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**ORIGINAL**

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE HAYNES NEIGHBORHOODS**

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE HAYNES NEIGHBORHOODS

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE  
HAYNES NEIGHBORHOODS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this \_\_\_\_\_ day of \_\_\_\_\_, 1999, by CENTEX HOMES, a Nevada general partnership, having CENTEX REAL ESTATE CORPORATION, a Nevada corporation, as its managing general partner (hereinafter referred to as "Declarant"). Capitalized terms used herein shall have the meanings set forth in Article I hereof.

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real property located in Land Lot 91 of the 5th District of Gwinnett County, Georgia; and

**WHEREAS**, Declarant has developed a portion of said property as a residential development of single-family detached building lots (herein referred to as the "Development") known as Haynes Crossing, Unit I, which property is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and is clearly shown and depicted on that certain Final Plat of Haynes Crossing, Unit I, which plat is recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, in the real estate records of Gwinnett County, Georgia; and

**WHEREAS**, this Declaration imposes upon all property which is submitted to its terms mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of said property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the same; and

**WHEREAS**, in furtherance of such plan, Declarant has caused or intends to cause the Association to be formed as a non-profit corporation organized for the common good and general welfare of the Owners to own, operate and maintain the Common Property and to administer and enforce the provisions of this Declaration, the By-Laws of the Association, and the Design Standards referred to herein; and

**WHEREAS**, Declarant desires to maintain the right to annex additional real property into the Development and to subject the same to the rights and the obligations set forth herein;

**NOW, THEREFORE**, Declarant hereby declares that all of the real property described in Exhibit "A" shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with title to the real property subject to this Declaration. This Declaration shall be binding on all parties having any right, title or interest in the real property now or hereafter subjected hereto, or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and the Association.

**ARTICLE I - DEFINITIONS**

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

**1.01 Additional Property.** "Additional Property" means the additional property which may be added to the Property and made subject to this Declaration pursuant to Article X hereof. A description of the Additional Property is set forth on Exhibit "B" attached hereto and made a part hereof.

**1.02 Architectural Control Committee.** "Architectural Control Committee" or "ACC" shall mean and refer to the Architectural Control Committee established in Article V of this Declaration.

**1.03 Articles of Incorporation.** "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation for the Association, as filed with the Secretary of State of the State of Georgia, as the same may be amended from time to time.

**1.04 Association.** "Association" shall mean and refer to Haynes Homeowners Association, Inc. (a non-profit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

**1.05 Board of Directors.** "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

**1.06 Builder.** "Builder" shall mean and refer to any Person which purchases one or more Homesites for the purpose of constructing improvements thereon for later sale to consumers, or parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such Person's business.

**1.07 Bylaws.** "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

**1.08 Class "A" Member.** "Class "A" Member" shall be all Owners of Homesites in the Development except the Declarant.

**1.09 Class "B" Member.** "Class "B" Member" shall be the Declarant, its successors and assigns.

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

**1.11 Common Property.** "Common Property" shall mean and refer to all real property, including any portion of a Homesite, (together with any and all improvements now or hereafter located thereon) and all personal property, now or hereafter owned by the Association, for the common use and enjoyment of the Owners, including easements held by the Association for such purpose.

**1.12 Community-Wide Standard.** "Community-Wide Standard" shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard may be more specifically defined by the Board of Directors.

**1.13 Consumer Price Index.** "Consumer Price Index" or "CPI-U" shall mean and refer to the Consumer Price Index-Seasonally Adjusted U.S. City Average for All Urban Consumers (1982-84=100) published in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor. In the event the Consumer Price Index ceases to use the 1982-84 average of 100 as the basis of calculation, or if a substantial change is made in the term or number of items contained in the Consumer Price Index, then the Consumer Price Index shall be adjusted to the figure that would have been arrived at had the change in the manner of computing the Consumer Price Index in effect at the date of this Declaration not been altered. In the event that the Consumer Price Index (or a successor or substitute index) is not available, a reliable government or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used.

1.14 **Declarant.** "Declarant" shall mean and refer to Centex Homes, a Nevada general partnership, having Centex Real Estate Corporation, a Nevada corporation, as its managing general partner, its successors and assigns. The term shall also be applied to any Person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, which lawfully acquires the rights, privileges and options of Declarant in accordance with this Section. Should any of the Property become subject to a first Mortgage given by Declarant as security for the repayment of a loan to improve the Property for development as part of this residential community, then all rights, privileges and options herein reserved to the Declarant, if held by a Mortgagor, shall inure to the benefit of the holder of such first Mortgage upon its becoming the actual owner of the Property then subject to such first Mortgage through judicial foreclosure or sale made pursuant to any power of sale contained in such first Mortgage or by conveyance of a deed in lieu of foreclosure. The Declarant as hereinabove defined, may transfer all of its rights, privileges and options as Declarant to a successor-in-title to all or some portion of the Property or the Additional Property, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of such property, and provided further, that in a written instrument, such successor-in-title is expressly assigned Declarant's rights, privileges and options herein reserved to Declarant. Such an assignment may be included as a recital in any deed executed by Declarant which conveys any portion of the Property or the Additional Property. There shall be only one (1) Declarant at all times.

1.15 **Declaration.** "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Haynes, as the same may be amended from time to time.

1.16 **Development.** "Development" shall mean and refer to the Property, the Common Property, and all improvements located or constructed thereon, and any portion of the Additional Property subjected to this Declaration.

1.17 **Development Plat.** "Development Plat" shall mean and refer to any plat of survey of the Development, recorded in the public records of Gwinnett County, Georgia, as revised or supplemental surveys of the Property, or such additional real estate as may be annexed as part of the Development.

1.18 **Homesite.** "Homesite" shall mean and refer to all those numbered parcels of land shown as residential building lots upon the Development Plat or as similarly shown on any revised or supplemental surveys of such tract, or such additional tracts as may be added to the Property from time to time, as provided herein.

1.19 **Master Plan.** "Master Plan" shall mean the land use plan or development plan of Declarant for the Development, as such plan may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the Additional Property described on Exhibit "B" that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with this Declaration.

1.20 **Member.** "Member" shall mean and refer to a Person entitled to membership in the Association. The membership shall consist of the Class "A" Members and the Class "B" Member.

1.21 **Mortgage.** "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.22 **Mortgagee.** "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

1.23 **Mortgagor.** "Mortgagor" shall mean and refer to any Person who gives a Mortgage.





without limitation, the locations and dimensions of the Homesites, Common Property, Additional Property, roads, utility easements and systems, drainage easements and systems, right-of-way easements, and setback line restrictions.

## 2.02 Conveyance of Common Property.

(a) The Declarant may from time to time cause to be conveyed to the Association certain real property (which may include Homesites or portions thereof) or grants of easements as well as personal property, for the common use and enjoyment of the Owners (such real and personal property being hereinafter collectively referred to as "Common Property"). In addition, the Declarant may from time to time cause the conveyance of certain real property or grants of easements to the general public as may be required by governing authorities in accordance with this Declaration.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.02 and in accordance with Section 10.05 of this Declaration at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 2.02, the Declarant may convey, or cause to be conveyed, to the Association in accordance with this Section 2.02 such other real and personal property as the Declarant, in Declarant's sole discretion, may determine to be necessary, proper or convenient to the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property, Recreation Area or Open Space (or which is designated by any words which similarly signify such property is for the use of the Owners in the Development) whether by recorded plat of survey or otherwise, or that such property is designated for public use, shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority. Declarant shall likewise be under no obligation to improve or convey any property for the use and benefit of the Owners.

