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DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR HIGHLANDS VIEW  
COBB COUNTY, GEORGIA

After Recording Return to:  
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Table of Exhibits

Exhibit "A"  
Exhibit "B"

Legal Description  
By-Laws

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Highlands View

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DECLARATION OF  
COVENANTS AND RESTRICTIONS  
FOR HIGHLANDS VIEW  
COBB COUNTY, GEORGIA

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made on this 10<sup>th</sup> day of December in the year Two Thousand One by Beazer Homes Corp , a Tennessee corporation (hereinafter referred to as the "Declarant")

WHEREAS, the Declarant owns all of that certain real property located in Land Lot 609, 610, 615, 616 and 681 the 17<sup>th</sup> District, 2<sup>nd</sup> Section of Cobb County, Georgia, which real property is more particularly described on Exhibit "A", hereto attached and made a part hereof (the "Property"); and

WHEREAS, the Declarant intends to develop, the Property, for residential purposes by the construction thereon of single family Town Homes; and

WHEREAS, the Declarant desires to provide open spaces, parks, green belts and other facilities for the benefit of the persons who shall reside in the aforesaid Town Homes; and

WHEREAS, in order to insure the enjoyment of such open spaces, parks, green belts and other facilities by the residents of the said Town Homes, and in order to protect and enhance the value of the said Town Homes, it is desirable to create an association to own, maintain and administer such open spaces, parks, green belts and other facilities, and to administer and enforce the covenants and restrictions imposed by this Declaration on the said Town Homes, and to collect, hold and disburse the charges and assessments provided for in this Declaration; and

WHEREAS, it is intended that every owner of any of the said Town Homes automatically, and by reason of such ownership and this Declaration, become a member of the aforesaid association and be subject to its valid rules and regulations and the assessments and charges made by such association;

NOW, THEREFORE, the Declarant does hereby submit the "Town Homes" and the "Association Property" (as those terms are hereinafter defined) to the provisions of this Declaration.

ARTICLE I.  
DEFINITIONS

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article I, such definitions being cumulative of those set forth elsewhere in this Declaration

"Assessment" shall have the meaning specified in Section 4 of Article V hereof, and shall constitute the monthly, annual, and special assessments which, pursuant to the provisions of Article V hereof, shall be levied by the Association against the Town Homes for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in Section 4 of Article V hereof)

"Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time

"Association" shall mean Highlands View Homeowners Association, Inc , a Georgia non-profit membership corporation.

"Association Property" shall mean all real property which is shown and depicted on any Plat which is neither included with any Town Home nor dedicated to a governmental authority. Association Property shall also include the easement rights identified in Article III, Section 3 of this Declaration. As portions of the Property are subjected to this Declaration, all of the realty included within the portion of the Property so subjected to this Declaration shall constitute Association Property, except for the parts thereof that shall constitute Town Homes and except for the parts thereof that shall be dedicated to a governmental authority.

"Board of Directors" shall mean the Board of Directors of the Association

"Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time

"Declarant" shall mean Beazer Homes Corp , a Tennessee corporation, and shall include any successor or assign of Beazer Homes Corp who shall acquire the entire interest in the Property which was owned by the immediate predecessor-in-title of such successor or assign and who shall stand in the same relation to the Property as his immediate predecessor-in-title.

"Declaration" shall mean this Declaration of Covenants and Restrictions, as the same may be hereafter amended in accordance with the terms and provisions of Article XII hereof

"Easement Area" shall mean each of those portions of the Association Property which are located in the front or rear of the Town Homes and which are shown and depicted on each Plat as "Easement Area"

"First Mortgage" shall mean a Mortgage conveying a first priority lien upon or security title to any Town Homes

"HUD" shall mean the United States Department of Housing and Urban Development and, in the event that said Department shall be abolished and its operations transferred to another division of the United States government, such other division

"Patio" shall mean the poured-concrete patio that was laid down and installed within the Easement Area annexed to each Town Home, as part of the original construction of such Town Home

"Person" shall mean a natural person, corporation, trust, partnership or any other legal entity.

"Plat" shall mean, collectively, the plat that is recorded in the Plat Book Records of Cobb County, Georgia.

"Portico" shall mean the portico that was constructed as part of the original construction of certain of the Town Homes, said portico being located in the front of, and extending across the entire width of, the front boundary of such Town Home Each Portico is depicted on the Plat that was recorded in connection with the subjecting to the terms of this Declaration of the Town Home to which such Portico is attached.

