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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.

1.24. **Owner.** "Owner" shall mean and refer to that record owner (including Declarant) whether one or more Persons, of a fee simple title to any Homesite; provided, however, that where fee simple title has been transferred and is being held merely as security for repayment of a loan, the Person who would own the Homesite in fee simple if such loan were paid in full shall be considered the Owner.

1.25 Person. "Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.26 Property. "Property" shall mean and refer to that certain real property described in Exhibit "A" attached hereto, together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof, including, but not limited to, Common Property conveyed to the Association, utility systems, drainage systems, and other improvements serving the Homesites.

1.27. Restrictions. "Restrictions" shall mean and refer to all covenants, conditions, restrictions, easements, liens and other obligations created or imposed by this Declaration.

1.28 Right of Abatement. "Right of Abatement" shall have the meaning set forth in Section 8.02 hereof.

1.29 Structure. "Structure" shall mean and refer to:

(a) any thing or object, including but not limited to paint, stains and other such coverings, the placement of which upon any Homesite may affect the appearance of such Homesite, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, penhouse, covered or uncovered patio, swimming pool, antennas and satellite dishes, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Homesite;

(b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Homestead, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Homestead; and

(e) any change in the grade at any point on a Homesite of more than six (6) inches, whether or not subsection (b) of this Section 1.28 applies to such change.

ARTICLE II - PLAN OF DEVELOPMENT AND COMMON PROPERTY

2.01 **Rights of the Declarant.** While Declarant has submitted all of the Property to the terms and provisions of the Declaration, the Additional Property may be developed in phases and consequently only those phases which are completed and platted shall comprise the Homesites. Declarant hereby reserves the right, but not the obligation, to be exercised in its sole discretion, to designate the boundaries of all Homesites and Common Property in the Property as they are developed and platted and to construct improvements thereon. Declarant shall have the right, but not the obligation, to make improvements and changes to all Common Property and to all Homesites owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Property (including the Common Property) and the Additional Property, (ii) changes in the location of the boundaries of any Homesite owned by the Declarant or of the Common Property, (iii) installation and maintenance of any storm drainage system and water, sewer and other utility systems and facilities; and (iv) installation of security and/or refuse facilities. In accordance with the preceding, Declarant reserves the right to record, modify, amend, revise and add to, at any time and from time to time, plats of survey for the Development, setting forth such information as Declarant may deem necessary with regard to the Development, including

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 for 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 vote 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) **Casting 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 8.02 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 sitation 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 or 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.

(g) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Homesite, or on any portion of a Structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one "For Sale" or "For Rent" sign, each sign having a maximum face area of four square feet, provided, however, that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used;
- (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC;
- (iv) such signs as are used to identify and advertise the Property; and
- (v) a sign indicating the Builder of the residence on the Homesite.

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC.

(c) Notwithstanding any other provision in this Declaration, the Declarant may erect and place such signs on any portions of the Property owned by Declarant or on any Common Property, which Declarant in its sole discretion deems appropriate. This exemption shall also apply to any predecessors to Declarant for so long as such predecessor owns at least one (1) Homesite for sale. This Section 6.09(c) may only be amended with the prior written approval of the Declarant and any predecessor Declarant adversely affected by the proposed amendment.

6.10 Setbacks

(a) Each dwelling which is erected on a Homestead shall be situated on such Homestead in accordance with the building and setback line shown on the Development Plat, unless otherwise approved by the ACC. For purposes of this requirement all porches, patios, decks, shutters, awnings, eaves, gutters and other such overhangs will not be considered in violation thereof, even though such structure shall extend beyond said building and setback lines, unless the ACC has established such a requirement as part of its approval of a structure or has otherwise established setback requirements.

(b) In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure.

6.11 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Homestead without the prior written approval of the ACC of plans and specifications for such fences and walls.