(e) The Association hereby covenants and agrees to accept all such conveyances of Common Property. With respect to any improved Common Property, issuance of a certificate of occupancy (if required) by the local governing authority having jurisdiction over such matters, shall be conclusive evidence that said property complies with all building and construction standards. The Declarant, or any predecessor Declarant, shall not be responsible for compliance with any requirements called for by said local governing authority after the issuance of a certificate of occupancy.

2.03 Right of Enjoyment. Every Owner shall have a nonexclusive right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Homesite upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. Notwithstanding the foregoing, in the event the Common Property includes amenities, such as a clubhouse, pool or tennis courts, no Owner shall have the right to use the amenities unless and until the Owner is paying the full regular annual assessment and maintenance fee being paid by Owners of Homesites which have been occupied as a residence; provided, however, for so long as the Declarant or any Builder who purchased a Homesite from the Declarant shall own at least one (1) Homesite for sale, this restriction shall not apply to the Declarant, who may delegate its right to use and enjoy the amenities to its employees, and to its guests and social invitees. No Builder shall be allowed to use the amenities, nor shall any Builder allow their employees to use the amenities; provided, however, if a Builder is paying the full regular annual

assessment and maintenance fee for a Homesite, any natural persons occupying the Homesite shall, subject to such reasonable rules and regulations as may be adopted by the Association applicable to the Owners, have the right and easement to use and enjoy the amenities. The Association may permit Persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.03 is subject to those items set forth in Section 2.04, which include suspension by the Association as provided in Sections 2.04(c) and 3.05.

**2.04 Rights of The Association.** The rights and privileges conferred in Section 2.03 hereof shall be subject to the right of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property (which shall specifically include the right of the Association, acting through its Board of Directors, to allow residents of other developments outside of the Property to use the Common Property);

(b) charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

(c) suspend the voting rights of any Member, pursuant to Section 3.05, and the right of enjoyment granted or permitted by Section 2.03;

(d) grant easements or rights-of-way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;

(e) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;

(f) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, Mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;

(g) dedicate or transfer all or any part of the Common Property or interest therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority; and

(h) to sell, lease or otherwise convey all or any part of its properties and interest therein;

provided, however, that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of two-thirds (2/3) of both Class "A" and Class "B" Members.

**2.05 Types of Common Property.** At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or

portion thereof shall not, without a two-thirds (2/3) vote of both Class "A" and Class "B" Members of the Association, be used for any different purpose or purposes. For so long as Declarant owns at least one (1) Homesite held primarily for sale or has an unexpired option to add additional property to these Restrictions, the Common Property may not be used for any different purpose without the written consent of the Declarant.

**2.06 Entrance Easements and Entrance Monuments.** It is contemplated that certain easements for landscaping or for the erection and maintenance of entrance monuments, subdivision signs, walls, fences and other structures intended to provide an attractive atmosphere or to provide privacy to Owners within the Development will be reserved by the Declarant and may be set forth on plats of survey of the Development recorded in the County records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. All Owners taking title to any Homesite upon which such an easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the instrument conveying such easements to the Association. Such easements shall be Common Property. In addition, or alternatively, such entrance monuments and other similar improvements, may be constructed within or upon rights-of-way within the Development, in which case, such improvements shall be maintained by the Association as any other Common Property. In addition to any easements which may be created in accordance with this Section, whether by recorded plat or by separate instrument, there is hereby reserved for the Declarant and for the Association a non-exclusive perpetual easement to maintain any improvements constructed upon the Property which are intended as entrance or landscape monuments for the identification or beautification of the Development, including landscaped areas. Said easement shall include the right of access to and from such improvements, and shall include the right to re-construct improvements and to refurbish and/or modify landscaping within all such areas.

**2.07 Encroachment Easements.** If any buildings or other improvements initially constructed by Declarant, or by any Builder on any of the Homesites (including without limitation any eaves, roof overhangs, balconies, siding, porches, or other structures which may be attached to the walls or roofs of such buildings) encroach onto or over or extend into the air space or any portion of the Common Property, or, conversely, if any such improvements initially constructed on the Common Property encroach onto or over or extend into the air space or any portion of a Homesite, an easement for the encroachment and the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

**2.08 Development Easements.** For so long as the Declarant (or any Builder who purchased a Homesite from the Declarant) owns at least one (1) Homesite primarily for the purpose of sale, or for so long as Declarant has the unexpired option to add Additional Property to the Development, Declarant shall have alienable and transferable rights of way and easements in, on, over, through, under and across the Common Property for the following purposes:

(a) installing, maintaining, repairing and replacing such other improvements to the Property (including any portions of the Common Property) and the Additional Property as are contemplated by this Declaration or as Declarant desires, in its sole discretion;

(b) access, ingress and egress to the Common Property and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners in the Development to the use of the Common Property;

(c) for use as sales offices, model homes, and parking spaces in connection with Declarant's efforts to market Homesites;

(d) for the maintenance of such other facilities, equipment and signs as in the sole discretion of Declarant may be reasonably required, convenient or incidental to the improvement and sale of Homesites; and

(e) for doing all things reasonably necessary and proper in connection with the foregoing, provided that in no event shall Declarant have the obligation to do any of the foregoing.

**2.09 Delegation of Use.** Any Owner may delegate his right to use and enjoy the Common Property to the members of his family, his social invitees or his tenants who reside on a Homesite. Tenants who reside on a Homesite shall have the same rights of delegation as an Owner. If an Owner is not occupying his Homesite as a primary residence and has leased his Homesite to tenants, the Owner shall not have the right to use and enjoy the Common Property, which right may only be exercised by the tenants. Any delegation of rights must be made in accordance with the Bylaws and will be subject to reasonable regulation by the Board and in accordance with the procedures it may adopt.

### **ARTICLE III - THE HOMEOWNERS' ASSOCIATION**

**3.01 Purposes, Powers and Duties of the Association.** The Association shall be formed as a non-profit corporation organized for the primary purpose of performing certain functions for the common good and general welfare of its Members, which shall specifically include, but shall not be limited to maintaining the recreational facilities within the Development, maintaining the drainage system, the pump station, the entrance features, the fencing around the detention ponds, the landscaping, and all other Common Property intended for the common use and/or enjoyment of the Owners in accordance with the provisions of this Declaration. To the extent necessary to carry out such purposes, the Association shall (a) have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and (b) have the power to exercise all of the rights, powers and privileges of the Association as set forth in this Declaration.

**3.02 Membership in the Association.** Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration.

**3.03 Voting Rights.** Subject to the following provisions of this Section 3.03, the Association shall have two classes of voting membership: Class "A" and Class "B".

