( ) "Equity Membership" shall mean a Founder Membership or a Golf Membership in the Club entitling the member to vote on matters submitted for the vote of the members, as more particularly described in the Membership Documents.

( ) "Escrow Agent for Membership Contributions and Initiation Fees" shall mean a financial institution selected by the Company to act as escrow agent with respect to membership contributions pursuant to the Escrow Agreement for Membership Contributions, a copy of which is attached hereto as Exhibit "S".

( ) "Extraordinary Repairs or Replacements" shall mean repairs or replacements to the Club Facilities which result from acts of God, natural disasters, pestilence, weather, fires, the need to replace greens, turf and landscaping on the Club property due to disease or other unanticipated cause, the need to replace real or personal property in excess of budgeted amounts, requirements imposed by governmental authorities after the date hereof and any events beyond the reasonable control of the Company or the Club.

( ) "Fiscal Year" shall mean a 12-month period beginning January 1 and ending December 1.

( ) "Inventory and Supplies" shall mean the food, beverage, pro shop, and other supply inventory used primarily in the operation of the Club Facilities.

( ) "License Agreement" shall mean and refer to that certain license agreement between the Company and the Club, a copy of which is attached hereto as Exhibit "B", pursuant to which the Club may use the Club name and the related logo.

( ) "Marketing, Access and Use Agreement" shall mean the agreement entered of even date herewith between the Club and the Company incorporated herein and attached hereto as Exhibit "D", which agreement allows the Company certain access and use rights for marketing and advertising purposes.

( ) "Mortgage" shall mean the mortgage that may be placed upon the Club Facilities prior to the Turnover Date as more particularly described in Section 9(b) hereof, entitled "Consideration for Club Facilities".

( ) "Membership Documents" shall mean collectively the following, plus all exhibits attached thereto or referenced therein, as the same may be amended from time to time in accordance with their respective terms:

( ) this Agreement;

( ) Exhibit "E", Membership Plan of the Club, which is incorporated herein and attached hereto (the "Membership Plan");

( ) Exhibit "F", the Club's Certificate of Incorporation, which are incorporated herein and attached hereto;

( ) Exhibit "G", the Club's Bylaws, which are incorporated herein and attached hereto;

( ) Exhibit "H", the Rules and Regulations of the Club, which are incorporated herein and attached hereto;

( ) the Membership Purchase Agreement as executed by each and every member of the Club, the present forms of which are incorporated herein and attached hereto as composite Exhibit "I"; and

( ) Exhibit "D", the Marketing, Access and Use Agreement, which is incorporated herein and attached hereto.

( ) "Non-Equity Member" shall mean a holder of a Social Membership, Dinner Membership, Weekday Membership or Weekday Corporate Membership.

( ) "Operating Deficit" shall mean for each Fiscal Year or part thereof the amount by which (i) all costs and expenses of the Club determined in accordance with generally accepted accounting principles applied consistently from year to year, but excluding depreciation expense, and amortization expense, the net amount of any Company subsidies or payments, management fees and state and federal income taxes, if any, attributable to the sale or resale of memberships and including reserves for property and equipment replacements and equipment lease payments, exceeds (ii) the revenues of the Club determined in accordance with generally accepted accounting principles, applied consistently from year to year other than proceeds from the sale or resale of memberships.

( ) "Operating Surplus" shall mean for each Fiscal Year or part thereof the amount by which (i) the revenues of the Club determined in accordance with generally accepted accounting principles, applied consistently from year to year, other than the proceeds from the sale or resale of memberships, exceeds (ii) all costs and expenses of the Club determined in accordance with generally accepted accounting principles, applied consistently from year to year, but excluding depreciation expense, and amortization expense, the net amount of any Company subsidies or payments, management fees and state and federal income taxes, if any, attributable to the proceeds from the sale or resale of memberships, and including reserves for property and equipment replacements and equipment lease payments.

( ) "Permits" shall mean the licenses and permits required primarily in the development or operation of the Club Facilities.

( ) "Personal Property" shall mean and refer to all tangible and intangible personal property owned or leased by the Company as of the Transfer Date, which is related to the development or the operation of the Club Facilities, including without limitation, all Equipment, Inventory and Supplies and all assignable Contracts, Licenses, Warranties and Permits. "Personal Property" shall exclude all tangible and intangible personal property used in the Company's real estate sales operation.

( ) "Real Property" shall mean that certain real property on which the Club Improvements are constructed, the legal description of which is attached hereto as Exhibit "A", Legal Description of Real Property, together with all tenements, hereditaments and appurtenances thereto belonging or in any way appertaining.

( ) "Transfer Date" shall mean the date designated by the Company, in its discretion on which the instruments transferring the Company's interest in the Club Facilities are delivered in accordance with the terms hereof.

( ) "Turnover Date" shall mean that date specified by the Company, which date shall be within 60 days after the earlier of any of the following conditions precedent:

( ) the initial sale of all of the memberships permitted to be issued in the Club; or

( ) December 31, 2013; or

( ) any earlier date determined by the Company, in its sole discretion, provided the Club's accounting firm has reviewed the operating results of the Club and confirmed that the Club operated during the preceding 12 month period without an Operating Deficit.

( ) "Warranties" shall mean any warranties held by the Company as of the Transfer Date and received from manufacturers or suppliers as to any of the Club Facilities, specifically excluding any warranties from the Company.