6.12 Roads and Driveways. No road or driveway shall be constructed or altered on any Homestead without the prior written approval of the ACC of plans and specifications for such roads and driveways. The Declarant, however, shall have the right to construct, or to authorize the construction of, such roads and driveways as may be convenient for the development of the Property or property adjacent thereto through any Homestead owned by Declarant.

6.13 Antennae. Other than television antennas, satellite dishes less than one meter in diameter, and multipoint distribution service antennas less than one meter in size (with towers less than 12 feet above the roof line), all of which are permitted under the Telecommunications Act of 1996 (and are

herein referred to as "Permitted Antennas"), no other exterior antennas nor satellite dishes shall be allowed or maintained upon any portion of a Structure or Homesite without prior written approval by the ACC. While it is the intention of this provision to conform to the requirements of the Telecommunications Act of 1996, as amended, Owners are encouraged to install Permitted Antennas in inconspicuous locations (i.e. in a location not visible from the street), and to the extent placement in such a location is feasible while still permitting reception of an acceptable quality signal, is required. The ACC may adopt further rules and regulations regarding antennas and satellite dishes; provided, however, no such rules or regulations shall (i) unreasonably prevent or delay the installation, maintenance, or use of a Permitted Antenna, (ii) unreasonably increase the cost of installing, maintaining, or using a Permitted Antenna, or (iii) preclude reception of an acceptable quality signal. No antennae shall be installed or used for the purpose of transmitting electronic signals without the approval of the ACC.

6.14 Clotheslines, Garbage Cans, Etc. No clotheslines shall be permitted. All equipment, garbage cans, and woodpiles shall be kept in the garage or screened by adequate planting or approved fencing so as to conceal them from view by neighboring residences and streets.

6.15 Parking and Related Restrictions

(a) No vehicles of any type whatsoever shall be permitted to park on the streets within the Property on a permanent basis, but shall be allowed on a temporary basis.

(b) No school bus, truck or commercial vehicle over one (1) ton capacity, house trailer, mobile home, motor home, recreational vehicle, camper, habitable motor vehicle of any kind, boat or boat trailer, trailers of any kind, or like equipment, exceeding twenty-four (24) feet in length shall be permitted on any Homesite on a permanent basis, but shall be allowed on a temporary basis.

(c) Vehicles and equipment described in Section 6.15(b) above, but which are less than twenty-four (24) feet in length shall not be permitted unless stored within the garage with garage door closed.

(d) Any trash, firewood, wood scraps, building materials, or other such materials contained in any vehicle or trailer shall be covered from view.

(e) The purpose of this Section is to help maintain the neat and attractive appearance of the Development by requiring the streets of the Development to remain cleared, and for larger vehicles and equipment to be either hidden from view or eliminated altogether if intended to be stored on more than a temporary basis. In effectuating the purpose of this Section, the Board of Directors may adopt guidelines, rules and regulations which shall give greater substance to its provisions, as for example, by defining what shall be considered temporary or permanent in the case of each subsection above.

(f) The provisions of this Section shall not apply to Declarant or to any Builder in the process of constructing an approved Structure on any Homesite.

6.16 Recreational Equipment Recreational and playground equipment shall be placed or installed only upon the rear of a Homesite unless otherwise approved by the ACC.

6.17 Non-Discrimination No Owner or Person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Homesite to any Persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

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 Homestead unless kept thereon solely as household pets and not for commercial purposes. No livestock shall be kept on any Homestead. 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 Homestead 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 Homestead or on Common Property.