(a) **Class "A".** Every Person who is an Owner, with the exception of the Declarant except as otherwise set forth herein, shall be a Class "A" Member and shall be entitled to one vote for each Homesite owned. When more than one Person is a Class "A" Member by virtue of an ownership interest in the same Homesite, the vote for such Homesite shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Homesite. In the event of disagreement among such Persons and an attempt by two or more of them to cast the vote of such Homesite, such Persons shall not be recognized and the vote of such Homesite shall not be counted. The membership of a Class "A" Member shall automatically terminate upon the Member's sale of his Homesite. However, no termination of Class "A" membership shall affect such Member's obligation to pay assessments, fines or penalties as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

(b) **Class "B".** The Declarant shall be the sole Class "B" Member. Class "B" membership shall be a full voting membership and during its existence the Class "B" Member shall be entitled to vote on all matters and in all events. In accordance with the current Master Plan, the Class "B" Member shall be entitled to seven hundred fifty-three (753) votes less three (3) votes for each Homesite owned by a Person other than the Class "B" Member, provided, however, in no event shall the Class "B" Member have less than the total number of Class "A" votes plus one (1). The Class "B" membership shall cease

and shall be converted to Class "A" membership at such time as (a) the expiration of five (5) years from the date of recording of this Declaration; (b) the date as of which three-fourths (3/4) of the Homesites (shown on the Master Plan) shall have been conveyed, by either the Declarant or by a Builder who purchased the Homesite from Declarant for the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy; or (c) the Declarant surrenders its weighted votes as established herein and the authority to appoint and remove members of the Board by an express amendment to this Declaration executed by the Declarant and recorded in the Office of the Clerk of the Superior Court of the county in which the Property is located, whichever first occurs; provided, however, that so long as any Mortgagee of Declarant holds a security interest in any portion of the Property, as security for a Development Loan to Declarant, the Class "B" membership shall not terminate without the prior written consent of such Mortgagee. If at the time of termination of the Class "B" membership, Declarant still owns any Homesites, then as to each Homesite owned by Declarant, Declarant shall be deemed to be a Class "A" Member.

#### 3.04 Board of Directors and Officers.

(a) **Board.** The affairs of the Association shall be managed by a Board of Directors. The number of directors and the method of election of directors shall be as set forth in this Declaration and in the Bylaws. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation Code or this Declaration, the Association's Bylaws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.

(b) **Officers.** The number of officers and the method of election of officers shall be as set forth in this Declaration and the Bylaws. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws, officers shall be appointed by the Declarant until such time as Declarant no longer has the right to appoint members to the Board of Directors.

(c) **Castling of Votes.** The votes of the Members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the Bylaws, as amended from time to time, or by law.

3.05 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any Person who:

(a) shall be subject to the Right of Abatement, as defined in Section 3.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of the Restrictions, or of the Design Standards as may be adopted by the ACC, within thirty (30) days after having received notice of the same pursuant to the provisions of Sections 5.11, 6.02 or 8.02 hereof;

(b) shall be delinquent in the payment of any assessment, fine or penalty levied by the Association pursuant to the provisions of this Declaration; or

(c) shall be in violation of the rules and regulations adopted by the Board of Directors relating to the use, operation and maintenance of the Common Property or otherwise.

Any suspension shall be for the balance of the period in which said Member or Person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.05, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Homesite.



**3.06 Voting Procedures.** The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation, and the Bylaws, as each shall from time to time be in force and effect.

**3.07 Control by Declarant and Appointment of the Board.** Until such time as Declarant no longer has the right to appoint members to the Board, the Board shall consist of three (3) members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws, the Declarant hereby retains the right to appoint all members to the Board. The right of Declarant to appoint members of the Board also includes the right to remove and replace appointees until such time as Declarant's right to appoint members to the Board ceases. Declarant shall retain the right to appoint and remove members of the Board until sixty (60) days after the first of the following events shall occur: (i) the expiration of five (5) years from the date of the recording of this Declaration; (ii) the date upon which three-fourths (3/4) of the Homesites planned for the Development shall have been conveyed, by either Declarant or by a Builder who purchased the Homesite from Declarant for the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy; or (iii) the surrender by Declarant of the authority to appoint and replace directors by an express amendment to this Declaration executed by the Declarant and recorded in the Office of the Clerk of the Superior Court of the county in which the Property is located. Notwithstanding any other language to the contrary, the Board of Directors appointed by the Declarant shall retain the power and authority to act of behalf of the Association, and to exercise all rights available to Board members until such time as a new Board of Directors has been elected. Each Owner by acceptance of a deed to or other conveyance of a Homesite vests in Declarant such authority to appoint and replace directors and officers as provided in this Section.

**3.08 Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Property, and dwellings within the Property, and the Common Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees, and licensees, if any, until and unless revised or cancelled by the Board of Directors or overruled, cancelled, or modified in a regular or special meeting of the Association by the vote of Members representing a majority of the total Class "A" votes in the Association, and by the Class "B" Member so long as such membership shall exist. For so long as Declarant owns at least one (1) Homesite held primarily for sale, or has an unexpired option to add additional property to the Development, and for so long as any Builder owns a Homesite which was purchased from Declarant and is being held primarily for sale, no rule or regulation which modifies or affects the rights, privileges, options or exemptions of the Declarant shall be effective unless consented thereto in writing by the Declarant. In addition, for so long as any predecessor Declarant owns at least one (1) Homesite held primarily for sale and for so long as any Builder owns a Homesite which was purchased from any such predecessor Declarant and is being held primarily for sale, no rule or regulation which modifies or affects the rights, privileges, options or exemptions of said predecessor Declarant shall be effective unless consented thereto in writing by said predecessor Declarant.

**3.09 Enforcement.** The Association shall be authorized to impose sanctions for violations of this Declaration, the Bylaws, or rules and regulations adopted by the Association. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities within the Common Property. In addition, the Association, through the Board, in accordance with Article VIII of the Declaration, shall have the right to exercise the Right of Abatement to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Homesite in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations or to abate nuisances. The Association, through the Board, by contract or other agreement, shall have the right to enforce county and city ordinances, if applicable, and to permit the

governmental entities to enforce ordinances on the Property for the benefit of the Association and its Members.

3.10. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.11. Governmental Interests. For so long as the Declarant owns any portion of the property described in Exhibit "A" or Exhibit "B", the Association shall permit the Declarant to designate sites within the Property for fire, police, water, and sewer facilities, public schools and parks, and other public facilities. The sites may include Common Property owned by the Association.

3.12. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the property designed to make the property safer than it otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY HOMESITE, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND THE ACC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ACC MAY NOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY HOMESITE, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY HOMESITE AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO HOMESITES AND STRUCTURES LOCATED THEREON, AND TO THE CONTENTS OF DWELLINGS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

#### ARTICLE IV - ASSESSMENTS AND MAINTENANCE CHARGES

4.01. Covenant for Assessments and Creation of Lien and Personal Obligations. The Declarant, to the extent that Declarant is required herein, hereby covenants and agrees, and each Owner, jointly and severally, for Owner, Owner's heirs, distributees, legal representatives, successors and assigns,



by acceptance of a deed for a Homesite, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Homesites;

(b) to pay to the Association the initiation fee and any special assessments for capital improvements or such other purposes as are set forth in this Declaration;

(c) to pay to the Association any specific assessments, including costs for maintenance performed by the Association on his behalf, and any fines, penalties or other charges which may or shall be levied by the Association pursuant to this Declaration against all Homesites;

(d) that there is hereby created a continuing charge and lien upon all Homesites owned by him against which all assessments, fines, penalties and other charges are made to secure payment of such items and any penalties and interest thereon as provided in Section 4.08 hereof and costs of collection, including reasonable attorneys' fees;

(e) that such continuing charge and lien on such Homesites binds such Homesites in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Homesites whether arising from or imposed by judgement or decree or by any agreement, contract, Mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the lien of any Mortgage recorded prior to the recording of the Declaration, and (iii) the lien or charge of all first and second Mortgages of record (meaning any recorded Mortgages covering the Homesite with first or second priority over other Mortgages) made in good faith and for value;