## **1. TRANSFER OF CLUB FACILITIES**

The Company agrees to convey, transfer, assign and deliver to the Club on the Transfer Date all of its interest in the Club Facilities in accordance with the terms hereof and the Club hereby agrees to fund or cause the funding of the cost of constructing the Club Facilities contemplated by Section 3 of the Agreement. The Company will retain ownership of all of its other assets which are not connected with, or related to, the Club Facilities and shall specifically retain all cash, accounts receivable and notes receivable of the Company as of the Transfer Date and all personal property used in the Company's real estate sales operation. On the Transfer Date, the Company shall do, and the Club shall accept and agree to, and execute as appropriate, each of the following:

( ) cause fee simple title to the Real Property described on Exhibit "A" attached hereto to be conveyed in its "where is, as is" condition to the Club by deed in the form of Exhibit "K" attached hereto, properly executed and acknowledged, subject to (i) the zoning and other regulations imposed by governmental authorities, (ii) taxes for the year of the transfer and all subsequent years, (iii) a restriction that the Real Property shall only be used for open space or recreational facilities for 30 years after the Turnover Date, (iv) all easements, dedications, agreements, licenses, restrictions, covenants, conditions, rights-of-way and other matters affecting title then applicable to the Real Property as granted, imposed or suffered to be placed upon the Real Property by predecessors in title or the Company, including without limitation any mortgage liens encumbering the property, it being expressly understood by the parties hereto that the Company retains the right to develop the property around the Club Facilities and reserves the right to grant and reserve easements and other property interests as hereinafter set forth as may be necessary or convenient for the development and marketing of such property;

( ) cause to be issued, at such time as fee simple title to the Real Property is conveyed to the Club, and at the Company's sole expense, a standard coverage Owner's Title Insurance Policy in the amount of the assessed value of the Real Property and Club Improvements, insuring the Real Property, subject to those standard exceptions customarily

contained in owner's title insurance policies issued in the State of New York, and other matters referred to above and in the copy of the title insurance commitment attached hereto as Exhibit "L";

( ) deliver to the Club a Bill of Sale in the form of Exhibit "M" attached hereto for the Personal Property to be conveyed to the Club as part of the Club Facilities owned by the Company on the Transfer Date, duly executed on behalf of the Company;

( ) deliver to the Club an Assignment of Contracts in the form of Exhibit "N" attached hereto assigning to the Club all of the Company's right, title and interest in, to and under the Contracts as of the Transfer Date, which are assignable, duly executed on behalf of the Company;

( ) deliver to the Club an Assignment of Licenses and Permits in the form of Exhibit "O" attached hereto, of all assignable Permits which relate to the Club Facilities which have been received by the Company as of the Transfer Date, duly executed on behalf of the Company;

( ) deliver to the Club an Assignment of Warranties in the form of Exhibit "P" attached hereto, assigning the Company's interest in warranties with respect to the personality and Club Improvements to be transferred to the Club hereunder;

( ) deliver to the Club an assignment of the Cherry Creek License Agreement in the form of Exhibit "Q" attached hereto assigning to the Club all of NF Development's right, title and interest in, to and under the Cherry Creek License Agreement, duly executed on behalf of the Company;

( ) deliver to the Club the License Agreement, duly executed on behalf of the Company;

( ) deliver to the Club the Marketing, Access and Use Agreement; and

( ) deliver to the Club a Non-Foreign Affidavit in the form of Exhibit "R" attached hereto, duly executed on behalf of the Company.

## **2. COMPLETION OF CLUB FACILITIES**

( ) The Club shall acquire the Real Property and construct the following Club Improvements thereon, at its expense (subject to the Company's obligation to fund any shortfall pursuant to Section 9 hereof):

- 18-hole links style golf course designed by Buddy Johnson (the "Club Course");
- Golf practice facilities with chipping area, putting greens, and golf fitness center;
- Clubhouse of approximately 10,000 square feet featuring dining facilities, golf shop, indoor grill with outdoor covered patio area, fitness center,

men's and women's locker rooms with restrooms and a Founder Member's area, plus a basement of approximately 6,000 additional square feet for golf bag and cart storage;

- Tennis court; and
- Swimming pool.

( ) The Club shall acquire at its expense the Equipment, Inventory and Supplies, Permits and Warranties after the Transfer Date.

( ) The Company reserves the right to add additional facilities to the Club Facilities referred to above.

If additional facilities are added to the Club Facilities referred to above, and such facilities are or are to be located other than on the Real Property, the Club shall accept the conveyance of such other property (including, without limitation, a leasehold interest) on generally the same terms and conditions as are specified herein with respect to the conveyance of the Real Property.

( ) It is anticipated that the proceeds from the issuance of the Club Memberships will be used to fund the costs of constructing the Club Improvements and acquiring the items specified in subsection b above and/or to pay the amount of any construction loan obtained for such purpose as more particularly provided in Section 9 hereof.

### **3. INSPECTION OF CLUB FACILITIES**

( ) Upon completion of each of the Club Facilities, the same will be inspected by independent third party inspectors to determine if the facilities were built in substantial compliance with the plans and specifications as modified by any change orders and applicable governmental regulations. The inspectors will be selected in the sole discretion of the Company and will be independent inspectors, architects or engineers licensed by the State of New York. The Company, at its sole cost and expense, will make or cause to be made those repairs indicated in the inspection reports which the Company in its sole discretion deems appropriate and such repairs will be completed with due diligence and in a good and workmanlike manner. After completion of the repairs, the inspector who originally inspected the facilities shall certify that the repairs have been made in accordance with the report.

( ) Immediately prior to the Turnover Date, a second inspection will be conducted to determine whether the Club Facilities are in good working order, ordinary wear and tear excepted. The inspectors will be selected in the sole discretion of the Company and will be independent inspectors, architects or engineers licensed by the State of New York. Any material deficiency, as determined by the Company, disclosed on the inspection report, will be repaired at the Company's sole expense. The Company can use the funds in the capital reserve account, referred to below, to pay the costs of the repairs.