"Stoop" shall mean the front stoop that was constructed as part of the original construction of each Town Home

"Town Homes" shall mean each of those parcels of real property, and all improvements located thereon, described in Section 1 of Article II of this Declaration, and shown and depicted as Town Homes on the Plat, and each of those additional parcels of real property, and all improvements located thereon, as may hereafter be subjected to this Declaration as Town Homes in the manner described in Section 2 of Article II of this Declaration

"VA" shall mean the United States Department of Veterans Affairs and, in the event that said Department shall be abolished and its operations transferred to another division of the United States government, such other division.

All pronouns used in this Declaration are intended to be gender neutral, and the use of the masculine gender shall be deemed to include the feminine and neuter genders.

## ARTICLE II TOWN HOMES

Section 1 Town Homes Hereby Subjected to this Declaration The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth is

the real property described in Exhibit "A" attached hereto and by reference made a part hereof

The Declarant, for itself, its successors and assigns, hereby further covenants that the above-described property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Town Homes, including, but not limited to, the lien provisions set forth in Article V hereof. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Town Homes shall be a permanent charge thereon, and shall run with the Town Homes.

Section 2 Additional Town Homes hereafter subjected to this Declaration. Notwithstanding Article VII and anything contained herein to the contrary, Declarant may, at any time, and from time to time, prior to December 10, 2009, subject additional portions of the Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration applicable to Town Homes by:

(a) executing and recording in the Deed Records of Cobb County, Georgia, a supplemental declaration to this Declaration describing such annexed property or additional Town Homes and stating that this Declaration is thereby extended to, and shall thereafter apply to, such annexed property and additional Town Homes; and

(b) recording in the Plat Book Records of Cobb County, Georgia, a Plat showing and depicting the additional Town Homes being thereby subjected to this Declaration

From and after the subjecting of such additional Town Homes to this Declaration, such additional Town Homes shall thereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration applicable to Town Homes, including, without limitation, all lien and assessment provisions set forth in this Declaration; from and after the subjecting of such additional Town Homes to this Declaration, all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to Town Homes shall be a permanent charge thereon, and shall run with, such additional Town Homes

No approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject any portion of the Property to this Declaration as additional Town Homes

Section 3. Town Home Boundaries. Notwithstanding the depiction of the boundaries of any Town Home on the applicable Plat the boundaries of each Town Home shall be as follows: The side boundary of each Town Home shall be a line consistent with and along the center of all firewalls separating a Town Home from another Town Home. The front and rear boundary, and the side boundary of each Town Home which does not separate a Town Home from another Town Home, shall be a line consistent with and along the outer, exterior surface of the outside wall of such Town Home. In the event of any discrepancy between the boundaries of a Town Home, as described in this Section 3, and the boundaries of such Town Home shown on the applicable Plat, the description of the boundaries of the Town Home set forth in this Section 3 shall control. All of the area within the boundaries of each of the Town Homes, as herein described, and as shown and depicted on the applicable Plat, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easements and restrictions of this Declaration.

Section 4 All Town Homes Bear the Burdens and Enjoy the Benefits of this Declaration. Every person who is a record owner of a fee or undivided fee interest in any Town Home does, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title to such Town Home, agree to all of the terms and provisions of this Declaration. Each of the Town Homes is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

Section 5 Easements Over the Town Homes. The Town Homes shall be subject to, and the Declarant does hereby grant to the appropriate grantees thereof, the following easements:



(a) Each Town Home shall be subject to all easements which are shown and depicted on the Plat as affecting and burdening such Town Home;

(b) Each Town Home shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go in and upon such Town Home under the circumstances, and for the purposes, described in Article XIV of this Declaration.

ARTICLE III

ASSOCIATION PROPERTY

Section 1. Association Property The Declarant shall have the right to transfer and convey to the Association any portion of the Property. All portions of the Property which the Declarant shall so transfer or convey to the Association shall thereafter constitute Association Property. Said right may be exercised by the Declarant any time, and from time to time, prior to December 10, 2009

All portions of the Property which shall be transferred to the Association by the Declarant (a) shall be conveyed to the Association by limited warranty deed free of debt encumbrance, and (b) shall be conveyed to the Association subject to the rights and easements set forth in Sections 2 and 3 of this Article III, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements

The Association does hereby covenant and agree to accept all conveyances of the Association Property which may be made to it pursuant to, and in accordance with, the terms and provisions of this Section 1 .