(f) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Homesite or Homesites from liability for any assessment thereafter assessed;

(g) that any initiation fee charged to a Homesite and all assessments (together with interest thereon and late charges as provided in Section 4.08 of this Declaration and costs of collection including reasonable attorneys' fees) levied against such Homesite or Homesites shall be (in addition to being a continuing charge and lien against such Homesite or Homesites as provided in Section 4.01(d) of this Declaration) a personal obligation which will survive any sale or transfer of the Homesite or Homesites;

(h) that, except as provided in subsections (i) and (ii) below, the grantee in a conveyance of a Homesite shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however,

(i) that if the grantor or grantee shall request a statement from the Association as provided in Section 4.09 of this Declaration, such grantee and said grantee's successors, successors-in-title and assigns shall not be liable for nor shall the Homesite conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement, or

(ii) in the event that the holder of a first or second Mortgage (provided that neither the grantee nor any successor grantee on the second mortgage is the seller of the Homesite) or any other Person acquires title to a Homesite as a result of foreclosure of any such Mortgage, such holder or other Person, and their respective successors, successors-in-title, and assigns, shall not be liable for, nor shall the Homesite be subject to, any lien for assessments under the Declaration chargeable to the Homesite on account of any period prior to the acquisition of title; provided, however, that the unpaid share of an

assessment or assessments shall be deemed to be a common expense collectable from all of the Owners, including any such holder or other Person, and their respective successors, successors-in-title, and assigns.

**4.02. Purpose of Assessment.** The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the Owners, including, but not limited to, and in addition to other purposes set forth in this Declaration, the acquisition, construction, improvement, maintenance and equipping of Common Property, including but not limited to the private drive within the Development, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

**4.03. Accumulation of Funds Permitted.** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

**4.04. Annual Assessment or Maintenance Charge.**

(a) Subject to the terms of this Article, each Homesite in the Property is hereby subjected to an annual assessment or maintenance charge, which maintenance charge and assessment will be paid by the Owner or Owners of each Homesite within the Property (and any area annexed under the jurisdiction of the Association). Payment of such assessments will be made in advance in monthly, quarterly, annual or semi-annual installments with the due dates being established by the Board of Directors.

(b) The annual maintenance charge and assessment will commence with respect to each Homesite on the first day of the month following the earliest to occur of the following events: (i) upon the occupancy of the Homesite as a residence; or (ii) upon the conveyance of the Homesite by Declarant to an Owner or tenant for residential occupancy; or (iii) upon the conveyance of the Homesite by a Builder who purchased the land from Declarant for the purpose of erecting a dwelling thereon to an Owner or tenant for residential occupancy. Notwithstanding the foregoing, until such time as the Declarant no longer has the right to appoint and replace members of the Board of Directors, Declarant shall have the right to delay the commencement of annual assessments.

(c) The Board of Directors shall establish the initial annual assessment which amount shall be the "maximum annual assessment" for 1999 and 2000. Beginning January 1, 2001, and from year to year thereafter, the maximum annual assessment may be increased by the Board of Directors; however, the maximum annual assessment may be increased each year not more than the greater of (i) ten percent (10%) above the maximum annual assessment for the previous year, or (ii) an amount equal to the percentage increase in the Consumer Price Index, or "CPI-U", between the CPI-U for the first full month of the preceding calendar year and the last month of the preceding calendar year, without a vote of the membership, which shall require approval of two-thirds (2/3) of each class of members present, in person or by proxy, at a meeting duly called for such purpose, with at least sixty percent (60%) of the Owners or other proxies present. If sixty percent (60%) of the Owners entitled to vote do not attend, a second meeting may be called and the quorum will be reduced to thirty percent (30%) of the Owners or their proxies. If not otherwise increased as provided herein, the maximum annual assessment for each successive year shall automatically increase by an amount equal to the percentage increase in the CPI-U. The annual assessment for each year shall be determined by the Board of Directors as the needs of the Development may in the judgment of the Directors require; however, the annual assessment for each year shall not exceed the maximum annual assessment set for that year. In addition, if for any reason the Board of Directors fail to determine the annual assessment for any successive year, the annual assessment

or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

#### 5.05 Design Standards.

(a) The ACC may from time to time (but shall not be required to) adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purposes of:

- (i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
- (ii) governing the procedure for such submission of plans and specifications;
- (iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and
- (iv) assuring the conformity and harmony of external design and the general quality of the Development.

(b) The ACC may publish copies of any current Design Standards adopted by it, in which case they shall be made readily available to Members and prospective Members and to all applicants seeking the ACC's approval.

5.06 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Homesite nor shall any existing Structure upon any Homesite be altered in any way which materially changes the exterior appearance of the Structure or Homesite, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC, including where applicable, and without being limited to:

- (a) a site plan showing the location of all proposed and existing Structures on the Homesite including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;
- (b) a foundation plan;
- (c) a floor plan;
- (d) exterior elevations of all proposed Structures and alterations to existing Structures; as such Structures shall appear after all back-filling and landscaping are completed;
- (e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and
- (f) plans for landscaping and grading.

5.07 Approval of Plans and Specifications. Approval for use, in connection with any Homesite or Structure, of any plans and specifications shall not be deemed a waiver of the ACC's right, in its

discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Homesite or Structure. Approval of any such plans and specifications relating to any Homesite or Structure, however, shall be final as to that Homesite or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

**5.08 Disapproval of Plans and Specifications.** The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

(a) the failure to include information in such plans and specifications as may have been reasonably requested;

(b) the failure of such plans or specifications to comply with this Declaration or the Design Standards; or

(c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the Community-Wide Standard, or (ii) to fail to be aesthetically pleasing, or (iii) as to location, to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

**5.09 Obligation to Act.** The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with all conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure of the ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

**5.10 Inspection Rights.** Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon any Homesite and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Homesite or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

**5.11 Violations.** If any Structure shall be erected, placed, maintained or altered upon any Homesite, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

**5.12 Fees.** The ACC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 5.10. The fee shall be established from time to time by the ACC and published in the Design Standards.

**5.13 Nondiscrimination by ACC.** The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

**5.14 Disclaimer as to ACC Approval.** Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these Restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

**5.15 Declarant.** The provisions contained in this Article, as well as all other architectural control provisions, including but not limited to building setbacks, contained in this Declaration, the Articles of Incorporation or the Bylaws, shall not apply to Declarant, nor to any predecessor Declarants. In addition, said provisions shall not apply to any Builder who acquires a Homesite from Declarant, any predecessor Declarants, or through other Builders who had acquired the Homesite from said parties for the purpose of constructing a dwelling thereon; provided, however, any such Builder must submit to and have its plans and specifications approved by Declarant, if title to the Homesite passed through Declarant, and provided further, if title to the Homesite passed through a predecessor Declarant, and said predecessor still owns at least one (1) Homesite for sale in the Development, then such plans and specifications must only be approved by said predecessor. This Section 5.15 may only be amended with the prior written consent of the Declarant, and any predecessor Declarants still owning at least one (1) Homesite for sale.

## **ARTICLE VI - GENERAL COVENANTS AND RESTRICTIONS**

**6.01 Application.** The covenants and restrictions contained in this Article VI shall pertain and apply to all Homesites and to all Structures erected or placed thereon.