( ) Other than these inspections, no representation or warranties shall be made regarding the Club Facilities. Any repairs funded by the Company under this Section shall be a capital contribution in exchange for the Equity Memberships.

#### **4. MAINTENANCE OF CLUB FACILITIES**

The Club Facilities shall be maintained by the Club until the Turnover Date at the Club's cost and expense in good working order, ordinary wear and tear excepted. Each year in the Club's budget, a reserve for capital repairs and replacements will be established. A reserve of one and a half percent (1 ½%) of the gross operating revenues will be established by the Club for the first year, two percent (2%) for the second year and three percent (3%) for each year thereafter. The reserve is not based upon an analysis of the useful life of the Club property and equipment. For purposes hereof, the gross operating revenues of the Club shall not include any proceeds from the sale or resale of memberships. Prior to the Turnover Date, the Club and the Company shall have no obligation to cause the actual funding of the reserve as aforesaid. However, upon the Turnover Date, the Company shall cause to be deposited in the capital reserve account a sum equal to the total amount required to be set aside in respect of reserves as aforesaid up to that date, less the total amount expended to such date for capital repairs and replacements as verified by the Club's accountants. The Company shall not be obligated to fund the reserve for the period after the Turnover Date. The Club is responsible for any Extraordinary Repairs or Replacements, subject to the terms hereinafter provided for. The Club shall also be responsible for any capital improvements to the Club Facilities. In the event of any assessment for Extraordinary Repairs or Replacements which is not voted on by the Equity Members, the Company will pay a share of the assessment based upon the number of unissued Equity and Non-Equity Memberships as provided hereinafter. After the Turnover Date, the Club Facilities shall be maintained by the Club at the Club's sole expense in good working order, ordinary wear and tear excepted.

#### **5. STRUCTURAL AND DESIGN CHANGES TO CLUB FACILITIES**

After the Turnover Date, and as long as the Company is engaged in any sales and marketing activity of memberships in the Club and/or residences or homesites in the Community, the Company shall have the right to approve or disapprove all proposed architectural, exterior designs, colors, landscaping plans and the location of any improvements with respect to the Club Facilities and any changes thereof. The Club shall submit all plans in detail and obtain the written consent of the Company prior to commencement of any such work.

#### **6. FORCE MAJEURE**

If the performance of any obligations or duties of either the Company or the Club is prevented, in whole or in part, by any law, rule, regulation, order or other action adopted or taken by any federal, state or local governmental authority or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortages or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the control of the Company, the Club, or any affiliated entity, whether or not specifically mentioned herein, the

Company and the Club shall be excused, discharged and released from performance to the extent that the performance or obligation is so limited or prevented by the occurrence without liability of any kind.

## **7. DISCLAIMER OF WARRANTIES**

THE CLUB WILL ACCEPT THE REAL PROPERTY AND THE CLUB FACILITIES CONSTRUCTED AND TO BE CONSTRUCTED UNDER THIS AGREEMENT IN THEIR "WHERE IS, AS IS " CONDITION, SUBJECT TO THE INSPECTIONS AND REPAIRS MADE PURSUANT TO SECTION 4 ABOVE, WITHOUT RECOURSE, AND THE COMPANY DISCLAIMS AND MAKES NO REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, BY FACT OR LAW, WITH RESPECT THERETO, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE DEED DELIVERED PURSUANT HERETO, INCLUDING WITHOUT LIMITATION REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE AND REPRESENTATIONS AND WARRANTIES REGARDING THE EXTENT, DESIGN, FITNESS, CONDITION, CONSTRUCTION, DATE OF COMPLETION, ACCURACY, COMPLETENESS, LOCATION, ADEQUACY OF THE SIZE OR CAPACITY IN RELATION TO THE UTILIZATION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATION OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH HAS BEEN OR WILL BE USED IN THE CLUB FACILITIES. NO CLAIM SHALL BE MADE BY THE CLUB RELATING TO THE EXTENT, DESIGN, FITNESS, CONDITION, CONSTRUCTION, DATE OF COMPLETION, ACCURACY, COMPLETENESS, LOCATION, ADEQUACY OF THE SIZE OR CAPACITY IN RELATION TO THE UTILIZATION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATION OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH HAS BEEN OR WILL BE USED IN THE CLUB FACILITIES OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM.

## **8. CONSIDERATION FOR CLUB FACILITIES**

( ) Consideration. In consideration for the transfer of the Club Facilities to the Club and the Company's obligation under Section 4 to fund repairs set forth in the inspection reports, the Company agrees to subscribe for and the Club agrees to transfer to the Company on the Transfer Date the following memberships in the Club: 149 Golf Memberships, 95 Social Memberships, 125 Weekday Memberships and 30 Weekday Corporate Memberships. The Company shall deliver a receipt of the membership certificates representing the memberships on the Transfer Date. The Company may not vote any of its Equity Memberships.

( ) Mortgage. Prior to the Turnover Date, the Company may cause the Club to place a Mortgage on the Club Facilities securing a loan in a principal amount not to exceed \$1.25 million. The interest rate and other terms and conditions of the Mortgage will be commercially reasonable at the time the Mortgage is placed on the Club Facilities as confirmed by a nationally recognized accounting firm. The Club hereby agrees to cooperate with the Company in obtaining the Mortgage and to execute all documentation required by the lender in connection with the Mortgage. The Club agrees to pay all obligations arising under the Mortgage as they become due. The proceeds of the loan secured by the Mortgage will be paid to the Company, and the Company will not be responsible for the obligations under the Mortgage.