Section 2. Members' Rights in Association Property Every owner of any Town Home shall have a non-exclusive right and easement of enjoyment and use in and to all portions of the Association Property, except for Easement Areas, Porticos, Stoops and Patios (which shall be subject to an easement for the exclusive use of the owner of the Town Home to which the same are attached or annexed, as provided for elsewhere in this Declaration), and such right and easement shall be appurtenant to, and shall pass with, the title to the Town Home(s) owned by such owner. Such right and easement of enjoyment and use are and shall be subject to the easements which are described in Section 3 of this Article III, to all other provisions of this Declaration relating to the use of the Association Property, and to the right of the Association to promulgate reasonable rules and regulations regarding the use of Association Property, and to the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the owner of any Town Home during any period in which any assessment which is due to the Association from such owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of its published rules and regulations

Section 3. Easements Over Association Property All Association Property shall be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) An easement across, in, under, over and through the Association Property for the purposes of the construction, installation, repair, maintenance and use of all utility and drainage lines, wires, pipes and similar facilities as may be reasonably necessary for the provision of utility services (including, water, sewer, gas, electric and telephone services) to the Town Homes;

(b) An easement in favor of Declarant for the exclusive use of such portions of the Association Property as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Town Home, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by any and all persons who the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and builders of Town Homes, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate at such time as the construction of the Town Home has been completed and all of the Town Homes shall have been conveyed to owners thereof who

shall not have acquired the Town Homes for the purpose of immediate resale of the same. Such easements shall and do exist without affecting the obligation of the owner of any Town Home to pay assessments or charges coming due during such period of time as portions of the Association Property shall be used by authorized persons pursuant to the exercise of the easements herein stated

(c) The easements described in Sections 6 and 7 of this Article III;

(d) An easement for the continued maintenance, repair, replacement and use of the area on which the air-conditioning compressor serving any Town Home is located, such easement to be appurtenant to the Town Home served by such air-conditioning compressor

Section 4 Damage or Destruction of Association Property All damage that shall occur to any improvements located on any Association Property on account of any casualty shall be repaired in all events. Such repairs shall be undertaken and completed as soon after the occurrence of any such casualty as is reasonably practicable. All repairs to any improvements located on the Association Property shall be made in accordance with plans and specifications that shall be approved for the same by the Board of Directors of the Association

Section 5 Transfer or Encumbrance. In no event shall the Association abandon, encumber, dedicate, sell or transfer, directly or indirectly, any portion of the Association Property unless such abandonment, encumbrance, dedication, sale or transfer shall be first approved in writing by: (a) the owners of no fewer than sixty-seven percent (67%) of the Town Homes; (b) the holders of no fewer than sixty-seven percent (67%) of the First Mortgages existing in regard to the Town Homes; and (c) HUD and VA (until such time as the Class B membership shall terminate as provided for in Article IV, Section 3 of this Declaration) In no event shall the Association abandon, encumber, dedicate, sell or transfer any portion of the Association Property consisting of a Stoop, Easement Area, or any portion of the Association Property.

Section 6 Easement Areas There shall be appurtenant to each Town Home an easement for the exclusive use and enjoyment of the Easement Area that is depicted on the Plat recorded in connection with the subjecting of such Town Home to the terms of this Declaration as being appurtenant to such Town Home. Such easement shall include the rights to plant shrubbery, plants, trees, flowers, bushes, grass, ivy and other foliage in and on such Easement Area, and to erect a fence in accordance with the provisions of Article X, Section 3 of this Declaration.

Section 7 Porticos, Stoops and Patios There shall be appurtenant to each Town Home an easement for the exclusive use of that part of the Association Property which consists of the Stoop that is annexed to such Town Home, and, for those Town Homes to which a Portico is attached, an easement for the exclusive use of that part of the Easement Area over which such Portico is located and for the repair, maintenance and replacement of the columns supporting such Portico.

Section 8 Maintenance of Association Property.

(a) Except for the maintenance of each Easement Area which is required to be performed by the owner of the Town Home to which such Easement Area is annexed (as provided for in Section 2 of Article X of this Declaration), and except for the maintenance and repair of the Porticos and Stoops which is required to be performed by the owner of the Town Home to which such Stoop and Portico are attached or annexed (as provided for in Section 1 of Article X of this Declaration), the Association shall be responsible for the maintenance and repair of all Association Property. Without limiting the generality of the foregoing, said maintenance and repair work shall include all driveways and roadways located on the Property

(b) In no event shall any person construct, place, install, plant or mount any structure, plant, tree, shrub or other item on any part of the Association Property (including within any Easement Area), except only for (i) fences permitted under the provisions of Section 3 of Article X hereof, (ii) items placed or installed on the Patios in accordance with all other terms and restrictions set forth in this Declaration, (iii) plants, shrubbery, trees, flowers, bushes, grass, ivy or other foliage planted in an Easement Area pursuant to the exercise of the easement

set forth in Section 6 of this Article III, and (iv) items placed with the prior, written permission of the Board of Directors