(b) Except during approved construction, no Person shall burn rubbish, garbage, or any other form of solid waste on any Homestead 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 Homestead 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 Homestead, 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:

(9) 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 managers, 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 to 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 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 required 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 vent 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: Tom Peterson
Tom Peterson, Division Manager

Notary Public

(CORPORATE SEAL)

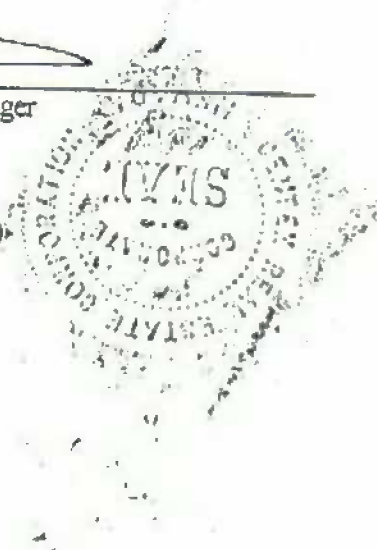


EXHIBIT "A"

DESCRIPTION OF PROPERTY SUBMITTED

All those tracts or parcels of land lying and being in Land Lot 91, Parcel 2, 5th 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.

BY-LAWS
OF
THE HAYNES HOMEOWNERS ASSOCIATION, INC.

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BY-LAWS**OF****THE HAYNES HOMEOWNERS ASSOCIATION, INC.****ARTICLE 1: NAME, PRINCIPAL OFFICE, AND DEFINITIONS**

1.1. **Name.** The name of the corporation is The Haynes Homeowners Association, Inc. (the "Association").

1.2. **Principal Office.** The principal office of the Association shall be located in Fulton County, Georgia. The Association may have such other offices, either within or outside the State of Georgia, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. **Definitions.** The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for The Haynes filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

ARTICLE 2: ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

2.1. **Membership.** The Association shall have two (2) classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2. **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient as is possible and practical. Meetings may be held by means of telephone conference, video conference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation by one of these methods shall constitute presence in person at such meeting.

2.3. **Annual Meetings.** The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular shall be held annually on a date and at a time set by the Board.

2.4. **Special Meetings.** The president may call special meetings. In addition, it shall be the duty of the president to call a special meeting within thirty (30) Days if so directed by resolution of the Board or upon a petition signed by Members representing at least 20% of the total Class "A" votes in the Association or upon written request of the Declarant.

2.5. Notice of Meetings. Written notice stating the place, day, and time of any meeting of the Members shall be delivered to each Member entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) Days before the date of such meeting, by or at the direction of the president or the secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice; provided however, if Members holding at least twenty percent (20%) of the Class "A" votes are present at an annual meeting, in person or by proxy, matters in addition to those set forth in the notice of the meeting may be voted upon without further notice to the Members.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting shall be deemed a waiver of any objection as to notice of the time, date, and place thereof, unless specific objection as to the lack of proper notice is given at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than twenty (20) Days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed in Section 2.5.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access.

2.9. List for Voting. After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Members entitled to notice of such meeting. The list shall show the address of the Member and the number of votes each is entitled to vote at the meeting. The list for voting shall be made available for inspection in accordance with Georgia law.

2.10. Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership, or limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject

to the limitations of Georgia law. Every proxy shall be in writing specifying the Homesite(s) for which it is given, signed by the Member or such Member's duly authorized attorney-in-fact, dated, and filed with the secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Homesite for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.11. Quorum. The presence, in person or by proxy, of Members representing twenty percent (20%) of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association. If a quorum is present, business may be continued until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

2.12. Conduct of Meetings. The president shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Association may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) Days after receiving authorization for any action by written consent, the secretary shall give written notice to all Members summarizing the material features of the authorized action.

ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

3.1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class "B" Member or serving as a representative of the Declarant, the directors shall be eligible Members or residents; provided however, no Owner and resident representing the same Homesite may serve on the Board at the same time. No Owner or resident shall be eligible to serve as a director if any assessment for such Owner's or resident's Homesite is delinquent. A "resident" for the purposes of these By-Laws shall mean any natural person eighteen (18) years of age or older whose principal place of residence is a Homesite within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, member,

manager, employee, or fiduciary of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided no Member may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by or serving as representatives of the Class "B" Member or the Declarant.

3.2. Number of Directors. The Board shall consist of three (3) to five (5) directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three (3) directors appointed by the Class "B" Member as provided in Section 3.3 and shall increase as provided in Section 3.5. After the termination of the Class "B" membership, the Board may, by resolution, increase or decrease the number of directors.