## **9. OFFERING OF MEMBERSHIPS**

( ) All of the Club Memberships shall be issued by the Club prior to the sale of any Company Memberships by the Company. The Company shall offer the Company Memberships and have the right to approve members in accordance with the Membership Documents. All membership contributions received by the Company from the issuance of Company Memberships shall be paid to and be the property of the Company and may be utilized by the Company in any manner whatsoever in its discretion.

( ) Prior to the initial sale of all memberships, the membership contribution for all Equity Memberships and the initiation fee for all Non-Equity Memberships, including the Company Memberships and the Club Memberships, shall be established by the Company from time to time. The membership contribution and initiation fee for memberships which are available for reissuance by the Club will be equal to the membership contribution or initiation fee set by the Company for unissued memberships. After the initial sale of all memberships, the membership contribution and initiation fee for memberships shall be established by the Board of Directors of the Club.

## **10. FINANCING OF ACQUISITION AND CONSTRUCTION COSTS**

( ) All membership contributions and initiation fees received from the sale of Equity Memberships and Non-Equity Memberships will be deposited in an escrow account at a financial institution in accordance with the Escrow Agreement for Membership Contributions and Initiation Fees in the form attached hereto as Exhibit "S" until the conditions set forth therein for release of the membership contributions and initiation fees have been satisfied.

( ) The costs of constructing and equipping the Club Facilities will be paid by one or more loans and/or from the proceeds from the issuance of the Club Memberships once the conditions for release of the escrow have been satisfied. Once the conditions for the release of escrow have been satisfied, the proceeds from the issuance of the Club Memberships shall be used first, to reimburse the Company for the costs it incurred in connection with the construction of the Club Facilities, including, without limitation, any design, permitting, architectural or other similar costs, and then to pay the cost of constructing and equipping the Club Facilities, including the repayment of any loan(s) obtained by the Club to finance construction and equipping costs.

( ) In the event the proceeds from the issuance of the Club Memberships are insufficient to pay the cost of constructing and equipping the Club Facilities or to repay any loan obtained to finance construction or equipping costs, the Company agrees to fund such shortfall. In exchange for the Company's obligation to fund such shortfall, the Company shall be entitled to receive the proceeds from the Club Memberships to the extent that the proceeds shall exceed the cost of constructing and equipping the Club Facilities.

## **11. PRORATION OF EXPENSES AND FUNDS ON TRANSFER DATE**

The following items shall be prorated as of the Transfer Date to the extent applicable:

( ) all water, sewer, electric and other utility charges;

- ( ) any property taxes, assessments or community association assessments on the Real Property;
- ( ) any rents, revenues and accounts receivable of the Club Facilities;
- ( ) any wages and payroll taxes of employees of the Company which relate to the development or operation of the Club Facilities;
- ( ) any other accrued expenses incurred in connection with the development or operation of the Club Facilities for items or services to be received after the Transfer Date; and
- ( ) all assignable license and permit fees related to the development or operation of the Club Facilities; and
- ( ) any dues, fees and charges paid in advance.

## **12. ASSUMPTION OF LIABILITIES BY CLUB**

The Club hereby assumes and agrees to perform, comply with, pay when due and defend and hold the Company and its affiliates, their successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents harmless for, from and against, all the debts, liabilities, obligations and contracts, licenses, permits and governmental approvals existing on the Transfer Date which are related to the development or operation of the Club Facilities. The assumption by the Club of the debts, liabilities, obligations, contracts, licenses, permits and governmental approvals of the Company shall expressly exclude any of the costs or expenses incurred by the Company in carrying out its obligations under this Agreement.

## **13. LICENSE TO USE CLUB NAME: "OLDE VINE GOLF CLUB"**

On the Transfer Date, the Company shall grant to the Club a non-exclusive license to utilize the name "Olde Vine Golf Club" and the Club emblem in accordance with the terms of the License Agreement.

## **14. PROCEEDS FROM REISSUANCE OF MEMBERSHIPS**

Prior to the Turnover Date, the Company shall be paid the amount retained by the Club upon the reissuance of Equity Memberships as additional consideration for the transfer of the Club Facilities and in consideration of the Company's obligation to fund operating deficits.

## **15. CLUB OPERATION PRIOR TO TURNOVER DATE**

Prior to the Turnover Date, the Club and the Club Facilities will be operated as follows:

- ( ) The Club will make no assessment (capital or operating), nor charge any dues on any Equity Memberships or Non-Equity Memberships held by or on behalf of the Company except for the Company's obligation to pay a share of any assessment for Extraordinary Repairs or Replacements which is not voted on by the Equity Members, as provided hereinafter.

( ) The Club will not assess the Equity Members or Non-Equity Members for any Operating Deficit. Equity Members' and Non-Equity Members' liability for capital assessments and assessments for Extraordinary Repairs and Replacements shall be as provided hereinafter.

( ) The Board of Directors of the Club shall have the right to cause the Club to buy or lease any Equipment, Inventory and Supplies or other property or services used in connection with the operation of the Club Facilities, or to enter any agreement with the golf professional providing for the operation of the pro shop.

( ) Dues will be reasonable in comparison to comparable clubs nationwide.

( ) The Club's accountants shall be a certified public accounting firm.

( ) The Club Facilities will be operated until the Turnover Date in a manner that is similar to the operation of other comparable club facilities.

( ) The Company shall reimburse the Club for any Operating Deficits incurred in, and shall be entitled to retain any Operating Surplus resulting from, the operation of the Club Facilities prior to the Turnover Date.

( ) The Company shall have the right to cause the Club to take out one or more mortgage loans secured by the Club Facilities and the Company may use the proceeds of such loan(s) as it shall determine it is sole discretion.