### **6.02 Maintenance**

(a) Each Owner shall keep and maintain each Homesite and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the

Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such conditions. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

(b) Each Owner covenants and agrees that in the event of damage to or destruction of Structures on or comprising his or her Homesite, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article V. Alternatively, the Owner shall clear the Homesite of all debris and ruins and maintain the Homesite in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

**6.03 Restriction of Use.** Homesites may be used for single-family residential purposes only, or if conveyed or dedicated to the Association as Common Property, for such purposes as the Association sees fit (subject to such restrictions as may be contained in the grant or conveyance of said Homesite) and for no other purposes; provided, however, that Declarant may use any Homesite or the Common Property for any purposes necessary or convenient to the improvement and/or marketing and sale of the Property, including, but not limited to, the operation of sales offices and/or model homes.

**6.04 Resubdivision of Property.** No Homesite may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision. This provision shall not apply to the Declarant.

**6.05 Erosion Control.** No activity which may create erosion or siltation problems shall be undertaken on any Homesite without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition or approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices of controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape, and required landscaping as provided for in Section 6.06.

**6.06 Landscaping.** No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration.

**6.07 Trees.** No living tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Homesite unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Sections 5.06, 6.05 and 6.06 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC.

**6.08 Temporary Buildings.** No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Homesite except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefor approved by the ACC. Declarant may use temporary structures, such as construction trailers, and may authorize the use of the same by any Builder, while developing the subdivision.

**6.09 Signs.**









**6.18 Waterfront Land.** On Homesites adjacent to a lake or creek or other water bodies or courses, no refuse of any kind shall be placed on or disposed of into the adjacent waters which are to be kept clean and free of pollution.

**6.19 Animals.** No animals, including birds, insects, and reptiles, may be kept on any Homesite unless kept thereon solely as household pets and not for commercial purposes. No livestock shall be kept on any Homesite. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Homesite unless plans, specifications and location for said Structure have been approved by the ACC.

**6.20 Solid Waste.**

(a) No Person shall dump rubbish, garbage, or any other form of solid waste on any Homesite or on Common Property.

(b) Except during approved construction, no Person shall burn rubbish, garbage, or any other form of solid waste on any Homesite or on Common Property.

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Homesite unless screened or otherwise handled in manner approved by the ACC.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day Persons will be making such pick-up. At all other times such containers shall be screened or enclosed.

**6.21 Nuisances.** No noxious or offensive activity shall be carried on upon any Homesite, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the community.

**6.22 Mailboxes.** The Association shall have the right to require that mailboxes be of a similar style. The ACC may, in its discretion, include within the Design Standards specific design requirements for mailboxes. As Structures, all mailboxes must be approved by the ACC.

**ARTICLE VII - EASEMENTS, ZONING AND OTHER RESTRICTIONS**

**7.01 Easements.**

(a) **Right to Create Easements.** Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual rights of way and easements, as well as the power to grant and accept the same to and from the county in which the Property or any portion thereof is located, or any other public authority or agency, public service district, public or private utility, or other Person, in, on, over, under and across any part of the Property (including the Common Property) for any purpose which the Declarant deems appropriate, including, by way of example, and not limitation, the following:

(i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities;

(ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;

(iii) slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and

(v) the erection, installation, construction and maintenance of fences, walls, monuments, signs, etc. along streets in, around and along the perimeter and at entrances to, the Development, and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature.

**(b) Reserved Easements.** The Declarant hereby expressly reserves to the Declarant, its successors and assigns, across the Property, perpetual, alienable and transferable easements appurtenant to the Property and the Additional Property for the following uses and purposes:

(i) an easement for ingress and egress by vehicular and pedestrian traffic over (1) such drives, roadways, walkways and paths as are shown on the Development Plat, and (2) any such drives, roadways, walkways and paths as may be constructed in the future;

(ii) an easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewage, storm drainage, electricity, street lights, telephone, and other utilities and services, including the right to connect with and to use in common with the Owners, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners; and

(iii) an easement for the purpose of creating and maintaining satisfactory drainage across Homesites in the development, being five (5) feet wide along each side line and ten (10) feet wide along the rear line of each Homesite; however, said easement shall not include any portion of a Homesite upon which the foundation of any dwelling is located.

**(d) Grant of General Utility Easements.** In addition to the above, the Declarant hereby grants a general easement in favor of utility, cable television, security and other such service companies across the Property, to install, maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities provided for the benefit of the Owners.

**(e) Sidewalks, Signs and Fences.** There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, perpetual right and easement in, on, over, under and across, those strips of land ten (10) feet in width located along and adjacent to those exterior boundaries located adjacent to streets and roads and by lines in the interior of such Homesites which are ten (10) feet from and parallel to such exterior boundaries, for the installation, maintenance and use of sidewalks, traffic directional signs, and related improvements, provided that Declarant shall have no obligation to construct any such improvements. There is further reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable and perpetual right and easement in, on, over, under and across those strips of land fifteen (15) feet in width located along those boundaries of all Homesites that constitute a part of the perimeter boundary of the Development, such easement to be for the purpose of constructing, installing, maintaining, repairing and replacing a perimeter wall or fence around the perimeter boundary of the

Development, provided that Declarant shall have no obligation to construct any such perimeter wall or fence, nor to maintain or repair the same if installed.

(f) **Reservation of Drainage Easement.** There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, perpetual right and easement in, on, over, under and across, the detention pond areas and related facilities, and all drainage and access easements shown on the Development Plat, for the purpose of maintaining the drainage system serving the Development and for connection any portion of the Additional Property thereto if approved by the relevant governmental authorities.

(g) **Right of Entry.** There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, employees, agents and representatives, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Homesite (including any Structure) in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon reasonable notice to an Owner or occupant of the Homesite or Structure.

(h) **Construction and Sales Easements.** Notwithstanding any provisions contained in this Declaration to the contrary, for so long as Declarant owns at least one (1) Homesite primarily for the purpose of sale or has an unexpired option to add additional property to the Development, there is hereby reserved for the benefit of Declarant and its successors and assigns, the alienable and transferable right and easement in and to the Property, including the Common Property, for the maintenance of signs, sales offices, construction offices, business offices, storage and model homes, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the improvement and/or marketing and sale of the Property or the Additional Property.

(i) **Landscape and Maintenance Easement.** There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any Homesite (including any Structure) for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps or other unsightly growth, and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

(j) **Miscellaneous.** The easements created in this Article VII are in addition to any easements or rights created elsewhere in this Declaration or in other easements of record. The provisions of this Article VII may not be amended without the written consent of the Declarant, its successors and assigns.

7.02 **Easement Area.** The words "Easement Area" as used herein shall mean those areas on any Homesite with respect to which easements are shown on a recorded deed or grant of easement, or on any filed or recorded map or plat relating thereto, or as otherwise set forth in Section 7.01.

7.03 **Entry.** The Declarant and the Association, their successors and assigns, directors, officers, employees, agents and representatives, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes. The Declarant and the Association shall be responsible for leaving each Homesite in good condition and repair following any work or activity undertaken by the same in an Easement Area pursuant to the provisions of Section 7.01.

**7.04 Zoning and Private Restrictions.** None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control. Notwithstanding the foregoing, if these Restrictions are included as part of any zoning ordinance or resolution, the adoption of the same shall not prevent the later modification or amendment of these Restrictions in accordance with the provisions for amendment contained in this Declaration.

#### **ARTICLE VIII - ENFORCEMENT**

**8.01 Right of Enforcement.** This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, or so long as it has an unexpired option to add additional property to the Development, or so long as any Builder owns a Homesite primarily for sale which was purchased from Declarant, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns.