3.3. Directors During Class "B" Control Period. Subject to the provisions of Section 3.5, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member during the Class "B" Control Period.

3.4. Nomination and Election of Directors. Elected directors shall be nominated from the floor at a meeting of the Association and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Each Owner may cast all votes assigned to such Owner's Homesites for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5. Election and Term of Office. Not later than the first annual meeting occurring after the termination of the Class "B" Control Period, the Board may be increased to five (5) directors, and the Association shall hold an election at which the Class "A" Members shall be entitled to elect all directors. Each Director so elected shall serve one (1) year terms unless otherwise determined by the Board.

3.6. Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by Members holding two-thirds (2/3) of the votes entitled to be cast for the election of such director, but shall not be subject to removal solely by the Class "B" Member. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) Days delinquent (or is the resident of a Homesite that is delinquent or is the representative of a Member who is delinquent) in the payment of any assessment or other charge due the Association, may be removed by a Majority

of the directors, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members may elect a successor for the remainder of the term.

In the event of the death, disability, or resignation of an elected director or the adoption of a Board resolution increasing the number of directors, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member or the Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or the Declarant.

B. Meetings.

3.7. Organizational Meetings. Within thirty (30) Days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one (1) such meeting shall be held during each quarter.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the president or vice president or by any two (2) directors.

3.10. Notice. Notice of a regular meeting shall be communicated to directors not less than four (4) Days prior to the meeting. Notice of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) electronic mail or e-mail using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an electronic mail or e-mail address. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone,

telecopier, telegraph, or e-mail shall be deemed communicated when delivered, telephoned, telecopied, e-mailed or given to the telegraph company.

3.11. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12. Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference, or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.13. Quorum of Board of Directors. At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than four (4) nor more than twenty (20) Days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.14. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a Majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the Board, excluding the interested director.

3.15. Conduct of Meetings. The president shall preside over all meetings of the Board, and the secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. In the case of a tie vote on a motion or resolution before the Board, the motion or resolution is considered lost.

3.16. Open Meetings. Subject to the provisions of Sections 3.12 and 3.17, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on a Member's behalf by a director. In such case, the president may limit the time any Member may speak. Notwithstanding the above, the president may adjourn any meeting of the Board, reconvene in executive session, and exclude Members to discuss matters of a sensitive nature.

3.17. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.18. Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things which the Governing Documents or FIELD(State/Project) law do not direct to be done and exercised exclusively by the membership generally.

3.19. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association, provided any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) contracting for repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the costs of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Homestead, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(o) indemnifying a director, officer or ARB or committee member, or former director, officer or ARB or committee member of the Association to the extent such indemnity is required or permitted under Georgia law or the Governing Documents; and

3.20. Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) an annual financial report shall be made available to all Members within one hundred twenty (120) Days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines; and
- (g) monthly statements for each account maintained on behalf of the Association must be provided to the Association by the financial institution holding the account.

3.22. Borrowing. The Association shall have the power to borrow money for any legal purpose; provided however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain the approval of Members holding at least sixty-seven percent (67%) of the total votes allocated to Homesites prior to borrowing such money.

3.23. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, within and outside the Properties; provided, any common management agreement shall require the consent of a Majority of the total number of directors of the Association.

3.24. Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed pursuant to Article 5, within fifteen (15) Days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within fifteen (15) Days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided however, the Board or covenants committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) Day period. Such suspension shall not constitute a

waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) Day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or covenants committee may impose a sanction without further notice to the violator.

(b) Hearing. If a hearing is requested within the allotted fifteen (15) Day period, the hearing shall be held before the covenants committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board may adopt a schedule of sanctions for violations of the Governing Documents.

(c) Appeal. If a hearing is held before a covenants committee, the violator shall have the right to appeal the committee's decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, president, or secretary of the Association within fifteen (15) Days after the hearing date.