## **16. BOARD OF DIRECTORS**

The Club is governed by a Board of Directors. The Board of Directors will be responsible for the government and administration of the affairs and property of the Club, set dues and charges for members, establish rules and regulations and, in general, control the management and affairs of the Club, except as otherwise provided in the Membership Documents. The Board of Directors may not, however, operate the Club in contravention of the terms and conditions of the Membership Documents. Decisions made by the directors appointed by the Company shall be in good faith and in a manner reasonably believed to be in the best interest of the Club and its members and the development and marketing of the Community. Prior to the Turnover Date, the Company shall appoint all of the members of the Board of Directors who shall serve until the Turnover Date or replaced by the Company. All directors must be members of the Club, except for the directors appointed by the Company. On the Turnover Date, the members of the Board of Directors shall resign. Thereafter, all members of the Board of Directors shall be elected by the Equity Members in accordance with the Bylaws of the Club.

## **17. BOARD OF GOVERNORS**

Prior to the Turnover Date, an advisory Board of Governors will be established to serve as a liaison between the management of the Club and the members of the Club. Until the Turnover Date, the members of the Board of Governors shall be members designated by the Company who will serve for specific terms. The Board of Directors appointed by the Company shall meet with the Board of Governors on a regular basis to discuss the operation of the Club

Facilities. The Board of Governors shall have no duty or power to negotiate or otherwise act on behalf of the members of the Club and shall serve only in an advisory capacity until the Turnover Date.

The Company will establish approximately one year prior to the date of the anticipated turnover of management and control of the Club to the Equity Members, a members' turnover committee ("Turnover Committee") consisting of three members of the Board of Governors selected by the Company, which will serve as a liaison between the Company and the Club's members concerning the turnover of control. The Turnover Committee shall have no duty to negotiate or otherwise act on behalf of the members until the Turnover Date. On Turnover Date, the persons comprising the members' Turnover Committee will become the Board of Directors of the Club. After the Turnover Date, the members of the Board of Directors shall be elected by the Equity Members as provided in the Bylaws.

## **18. TURNOVER DATE**

The turnover of management and control of the Club to the members will occur on the Turnover Date. The Turnover Date shall take place at the office of the attorney for the Company, at 10:00 A.M. local time, on a date specified by the Company, or at such other time and place as the parties may agree to in writing. On the Turnover Date, the following events shall occur:

( ) The Company shall deliver to the Club resignations of all of the members of the Board of Directors designated by the Company;

( ) The Company shall relinquish management and control of the Club Facilities to the members of the Club, except as otherwise set forth in this Agreement; and

( ) The Club shall pay to the Company in cash, or by cashier's check or wire transfer on the Turnover Date, the book value of the Inventory and Supplies owned by the Club on the Turnover Date. The book value of Inventory and Supplies shall be determined at the lower of cost or fair market value, in accordance with generally accepted accounting principles, applied consistently from year to year. The Club shall also pay the Company for the liquor permit previously assigned by the Company to the Club in an amount equal to the fair market value thereof at the time of the turnover.

( ) The Company and the Club shall determine either the Operating Surplus or Operating Deficits as of the Turnover Date and the appropriate payment shall be made to the party entitled to same.

( ) The Club may be subject to a working capital loan in an amount required to fund purchases of pro shop merchandise, food and beverage items, other Inventory and Supplies and the prepayment of Contracts, which will benefit the Club after the Turnover Date. The Club Facilities will be free and clear of any mortgage lien except for the lien of the Mortgage on the Turnover Date.

## 19. ASSESSMENTS

( ) Operating Assessments. Members of the Club shall not be assessed for Operating Deficits prior to the Turnover Date. After the Turnover Date, the Board of Directors of the Club may find it necessary to make assessments, in addition to dues, to cover any Operating Deficits which may occur. Any assessments to cover Operating Deficits will be prorated among the Equity Members and Non-Equity Members of the Club based on the amount of dues charged each Equity Member and Non-Equity Member during the year in which the deficit occurs. The foregoing proscription against assessments prior to the Turnover Date will not impact the ability of the Club to impose an assessment for Extraordinary Repairs or Replacements as set forth hereinafter. Annual increases in dues shall not be deemed an assessment.

(a) Capital Assessments. There will be no assessments for capital expenditures unless approved by a majority of the outstanding votes of the Equity Members entitled to vote, except that assessments required to pay for Extraordinary Repairs or Replacements do not require member approval and may be imposed by the Board of Directors. In the event of any assessment for Extraordinary Repairs or Replacements which is not voted on by the Equity Members, the Company will pay a share of the assessment based upon the number of unissued Equity Memberships and Non-Equity Memberships held by the Company. The assessment shall be apportioned among the issued and unissued Equity Memberships and Non-Equity Memberships in accordance with the terms below. Assessments for capital improvements made prior to the Turnover Date shall be subject to the approval of the Company, in its sole discretion.

Any assessment for capital expenditures which must be voted on by the Equity Members shall be voted on and paid as follows:

- Assessments for capital expenditures to the golf course, golf practice facilities and the clubhouse, other than the fitness and social facilities of the clubhouse, shall be prorated among all of the Founder Members, Golf Members, Weekday Golf Members and Weekday Corporate Members. Weekday Golf Members will pay an amount equal to fifty (50%) of the assessment payable by Equity Members and Weekday Corporate Members shall pay an amount equal to three times the assessment amount payable by Weekday Members.
- Assessments for capital expenditures to the fitness and social facilities of the Clubhouse shall be prorated equally among all members.
- Assessments for capital expenditures to the tennis and swimming facilities shall be prorated equally among all Social Members and those Equity Members who have elected to add on privileges to use the tennis and swimming facilities at the Club for the membership year that the assessment is imposed.