#### **8.02 Right of Abatement.**

(a) Except where different notice provisions are provided in Sections 5.11 and 6.02, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement. If any assessment, interest, cost or charge required by this Declaration is not paid within sixty (60) days after such assessment is due or such charge is imposed, the Association shall have the right to notify any or all Mortgagees having a security interest in the Owner's Homesite or Homesites that such Owner is in default in the performance of his obligations under these Restrictions, and of those actions taken or proposed to be taken by the Association as a result of the default.

(b) The Right of Abatement, as used in this Section and Sections 5.11 and 6.02 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Homesite or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions of this Declaration or the rules and regulations adopted by the Association, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or ten percent (10%) to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Homesite enforceable pursuant to the provisions of Section 8.05 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Homesite after such entry whether arising from or imposed by judgement or decree or by any agreement, contract, Mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the lien of any Mortgage recorded prior to the recording of the Declaration, and (iii) the lien or charge of all first and second Mortgages of record (meaning any recorded Mortgages covering the Homesite with first or second priority over other Mortgages) made in good faith and for value.

**8.03 Fines and Penalties and Creation of Lien.**

(a) Except for nonpayment of any annual or special assessments, which violation of the Restrictions is controlled by Section 4.08, in addition to all other remedies set forth in this Declaration, the Association, acting through its Board of Directors, may establish fines and penalties for any or all violations of the Restrictions.

(b) The Association, acting through its Board of Directors, shall have the authority to establish different degrees or categories of violations and to further establish fines or penalties which vary in amount, or method of application, from category to category. All fines within any one category shall be set at a standard amount and shall be applied by a standard method.

(c) Except for violations of rules governing the use, operation and maintenance of the Common Property, no fine or penalty provided for herein shall begin to accrue unless the Owner has been given notice in accordance with Section 8.02(a). This provision shall not supersede any other provision of this Declaration requiring different notice.

(d) Due to the recognition that fines and penalties are often not established until after a violation has occurred, the Association, acting through its Board of Directors, shall have the authority to assess any fines or penalties established in accordance with these provisions against any and all violations of the Restrictions referred to herein, regardless of when the violation occurred; however, no fines or penalties can begin accruing until after they are adopted and notice of the penalty has been given to the Owner.

(e) Any fines or penalties assessed pursuant to this Section 8.03 for violations of the Restrictions, including any fines or penalties assessed for violation of rules and regulations relating to the use, operation and maintenance of the Common Property, together with the cost of collection and reasonable attorneys fees, shall be a binding personal obligation of the Owner enforceable in law, as well as a lien on such Owner's Homesite enforceable pursuant to the provisions of Section 8.05 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Homesite after their assessment whether arising from or imposed by judgment or decree or by any agreement, contract, Mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior; (ii) the liens created by Section 4.01 hereof, and (iii) the lien or charge of all first and second Mortgages of record (meaning any recorded Mortgages with first or second priority over other Mortgages) made in good faith and for value.

**8.04 Specific Performance.** Nothing contained in this Declaration shall be deemed to affect or to limit the rights of the Declarant, the Association or any Owner to enforce these Restrictions. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of or failure to perform any of the obligations provided by, this Declaration, and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

**8.05 Collection of Assessments and Enforcement of Lien.** If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Homesite or Homesites subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

8.06 **No Waiver.** The failure of the Declarant, the Association, or the Owner of any Homesite, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

#### ARTICLE IX - DURATION AND AMENDMENT

##### 9.01 Duration and Perpetuities

(a) **Duration.** This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of that county in which the Property is located, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of twenty (20) years. Notwithstanding the foregoing, and in accordance with O.C.G.A. Section 44-5-60(d)(2), within two (2) years of the end of the initial twenty (20) year period, or within two (2) years of any renewal period, these Restrictions may be terminated as follows:

(i) At least fifty-one percent (51%) of the Owners shall execute a document containing a legal description of the Property, a list of the names of all Owners affected by the Restrictions, and a description of those covenants to be terminated (a reference to the recorded Declaration being acceptable);

(ii) the document shall verify that each Person signing the same is a record Owner of property which is subject to the Restrictions; and

(iii) the document shall be recorded in the office of the Clerk of the Superior Court of the county in which the Property is located no sooner than but within two (2) years prior to the expiration of the initial twenty (20) year period or any subsequent (20) year period and the document shall be indexed under the name of each Owner appearing in the document.

(b) **Rule Against Perpetuities.** If any of the covenants, conditions, restrictions, easements or other provisions of these Restrictions shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of those descendants of Her Majesty Queen Elizabeth II, the Queen of England, which are living as of the date this Declaration is executed.

##### 9.02 Amendment

(a) **Amendments by Declarant.** So long as Declarant owns at least one (1) Homesite held primarily for sale or has an unexpired option to add additional property to the Development, these Restrictions may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Homesites subject to these Restrictions (iii) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Homesites subject to these Restrictions, (iv) if such amendment would enable any governmental agency, such as the Department of Veterans Affairs, or reputable private mortgage insurance company to insure Mortgage loans on the Homesites subject to these Restrictions or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration. However, any such amendment shall not adversely affect the title to any Homesite unless the Owner shall consent in writing. In addition, during the period in which Declarant has



the right to appoint and replace members of the Board of Directors, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. Each Owner, by acceptance of a deed or other conveyance to a Homesite agrees to be bound by any such amendments as are permitted by this Section, and further agrees that, if requested to do so by the Declarant, such Owner will consent in writing to any such amendment, provided it shall not materially adversely affect the title to the Owner's Homesite.

(b) Amendments by Owners and Consent of Declarant. These Restrictions may be amended at any time and from time to time by an agreement signed by at least two-thirds (2/3rds) of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant if the Declarant, or a Builder who has purchased a lot from the Declarant, still owns any real property subject to these Restrictions. No amendment to the provisions of these Restrictions shall materially and adversely alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any Mortgage encumbering any Homesite affected thereby unless such holder shall consent in writing thereto. Notwithstanding the foregoing, nor any other provisions contained in this Declaration, no amendment to the Declaration, the Articles of Incorporation or the Bylaws, which modifies or affects the rights, privileges, options or exemptions of the Declarant shall be effective unless consented thereto in writing by the Declarant.

(c) Amendment to Submit Development to Georgia Property Owners' Association Act. These Restrictions may be amended at any time to submit the Development to the terms and provisions of the Georgia Property Owners' Association Act, including the amendment of any provisions of the Restrictions to conform to mandatory provisions of said Act, by an agreement signed by a majority of all Owners of Homesites within the Development, and for so long as the Declarant has the right to approve amendments as set forth above, the Declarant.

(d) Filing of Amendments. Any amendment made pursuant to this Section shall only become effective at such time as the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of that county in which the Property is located or at such later date as may be specified in the amendment itself. Agreement of the required majority of Owners to any amendment of the instrument shall be evidenced by their execution of the amendment. The written consent thereto of any Mortgagee affected thereby shall also be filed with such amendment. In the alternative, provided that the Declarant does not then have the right to control the Association pursuant to the Declaration, the sworn statement of the President, or any Vice President, or of the Secretary of the Association attached or incorporated in an amendment executed by the Association, which sworn statement states unequivocally that the agreement of the required majority was otherwise lawfully obtained and that all notices required were properly given (specifically including the Georgia Property Owners' Association Act if the Development has been submitted thereto), shall be sufficient to evidence the required agreement. The allowance of the foregoing alternative shall not preclude the written consent of Declarant or any predecessor Declarant as otherwise required in these Restrictions.