ARTICLE 4: OFFICERS

4.1. Officers. The officers of the Association shall be a president, secretary and treasurer. The president and secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one (1) or more assistant secretaries and one (1) or more assistant treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of president and secretary.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each election of new directors. Such officers shall serve until their successors are elected.

4.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the chief

executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The secretary shall be responsible for preparing minutes of meetings of the Association and the Board and for authenticating records of the Association.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.14.

ARTICLE 5: COMMITTEES

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Unless otherwise provided by the Board, committee members shall be eligible Members or residents; provided however, no Class "A" Member may have more than one(1) representative on a committee at any time. No committee appointed by the Board shall be empowered to take any affirmative action or to bind the Board or the Association without the consent of the Board.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to the Declaration, these By-Laws and, specifically, Section 5.1, the Board may appoint a covenants committee consisting of at least three (3) and no more than five (5) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the covenants committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.25 of these By-Laws.

ARTICLE 6: MISCELLANEOUS

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Homesite, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Homesite: the Declaration, By-Laws, and Articles of Incorporation, any amendments and supplements to the foregoing, the rules of the Association, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate during normal business hours.

(b) Rules for Inspection. The Board may establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Homesite of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

If mailed, any notice shall be deemed to be delivered when deposited in the United States mail addressed with postage prepaid. To increase flexibility, any Person, including the Association, may consent to or request in writing additional methods of receiving notice, including but not limited to, facsimile, electronic mail or e-mail.

6.6. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Until conveyance of the first Homesite to a Person other than a Builder, the Declarant may unilaterally amend these By-Laws for any purpose. Thereafter, the Declarant may unilaterally amend these By-Laws if such amendment is necessary to enable the U. S. Department of Veterans Affairs ("VA"), the U. S. Department of Housing and Urban Development ("HUD"), the Federal Housing Administration ("FHA"), the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation to make, purchase, insure or guarantee Mortgage loans on the Homesites; provided however, any such amendment shall not adversely affect the title to any Homesite unless the Owner shall consent thereto in writing. In addition, during the Development Period, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) By the Board. The Board shall be authorized to amend these By-Laws without the consent of the Members (i) for the purpose of submitting the Properties to the Georgia Property Owners' Association Act, O.C.G.A. §44-3-220, et seq. (1994) and conforming these By-Laws to any mandatory provisions thereof, and (ii) to correct scrivener's errors and other mistakes of fact, provided that any amendments under this provision have no material adverse effect on the rights of the Members. During the Development Period, any such amendments shall require the consent of the Declarant.

(c) By Members. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant. In addition, the approval requirements set forth in Article 12 of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to these By-Laws shall become effective upon adoption as specified herein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

(e) HUD/VA Approval. As long as there is a Class "B" membership, the U.S. Department of Veterans Affairs, so long as it is guarantecing the Mortgage on any Homesite, or the U.S. Department of Housing and Urban Development, so long as it is insuring the Mortgage on any Homesite, shall have the right to disapprove any amendment to the By-Laws.

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FILED AND RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY GA

05 NOV -7 AM 8:00

TOM LAWLER, CLERK

SPACE ABOVE RESERVED FOR RECORDING DATA

After recording, please return to:

Weissman, Nowack, Curry & Wilco, P.C.
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
Attn: MEM

STATE OF GEORGIA

Cross Reference: Deed Book: 19955
Page: 3

COUNTY OF GWINNETT

AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE HAYNES NEIGHBORHOODS

WHEREAS, on January 28, 2000, Centex Homes, a Nevada general partnership ("Declarant") filed that certain Declaration of Covenants, Conditions and Restrictions for The Haynes Neighborhoods ("Declaration") in Deed Book 19955, Page 3, et. seq., Gwinnett County, Georgia land records, as amended; and