(b) Unissued Memberships Not Subject to Assessments or Dues. The Club will not make any capital or operating assessments or impose any dues or other charges on any Equity Memberships or Non-Equity Memberships during the period such memberships are held by the Company except for resigned Equity Memberships and Non-Equity Memberships which the

Company purchases and subject to the Company's obligation to pay its share of any assessment for Extraordinary Repairs or Replacements as provided above. A member acquiring an Equity Membership or Non-Equity Membership from the Company shall not be subject to payment of any capital or operating assessment imposed or incurred prior to their becoming a member.

## **20. THE COMPANY'S RIGHT TO DESIGNATE INDIVIDUALS TO USE THE CLUB FACILITIES**

Until the later of the (i) initial sale of all residences and homesites in the Community, and (ii) the initial sale of all memberships permitted to be issued in the Club, the Company and its designees shall have the right to designate persons to use any or all of the Club Facilities, for any purpose and upon such terms and conditions as are determined from time to time by the Company. The persons designated by the Company shall include, without limitation, persons who are employees of the Company or the Club, persons who are prospective purchasers of property in the Community, persons who are prospective members in the Club, and persons who are involved in special events held at the Club. The individuals designated by the Company are subject solely to approval by the Company, however, use of the Club Facilities by the Company and its designees may not unreasonably interfere with the members' use of the Club Facilities.

After the Turnover Date, the Company and its designees shall pay the use fees charged accompanied guests of members. The Company may at any time promote and refer to the Club in advertisements and promotional materials by making reference to the Club and the availability of memberships in the Club.

## **21. PRO SPONSORED PLAY AND SPECIAL EVENTS**

The Club will permit use of the Club Course by individuals who are sponsored by area golf professionals until the initial issuance of 250 Equity Memberships in the Club. The Club shall have the right hold tournaments, outings and other special events at the Club Facilities from time to time on such terms as it shall determine in its sole discretion.

## **22. BULK SALES ACT**

The Club waives the Company's compliance with the requirements of the Uniform Commercial Code relating to bulk transfers in connection with this sale of assets, including the requirements that the Company furnish the Club with a list of creditors. Nothing in this Section shall prevent the Club and/or the Company from asserting in any action or proceeding that this article of the Uniform Commercial Code is not applicable to the sale of assets contemplated by this Agreement.

## **23. MODIFICATION OF MEMBERSHIP DOCUMENTS**

The Company reserves the right prior to the Turnover Date to waive or modify the provisions of this Agreement or the terms and conditions set forth in the other Membership Documents so long as such waivers or modifications are not materially adverse to the rights of the members. Any waiver or modification which is materially adverse must be approved by a majority vote of the Equity Members, in accordance with the Bylaws.

The Club warrants and agrees that after the Turnover Date and until the later of (i) the initial sale of all of the memberships permitted to be issued in the Club, or (ii) the initial sale of all residences and homesites in the Community to retail purchasers, the Membership Documents will not be changed without the prior written consent of the Company, which consent may be withheld for any reason whatsoever.

After the Turnover Date, this Agreement may be changed only upon obtaining the Company's written consent, which may be withheld by the Company for any reason whatsoever.

#### **24. SUBJECT TO MEMBERSHIP DOCUMENTS**

This Agreement shall incorporate by reference the terms and conditions of the other Membership Documents. In the event of a conflict between the terms of this Agreement, the Bylaws, the Certificate of Incorporation, and the Membership Plan, this Agreement shall prevail over the Bylaws, the Certificate of Incorporation and the Membership Plan. The Bylaws shall prevail over the Certificate of Incorporation and the Membership Plan, and the Membership Plan shall prevail over the Certificate of Incorporation.

#### **25. REFORMATION OF AGREEMENT**

If by final decree of a court or administrative agency of competent jurisdiction it is determined at any time that any aspect of the transactions contemplated by this Agreement or the Membership Documents is contrary to any law, the Company and the Club shall reform this Agreement and the Membership Documents so as to bring them into compliance with the law or obligation determined to have been violated if financially feasible.

#### **26. CASUALTY INSURANCE**

The Club agrees it shall maintain, until the initial sale of all of the memberships permitted to be issued in the Club, replacement cost insurance on the improvements to the Club Facilities equal to the full replacement cost thereof.

#### **27. LIABILITY OF COMPANY, CLUB DIRECTORS AND OFFICERS**

Neither the Company, its affiliates nor any of their respective partners, shareholders, members, directors, officers, employees or agents, nor the Club's incorporator or any of the members of the Board of Directors or officers appointed by the Company, shall have any liability to the Club or the members of the Club for decisions or actions taken regarding the operation of the Club or the Club Facilities, in accordance with and pursuant to the Membership Documents, on account of any mistakes of fact or any alleged errors of judgment made in good faith or for decisions or actions made under the business judgment rule, except where the same are guilty of a bad faith breach of an express provision of this Agreement.

The Company shall have the absolute right to cause the Club to buy or lease any equipment, supplies or other property or services used in connection with the operation of the Club Facilities. No claims will be made against the Company by the Club or any Equity Member relating to any decisions of the Company or the Club to buy or lease, including

without limitation, any claim that questions the business judgment of the Company or the Club in making such decision.

For purposes of this Agreement, whenever one of the parties reasonably requires or retains the use of an expert in order to discharge a duty hereunder, such party's sole responsibility in connection with said duties shall be the reasonable reliance upon the advice of the experts. No party shall be liable on account of any duty or obligation imposed hereunder, in the event of a reliance upon professional advice.

## **28. NO FIDUCIARY DUTY**

The parties agree that none of the Company, its affiliates, successors and assigns and their respective employees, agents, officers, directors, shareholders, members and partners or the Club's incorporators, initial and interim Board of Directors or officers designated by the Company, owe any fiduciary duty to investigate, negotiate or otherwise act on behalf of the members of the Club or the Club.