(e) Agreement to be Bound. Every purchaser or grantee of any interest in any real property now or hereafter subject to these Restrictions, by acceptance of a deed or other conveyance therefor, thereby agrees that these Restrictions may be amended as provided in this Section.

#### ARTICLE X - ANNEXATION

10.01 Submission of Additional Property. Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Section 10.02 of this Article, to submit all or portions of the Additional Property to this Declaration and thereby cause the Additional Property, or such portions thereof as may be submitted, to become part of the Property. This option may be exercised by the Declarant in accordance with the conditions and limitations set out in Section 10.02 of this Article, which are the only conditions and limitations on such right.

**10.02 Conditions of Annexation.** Any annexation as permitted in Section 10.01 of this Article shall be in accordance with the following terms and conditions:

(a) The option to submit portions of the Additional Property may be exercised at any time and from time to time until five (5) years from the date this Declaration is recorded; provided, however, that the Owners of Homesites to which a majority of the Class "A" votes in the Association appertain, exclusive of any vote or votes appurtenant to Homesites then owned by Declarant, may consent to the extension of such option by vote taken not more than one (1) year prior to the date upon which such option will expire.

(b) The legal description of the Additional Property is set forth in Exhibit "B". Portions of the Additional Property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become part of the Property.

(c) All Homesites created on portions of the Additional Property which are added to the Property will be restricted exclusively to residential purposes, in accordance with Article VI of this Declaration, unless otherwise used as Common Property.

(d) If the Additional Property or any portion thereof is subjected to this Declaration, Declarant reserves the right to designate the boundaries of the Homesites and Common Property, if any, in accordance with Article II, Section 2.07 of this Declaration.

(e) The option reserved by Section 10.01 of this Article may be exercised by the Declarant alone (without the consent of the Association or any Owner) by the execution by the Declarant of an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of that county in which the Property is located. Any such amendment shall expressly submit that portion of the Additional Property which is to become part of the Property, and upon the exercise, if any, of such option, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation.

(f) In addition to the procedure outlined in subparagraph (e) above, the option reserved by Section 10.01 of this Article may be exercised with respect to any portions of the Additional Property, notwithstanding that such Additional Property may be owned by Persons, including any individual, individuals, corporations, partnerships or any other type of entity, other than Declarant. Declarant shall exercise this option by an amendment expressly submitting such property to this Declaration, which amendment shall be filed for record in the Office of the Clerk of the Superior Court of the county in which the property lies. Any such amendment shall contain a statement consenting to the annexation of any such Additional Property, together with a reference to this Declaration, executed by the owner or owners thereof submitting such Additional Property to this Declaration. Upon exercise of the foregoing procedure, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(g) Should the option to add Additional Property or any portions thereof, not be exercised within the term specified herein or be otherwise released or terminated by Declarant, Declarant shall not be obligated to impose on the Additional Property or any portion thereof any covenants conditions or restrictions whatsoever.

**10.03 Effect of Annexation.**

(a) From and after the date of annexation of any portion of the Additional Property, each Homesite so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges afforded every other



Homesite previously comprising part of the Property. Upon annexation of each portion of the property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owners, the covenant to maintain the Common Property and the other obligations imposed by this Declaration, as amended from time to time, with respect to that portion of the Additional Property which is then the subject of annexation.

(b) Each Owner, by acceptance of a deed to a Homesite in the Property, and the Association, shall be deemed to have approved annexation in the manner provided in this Article X.

**10.04 Proposed or Future Development of Additional Property.** Notwithstanding any other provision contained in this Declaration, or any language contained upon any plat of survey of the Development, Declarant is under no obligation to submit any portion of the Additional Property to the Declaration, or to develop any portion of the Additional Property. Any references to "proposed" or "future" development are for the Declarant's reference only, and any portion of the Additional Property may be developed by Declarant as Declarant in its sole discretion sees fit.

**10.05 Withdrawal of Property.** Declarant reserves the right to amend this Declaration unilaterally at any time so long as Declarant holds an unexpired option to expand the Development pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Development then owned by the Declarant from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Development desired to be effected by the Declarant.

#### ARTICLE XI - LEASES

**11.01 Application.** In order to assure a community of congenial Owners and thus protect the value of Homesites within the Development, the leasing of a Homesite, or any portion thereof, by any Owner (other than as provided herein for certain Mortgagees and Declarant) shall be subject to the provisions contained in this Article so long as the Property is subject to the Restrictions.

**11.02 Notice and Regulation.** Any Owner intending to lease a Homesite, or any portion thereof, shall give written notice of such intention to the Board of Directors, stating the name and address of the intended lessee, the terms of the proposed lease and such other information as the Board may reasonably require. The Board of Directors shall have the authority to make and enforce reasonable rules and regulations in order to enforce this provision, including the right to impose fines constituting a lien upon the Homesite being leased.

**11.03 Required Lease Provisions.** The Board of Directors may set the minimum lease term; however, said minimum term shall not be set for greater than one (1) year. All leases and lessees are subject to the provisions of the Declaration and Bylaws. The Owner must make available to the tenant a copy of this Declaration. Any leases of a Homesite, or a portion thereof, shall be deemed to contain the provisions of Sections 11.03(a), (b), (c) and (d), whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of his Homesite shall contain the language of said provisions, and further, that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Homesite. Any lessee, by occupancy of a Homesite, agrees to the applicability of this covenant and its incorporation as part of the lease along with the following provisions:

(a) Lessee acknowledges that promises made to Lessor, as contained in Article XI, Sections 11.03(a), (b), (c) and (d) of the Declaration of Covenants, Conditions and Restrictions for The Haynes Neighborhoods which govern the leased Premises, and which provisions are incorporated within this lease agreement, are made for the benefit of the Association for the purpose of discharging Lessor's duties to the Association through Lessee's performance. In order to enforce those provisions made for the benefit of the

EXHIBIT "B"

ADDITIONAL PROPERTY

PAGE TWO OF TWO

TRACT B

All that tract or parcel of land lying and being in Land Lot 91 of the 5th District of Gwinnett County, Georgia, and being more particularly described as follows:

BEGINNING AT AN IRON PIN FOUND at the common intersection of Land Lots 69, 70, 91 and 92, of said District; proceeding thence north 30 degrees 09 minutes 00 seconds west along the southwestern land lot line of Land Lot 91 a distance of 2,708.25 feet to an iron pin located on the southeastern right-of-way line of Georgia Highway No. 84; proceed thence north 62 degrees 00 minutes 35 seconds east along said right-of-way line a distance of 692.20 feet to a point; thence leaving said right-of-way line and proceeding south 27 degrees 49 minutes 33 seconds east a distance of 1,117.99 feet to a point; thence south 47 degrees 57 minutes 48 seconds east a distance of 1,142.26 feet to a point; thence south 41 degrees 47 minutes 20 seconds east a distance of 485.99 feet to a point located on the southeastern land lot line of Land Lot 91; and proceeding thence south 59 degrees 45 minutes 49 seconds west along said land lot line a distance of 1,093.85 feet to the iron pin marking the POINT OF BEGINNING; said tract containing approximately 49.3 acres of land, and being shown and depicted as Tract B, on that certain plat of survey entitled, "Boundary Survey for Bachman Properties, Inc, Jolly Development Corporation, Inc., Centex Homes and First American Title Insurance Company", prepared by Development Consultants Group, dated May 12, 1998, last revised January 4, 1999.