WHEREAS, Article IX, Section 9.02(b) of the Declaration provides that the Declaration may be amended at any time from time to time by an agreement signed by at least two-thirds (2/3) of the Owners; provided, however, so long as the Declarant or a Builder who has purchased a lot from the Declarant owns any real property subject to the Declaration, such amendment shall also be approved by the Declarant and further provided, however, that any amendment that materially and adversely alters, modifies, changes or rescinds any right, title, interest or privilege of the holder of any Mortgage encumbering any Homesite affected thereby must also be consented to in writing by the affected Mortgage Holder; and

WHEREAS, neither the Declarant nor any Builder owns any real property subject to the Declaration; and

WHEREAS, this amendment does not materially and adversely alter, modify, change or rescind any right, title, interest or privilege of the holder of any Mortgage encumbering any Homesite; provided, however, in the event a court of competent jurisdiction determines this amendment materially and adversely alters, modifies, changes or rescinds any right, title, interest or privilege of a holder of a Mortgage encumbering a Homesite, then this Amendment shall not be binding on such Mortgage holder so involved, unless it consents hereto; and if such consent is not forthcoming, then the provisions of the Declaration prior to this Amendment shall control with respect to the affected Mortgage holder; and

WHEREAS, two-thirds (2/3) of the Owners have consented to this Amendment as reflected by their execution of consent forms retained in the Association records.

185723
NOW, THEREFORE, the Declaration is hereby amended as follows:

mem 391591-1 (8502)

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BK45160PG0005

1.

Article VI of the Declaration is hereby amended by adding the following new subsection 6.23 to the end thereto:

6.23 Garage Restrictions. The cooking or grilling of food within the confines of the garage on a Homesite is strictly prohibited.

2.

Article XI of the Declaration is hereby deleted in its entirety and the following new Article XI is substituted therefor:

11.01 Leasing of Homesites. In order to protect the equity of the individual Owners at The Haynes Neighborhoods, and to carry out the purpose for which the community was formed by preserving the character of the community as a homogenous residential community of predominantly owner-occupied homes, leasing of Homesites shall be prohibited. Except as provided herein, leasing of Homesites is governed by the restrictions imposed by this Article. Except as provided herein, leasing of Homesites is prohibited.

11.02 Definitions.

(a) **"Grandfathered Owner"** means an Owner of a Homesite who is lawfully leasing his or her Homesite on the Effective Date. Grandfathering shall apply only to the Homesite owned by that Grandfathered Owner on the Effective Date. Grandfathering hereunder shall continue only until the earlier of: (1) the date the Grandfathered Owner conveys title to the Grandfathered Homesite to any other person (other than the Owner's spouse), or (2) the date that all current occupants of the Grandfathered Owner's Homesite vacate and cease to occupy the Homesite. Upon the happening of either event, the Homesite shall automatically lose grandfathering hereunder.

(b) **"Grandfathered Homesite"** means the Homesite owned by a Grandfathered Owner on the Effective Date hereof.

(c) **"Leasing"** means the regular, exclusive occupancy of a Homesite by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner, or (2) a person who occupies the Homesite with the Owner or parent, child or spouse of the Owner occupying the Homesite as his or her primary residence.

11.03 Leasing Permit and Restriction. No Owner of a Homesite may lease his or her Homesite unless: (1) the Owner is a Grandfathered Owner, or (2) the Owner is not a Grandfathered Owner but has received a hardship leasing permit from the Board as provided below.

11.04 Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a

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hardship leasing permit. The Board shall have the authority to issue or deny requests for hardship leasing permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship, (2) the harm, if any, which will result to the community if the permit is approved, (3) the number of hardship leasing permits which have been issued to other Owners, (4) the Owner's ability to cure the hardship, and (5) whether previous hardship leasing permits have been issued to the Owner.

A "hardship" as described herein shall include, but not be limited to, the following situations: (1) an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) months from the date that the Homesite was placed on the market, sell the Homesite except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) an Owner dies and the Homesite is being administered by his or her estate; or (3) an Owner takes a leave of absence or temporarily relocates out of the metropolitan-Atlanta area and intends to return to reside in the Homesite within one (1) year.