## **29. INDEMNIFICATION BY CLUB**

( ) The Club, at its expense and not the Company's expense (notwithstanding its obligation to fund Operating Deficits prior to the Turnover Date), shall indemnify, defend, and hold harmless the Company and its affiliates, successors and assigns and their employees, agents, officers, directors, stockholders, members, partners and affiliates for, from, against and in respect of, and reimburse the same on demand for any and all claims, demands, losses, costs, expenses, settlements, obligations, liabilities, damages, recoveries and deficiencies, including, but not limited to, interest, penalties, and attorneys' and paraprofessionals' fees and disbursements (even if incident to any appeals) that the Company, its affiliates, their successors and assigns and their respective employees, agents, officers, directors, stockholders, members or partners shall incur or suffer, which arise, result from, or relate to: (i) the ownership, operation or management of the Club Facilities subsequent to the Turnover Date, (ii) the alteration or modification of the Membership Documents or any other contractual relations with respect to the Club or the Club Facilities subsequent to the Turnover Date, (iii) any other activities of the Club subsequent to the Turnover Date, and (iv) any allegations or claims made or instituted by the Club, its Equity Members or other persons in connection with this Agreement and the other Membership Documents or the performance of the Club obligations created by this Agreement and the other Membership Documents, including without limitation the transfer, condition or adequacy of the Club Facilities, but excluding any claims successful on the merits that the Company is not in compliance with any material provision of this Agreement and the other Membership Documents. The Company, its affiliates, their successors and assigns and their respective employees, agents, officers, directors, stockholders, members and partners as applicable shall have the right to approve the legal counsel in connection with any allegation, claim, demand or lawsuit in connection with the above and shall have the right to approve in writing any binding judicial settlement or any submission to binding arbitration. This indemnification shall be provided at the Club's expense and shall not increase any Operating Deficit nor decrease any Operating Surplus but shall be paid from an assessment on Equity Members.

( ) The Company shall give the Club prompt written notice of any allegation, claim, demand or lawsuit or the like covered by the indemnification set forth in this Section.

### **30. FUTURE EASEMENTS, DEDICATIONS AND RESTRICTIONS**

The Club acknowledges that the Company or its affiliates, successors or assigns will develop and market the real estate in the Community and nothing in this Agreement shall be construed to limit or restrict such development and marketing. By the Club's acceptance of the interest in the Real Property, the Club agrees that it may be necessary or desirable for the development of the Community to grant, modify, or enter into easements, dedications, agreements, licenses, restrictions, reservations, covenants and rights of way, to modify the boundary lines and to plat or replat portions of the Real Property, and to take such other action as the Company may deem reasonably necessary and appropriate, all in a manner which does not materially affect the use of the Club Facilities as a country club facility. The Club agrees to execute and deliver, and will cause the holders of any liens upon or interests in the Real Property to execute and deliver, any and all agreements, documents, plats, and instruments which the Company deems necessary or desirable to accomplish the same, specifically including without limitation, deeds reconveying portions of the Real Property to the Company. The Club further agrees to accept such additional conveyances of title or leasehold to land as the Company deems necessary or desirable, which conveyances may be subject to the same provisions imposed on the Real Property pursuant to this Agreement.

### **31. RESALE OFFICE**

The Club hereby grants to the Company, its designees, and their successors and assigns the continuing right (before and after the Turnover Date) to operate a real estate sales office within the Clubhouse for the initial sale and resale of property in the Community. After the Turnover Date, any change in the location of this office shall be mutually agreed upon by the Company and the Club. The Company shall not be obligated to pay any rent for this space, but, after the Turnover Date, shall be obligated to pay an allocable portion of the electric and air conditioning charges relating to the clubhouse based on the size of the office, and all telephone charges attributable to the operation of the office. So long as the Company or its designee is using such space, the Club shall not permit any other real estate brokerage office to operate on the Real Property. The Company, or its designees or their successors or assigns shall have the right to cancel such occupancy arrangement at any time upon written notice to the Club.

### **32. TAX EXEMPT STATUS OF CLUB**

The Internal Revenue Service recently adopted a new regulation (§1.337(d)-4) concerning the change in status of a taxable corporation to a tax-exempt corporation. The Club, although a New York not-for-profit corporation, initially will be a taxable corporation for income tax purposes. Essentially, in the case of the Club, a change in tax status to a tax-exempt status must occur within seven years from the year in which the Certificate of Incorporation of the Club have been filed, otherwise, the Club may suffer negative tax consequences should it seek tax-exempt status thereafter. This is so because pursuant to the regulation, a taxable corporation's change in status to a tax-exempt entity will be treated as if it transferred all of its assets to a tax-exempt entity immediately before the change in status. Accordingly, the taxable

corporation could have to recognize gain, if any, immediately before the change to tax-exempt status as if the assets were sold at their fair market values.

The Company agrees that it will attempt to cause the Club to qualify for tax-exempt status prior to the end of the seven-year period referred to above, provided the regulation remains in effect in its present form and, in the Company's view, obtaining tax-exempt status would probably be beneficial for the Club under the circumstances and not detrimental to the Company. However, the Company is not making any representations or warranties whatsoever about the ability of the Club to qualify for tax-exempt status or the economic feasibility or advantages of such qualification. The Club hereby releases the Company and agrees to hold the Company, its members and their respective officers, directors, employees, agents, members and partners harmless for, from and against all liability, loss, cost or expense suffered or incurred by any of them arising out of the Club's qualifying or failing to qualify for tax-exempt status, other than the expenses incurred by the Company in attempting to cause the Club to qualify for tax-exempt status as aforesaid.