TOGETHER WITH all land lying within a one mile radius of the above described tracts; BUT LESS AND EXCEPT the land described in Exhibit "A" of this Declaration, which land has been submitted to these Restrictions upon the recording of the Declaration.

Association, the Association may bring an action against Lessee for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

(b) Lessee shall comply strictly with all provisions of the Declaration, Bylaws, and with the administrative rules and regulations adopted by the Association pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association harmless for any such Person's failure to comply. Lessee acknowledges the violation by Lessee or any occupant or Person living with Lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Lessee further acknowledges that the Association has the right to act on its own behalf, or where necessary on behalf of Lessor, as Lessor's attorney-in-fact, to seek any remedies which are available to a landlord upon breach or default of a lease agreement by Lessee.

(c) Upon request by the Association, Lessee shall pay to the Association all unpaid annual assessments and special assessments, as lawfully determined and made payable during and prior to the terms of this lease agreement and any other period of occupancy by Lessee; provided, however, that Lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association's request. All payments made to the Association shall reduce by the same amount Lessee's obligation to make monthly rental payments to Lessor under the Lease. If Lessee fails to comply with the Association's request to pay assessments, Lessee shall pay to the Association all late or delinquent charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent Lessee would be required to make such payments to the Association if Lessee were the Owner of the Premises during the term of this lease agreement and any other period of occupancy by Lessee.

(d) Lessee's right shall be subject to all rights of the Association and any bona fide Mortgage or deed to secure debt which is now or may hereinafter be placed upon the Premises by Lessor.

**11.04 Enforcement.** For the purpose of enforcing the provisions of Section 11.03, which shall be incorporated in the provisions of any leases of a Homesite, each Owner, by acceptance of a deed or other conveyance of a Homesite, hereby irrevocably appoints the Association, which may act by any one of its authorized officers, as his attorney-in-fact, to enforce said provisions and to take action, at law or equity, which could be taken by said Owner against the lessee should lessee default in performance under the lease agreement. Each Owner hereby further acknowledges that this power of attorney shall only apply in the event of noncompliance by a lessee with the provisions of Section 11.03, and that the Association, its Board of Directors, employees and agents shall be held harmless by each Owner in exercising the power of attorney herein granted to the Association.

**11.05 Expenses of Eviction.** In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specifically assessed against the Homesite, becoming a lien thereon subject to enforcement in accordance with Sections 8.03 and 8.05 of this Declaration, and shall become the personal obligation of the Owner thereof, such being deemed hereby as an expense which benefits the Homesite and the Owner thereof.

**11.06 Rights of Lessee.** Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations is entitled to the same rights to which the Owner is entitled as provided in the Association's Bylaws.



**11.07 Rights of First Mortgagees.** Notwithstanding anything to the contrary herein contained, the provisions of this Article shall not impair the right of any first Mortgagee to:

- (a) foreclose or take title to the Homesite pursuant to remedies contained in any Mortgage;
- (b) take a deed or assignment in lieu of foreclosure; or
- (c) sell, lease, or otherwise dispose of a Homesite acquired by the Mortgagee.

#### ARTICLE XII - MISCELLANEOUS

**12.01 No Reverter.** No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

**12.02 Severability.** A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provisions hereof.

**12.03 Headings.** The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

**12.04 Gender.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

**12.05 Notices.** All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent or any kind made pursuant to this Declaration, whether by the Declarant, the Association, the ACC, the Owner, or any other Person, shall be in writing. All such writings shall be delivered, as may be appropriate, to the following addresses, and to any such other address requested by any party, notice of which has been provided in accordance herewith:

- (a) Declarant: Centex Homes  
Attn: Mike Schoeffner,  
Division Controller  
1225 Northmeadow Parkway  
Suite 120  
Roswell, Georgia 30067
- (b) Owners: Each Owner's address as  
registered with the Association  
in accordance with the Bylaws

Any written communication transmitted by the United States Mail, with sufficient postage affixed, shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

**12.06 No Liability.** Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other Person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Homesite, acknowledges that Declarant shall have no such liability.

### ARTICLE XIII - MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Homesites in the Development. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**13.01 Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provided written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Homesite number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Homesite on which there is a first Mortgage held, insured or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owned by an Owner of a Homesite subject to the Mortgage of such eligible holder which such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Homesite of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible Mortgagees.

**13.02 Right to Records.** Upon written request in accordance with Section 13.01, all eligible holders shall:

(a) be entitled to attend and observe all meetings of Owners, but not meetings of the Board;

(b) be furnished with copies of annual financial reports made to the Owners; and

(c) be entitled to inspect the financial bonds and records of the Association during reasonable business hours.

#### **13.03 Insurance.**

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the Common Property. All property insurance policies shall be for the benefit of the Association and, to the extent that Declarant owns any portion of the Common Property, for the benefit of Declarant, as their interests may appear, their successors and assigns. All liability insurance shall contain cross-liability endorsements to cover liability of the Association to an individual Owner, and shall also name the Declarant as an additional insured. Any such policies of insurance shall require that the



certificate holders and insured by giving thirty (30) days prior written notice if any cancellation of such policies.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of 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 and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, for so long as the Declarant owns at least one (1) Homesite primarily for purpose of sale the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destructions, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

(c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder for maintenance of the damaged or destroyed property.

**13.04 No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Homesite in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**13.05 Services Provided by Declarant and Professional Management.** The Declarant can provide services and goods for the benefit of the Association and bill or charge the Association for the same. Any agreement for professional management of the Association, or any other contract providing services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee upon ninety (90) days written notice.

**13.06 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 Residence.

**13.07 Amendment by Board.** Should the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage

Corporation subsequently delete any of their respective requirements which may have necessitated the provisions of this Article or make such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

13.08 Applicability of Article XIII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

13.09 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action, including but not limited to the amendment of this Declaration, 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 receipt of any such request sent by or at the direction of the Association by certified mail, return receipt requested.

13.10 HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the Federal Housing Administration or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the mortgage on any Homesite: annexation of additional property, or dedication, conveyance or mortgaging of Common Property, or material amendment of this Declaration. If either FHA or VA is insuring or guaranteeing the mortgage on any Homesite, no portion of the Common Property may be mortgaged or conveyed unless at least 67% of the total Class "A" Members consent, not including the Declarant.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed on that date first above written.

Signed, sealed and delivered  
in the presence of:

DECLARANT:

CENTEX HOMES, by its managing general partner,  
CENTEX REAL ESTATE CORPORATION

Rebecca A. Donaldson  
Unofficial Witness

BY: [Signature]  
Tom Peterson, Division Manager

[Signature]  
Notary Public

(CORPORATE SEAL)



EXHIBIT "A"

**DESCRIPTION OF PROPERTY SUBMITTED**

All those tracts or parcels of land lying and being in Land Lot 91, Parcel 2, 5<sup>th</sup> District of Gwinnett County, Georgia, including numbered building Lots 1 through 9, inclusive, Lots 61 and 62, Lots 105 through 156, inclusive, of Block "A", as well as the Open Space, containing 314,235 square feet, all as shown and depicted on the Development Plat entitled "Final Plat of Haynes Crossing, Unit I," recorded in Plat Book 03, Page 210, Gwinnett County Records, which Development Plat is by reference incorporated herein and made a part of this description.