Hardship leasing permits shall be valid only as to a specific Owner and Homesite and shall not be transferable to other Homesites or Owners (including a subsequent Owner of a Homesite where a permit was issued to the Owner's predecessor-in-title). Hardship leasing permits shall be valid for a term approved by the Board, not to exceed one (1) year. Owners may apply for additional hardship leasing permits at the expiration of a hardship leasing permit, if the circumstances warrant.

Hardship leasing permits shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Homesite to a third party (excluding sales or transfers to an Owner's spouse); (2) the failure of an Owner to lease his or her Homesite within ninety (90) days of the permit having been issued; or (3) the failure of an Owner to have his or her Homesite leased for any consecutive ninety (90) day period thereafter.

11.05 Leasing Provisions. Leasing which is authorized hereunder shall be governed by the following provisions:

(a) **Notice.** At least seven (7) days before entering into a lease, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of that lease. If a lease is disapproved, the Board shall notify the Owner of the action to be taken to bring the lease in compliance with the Declaration and any Association rules.

(b) **General.** Homesites may be leased only in their entirety; no rooms or fractions of Homesites may be separately leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. There shall be no subleasing of Homesites or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Homesite, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Homesite. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to

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approve or disapprove a proposed lessee; rather, the Board's approval shall be limited to the form of the proposed lease.

(c) **Liability for Assessments; Compliance.** Each Owner covenants and agrees that any lease of a Homesite shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Homesite, agrees to the applicability of this covenant and incorporation of the following language into the lease:

Compliance with Declaration, Bylaws, and Rules and Regulations. The Owner and lessee shall comply with all provisions of the Declaration, Bylaws and Association rules and shall control the conduct of all other occupants and guests of the leased Homesite in order to ensure such compliance. The Owner shall cause all occupants of his or her Homesite to comply with the Declaration, Bylaws and Association rules, and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants are fully liable and may be sanctioned for any such violation.

If a Homesite is leased or occupied in violation of this Article or if the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, the Association's Board of Directors shall be authorized, in addition to all other available remedies, to levy fines against the lessee and/or the Owner and to suspend all voting and/or Common Property use privileges of the Owner, occupants and unauthorized tenant(s).

If a Homesite is leased or occupied in violation of this Article, the Association may require the Owner to evict the tenant. If the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, such violation is deemed to be a default under the terms of the lease and shall authorize the Owner or the Association, as more fully described herein, to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. Alternatively, the Association may require the Owner to evict the violating tenant. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Homesite.

(d) **Use of Common Property.** The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities.

(e) **Liability for Assessments.** When an Owner who is leasing his or her Homesite fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the

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term of the lease and any other period of occupancy by lessee. However, 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 Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

11.06 Applicability of this Article. Notwithstanding the above, this Article shall not apply to any leasing transaction entered into by the Association, or by any first mortgagee who becomes the Owner of a Homesite through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage. Such parties shall be permitted to lease a Homesite without first obtaining a permit in accordance with this Article.

3.

Except as otherwise provided herein, the terms of the Declaration shall remain unchanged.

IN WITNESS WHEREOF, the undersigned officers of the Haynes Homeowners Association, Inc. hereby certify that the foregoing amendments were properly approved by the requisite majority of the Owners with all required notices duly given.

Sworn to and subscribed before me
this 1st day of NOVEMBER,
2005.

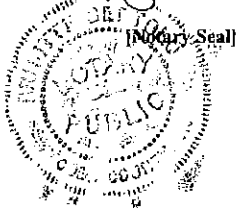
**ASSOCIATION: HAYNES HOMEOWNERS
ASSOCIATION, INC.**

Michael Vanderp
Witness

By: *Hayes Brian Diacoste*
President

[Signature]
Notary Public

Attest: *[Signature]* (Seal)
Secretary



Notary Public, Cobb County, Georgia
My Commission Expires Jan. 22, 2009

[CORPORATE SEAL]