### **33. DISPUTE RESOLUTION**

Any disputes between the Company and the Club or its members as to any matters under this Agreement shall be subject to mediation in accordance with the Dispute Resolution procedure attached hereto as Exhibit "T." If the matter is not resolved through mediation, then it will be submitted to binding arbitration in accordance with the same Dispute Resolution procedure.

### **34. MISCELLANEOUS PROVISIONS**

( ) Undefined Terms. Any capitalized terms herein which are not defined in this Agreement shall have the same meaning ascribed to such terms in the other Membership Documents.

( ) Definition of "Affiliate". For purposes of this Agreement and the other Membership Documents the term "affiliate" will have the same meaning as that set forth under Rule 144 promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended.

( ) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by and between such parties.

( ) Amendments. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, except by a writing signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought and making specific reference to this Agreement.

( ) Assignments. The Club shall not assign its rights and/or obligations hereunder without the prior written consent of the Company, and such consent may be exercised in the

sole and absolute discretion of the Company. The Company may assign its rights and/or obligations under this Agreement in whole or in part.

Prior to and after the Turnover Date, the Company reserves the right to assign any or all of its various rights, interests or obligations hereunder and under the other Membership Documents, in whole or in part, to one or more of its affiliates, members, such members' respective affiliates, or any other party or parties, whether or not such party or parties are related to the Company. The right of the Company to assign its rights, interests and obligations hereunder and under the Membership Documents shall include, without limitation, the Company's interest in the Club Facilities or any portion thereof, the memberships, the proceeds from the sale of memberships, the right to receive any Operating Surplus from operation of the Club Facilities prior to the Turnover Date, and the right to control the operation of the Club and the Club Facilities by appointing the Club's Board of Directors prior to the Turnover Date. The Company's right to assign its interest shall include the right to assign its interest to more than one related or unrelated entity. Any such assignments shall be subject to the rights and privileges of the members and the Club under the other Membership Documents and the rights and obligations of the Club hereunder, as applicable.

( ) Further Assurances. The parties hereby agree from time to time to execute and deliver such further assurances and other transfers, assignments and documents and do all matters and things which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.

( ) Brokers. Each of the parties represents and warrants that such party has dealt with no broker or finder in connection with any of the transactions contemplated by this Agreement, and, insofar as such party knows, no broker or other person is entitled to any commission or finder's fee in connection with any of these transactions. The parties each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

( ) Binding Effect. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors and permitted assigns.

( ) Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to the Company:

Olde Vine Golf Club LLC  
888 Veterans Memorial Hwy  
Bldg. 1, Suite 430  
Hauppauge, New York 11788

If to the Club:

Olde Vine Golf Club, Inc.  
695 Reeves Avenue  
Riverhead, NY 11901

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered : (a) on the date delivered if by personal delivery , (b) on the date of transmission with confirmed answer back if by facsimile, and (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

( ) Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

( ) Severability. If any part of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, the provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

( ) Survival. All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

( ) Waivers. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of that party to require performance of that provision or to exercise any right, power or remedy hereunder, and any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement.

( ) Third Parties. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons or entities other than the parties hereto and their respective legal representatives, successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement. All parties acknowledge that this Agreement does not give any rights to any or all of the members of the Club, and such members are not intended to be third party beneficiaries to this Agreement or any of the provisions herein.

( ) Governing Law. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York without regard to principles of conflicts of laws.

( ) Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Suffolk County, New York and that, therefore, without limiting the jurisdiction or venue of any other federal or state courts, each of the parties irrevocably and unconditionally: (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of records in the State of New York in Suffolk County or the District Court of the United States having jurisdiction over said county; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said State. The provisions of this paragraph are subject to the provisions hereof concerning dispute resolution.

( ) Enforcement Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties will be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals) incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled. The provisions of this paragraph are subject to the provisions hereof concerning dispute resolution.

( ) Waiver of Jury Trial. Each of the parties hereby waives trial by jury in any action arising out of matters related to this Agreement, which waiver is informed and voluntary. The foregoing provisions are subject to the provisions hereof concerning dispute resolution.

( ) Specific Performance. Each of the parties acknowledges that the parties will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is not specifically enforced. Therefore, in the event of a breach or threatened breach by any party of any material provision of this Agreement (including, without limitation, the failure of the Company to transfer control of the management of the Club Facilities to its members or deliver the Club Facilities or the failure of the Club to accept transfer of its management or delivery of the Club Facilities), then the other party shall be entitled, as its sole and exclusive remedy, to sue for injunctions restraining such breach, without being required to show any actual damage or to post any bond or other security, and/or to a decree for specific performance of the provisions of this Agreement. Under no circumstances shall the Club be entitled to sue the Company for damages in connection with this Agreement. The provisions of this paragraph are subject to the provisions of hereof pertaining to dispute resolution.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**OLDE VINE GOLF CLUB LLC**  
a New York limited liability company

By: /s/ \_\_\_\_\_

Name: George Heinlein

Title: Managing Member

**OLDE VINE GOLF CLUB, INC.,**  
A New York not-for-profit corporation

By: /s/ \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## SCHEDULE OF EXHIBITS

- . Description of the Real Property
- A. License Agreement
- B. Cherry Creek License Agreement
- C. Marketing, Access and Use Agreement
- D. Membership Plan
- E. Certificate of Incorporation
- F. By Laws
- G. Rules and Regulations
- H. Membership Purchase Agreements
- I. Membership Application
- J. Deed
- K. Title Insurance Commitment
- L. Bill of Sale
- M. Assignment of Contracts
- N. Assignment of Licenses and Permits
- O. Assignment of Warranties
- P. Assignment of Cherry Creek License Agreement
- Q. Non-Foreign Affidavit
- R. Escrow Agreement for Membership Contributions and Initiation Fees
- A. Dispute Resolution Procedure