Section 9 Temporary Structures Subject to the right of the Declarant to promote the sale of Town Homes, no structure of a temporary character, including, without limitation, any trailer, tent, shack, garage or other building, shall be permitted on any part of the Association Property at any time, whether temporarily or permanently, except with the prior written consent of the Board of Directors

Section 10 Assigned Parking Spaces The Board of Directors shall have the authority, but not the obligation, to designate certain parking spaces for the exclusive use of the occupants of a particular Town Home. In the event that the Board of Directors shall exercise such authority, then no vehicle may be parked in any parking space so dedicated for use by the residents of such Town Home, except for automobiles parked by a resident of such Town Home or parked with the permission of a resident of such Town Home. In no event shall more than two (2) such parking spaces be granted to each Town Home; one of which shall be an assigned space

#### ARTICLE IV

##### THE ASSOCIATION

Section 1. The Association Prior to the date this Declaration has been filed for record with the Clerk of the Superior Court of Cobb County, Georgia, the Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws

The Association is and shall be responsible for the ownership, management and operation of the Association Property, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as the Board of Directors shall deem to be in the best interests of the members of the Association

Section 2 Membership Every person who is, or who becomes, a record owner of a fee or undivided fee interest in any Town Home is and shall be a member of the Association; provided, however, that any such person who holds such interest merely as security for the performance of an obligation shall not be a member of the Association. The transfer of ownership of a fee or undivided fee interest in any Town Home shall automatically transfer membership in the Association, and in no event shall such membership be severed from the ownership of such Town Home

Section 3 Classes of Membership; Voting Rights The Association shall have two classes of voting membership: Class A and Class B.

(a) Class A The Class A members shall be all those persons holding an interest required for membership in the Association, as specified in Sections 2 and 3 of this Article IV, except for those persons who are Class B members. Until such time as the Class A members shall be entitled to full voting privileges, as hereinafter specified, the Class A membership shall be entitled to vote only in regard to the following matters: (a) any proposal of merger, consolidation or dissolution of the Association; (b) any proposal to transfer or encumber any portion of the Association Property; (c) any proposal pursuant to Article XII of this Declaration to amend this Declaration; (d) any proposal to modify or amend The Articles of Incorporation or the Bylaws and (e) any other matter for which it is herein specifically provided, or for which it is provided by law, that approval of each and every class of membership of the Association is required. Except in regard to the foregoing matters, the Class A membership shall be a non-voting membership until such time as the Class B membership shall terminate, at which time the Class A membership shall be the sole class of membership and shall be entitled to full voting privileges

When entitled to vote, Class A members shall be entitled to cast one (1) vote for each Town Home in which they hold an interest required for membership by Section 2 of this Article IV

(b) Class B The Declarant shall be the sole Class B member and shall be

entitled to three (3) votes for each Town Home owned; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1) 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. The Class B membership shall terminate and cease to exist, and the Class B member shall be and become a Class A member insofar as it may then hold any interest required for membership by Section 2 of this Article IV, upon the earliest to occur of: (i) the date on which the Declarant shall have conveyed to individual owners thereof seventy-five percent (75%) of the Town Homes, (ii) December 10, 2009, or (iii) on such earlier date as the Declarant shall designate in a written notice delivered to the Association

From and after the date at which the Class B membership automatically terminates and ceases to exist, such membership shall not be renewed or reinstated.

Section 4 Board of Directors A Board of Directors shall manage the affairs of the Association. The number of directors and the method of election of directors shall be as set forth in the By-Laws of the Association.

Section 5 Suspension of Membership Rights The Board of Directors may suspend the voting rights of any member of the Association, including the right to vote and to use the Association Property (except for the right to use the Association Property for access to and from the Town Home owned by such member), who (a) shall be subject to the Right of Abatement, as defined in Article XIII, Section 2 by reason of having failed to take reasonable steps to remedy a violation or breach of either the restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Article VII Section 11 or (b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article V hereof; or (c) shall be in violation of any of the rules or regulations of the Association relating to the operation or maintenance of the Association Property. Such suspension shall be for the balance of the period in which said member or person shall remain in violation, breach or default, as foresaid except that in the case of a violation described in subsection (d) of this Section 4, the suspension may be for a period not to exceed sixty (60) days after the sure or termination of such violation. No suspension shall interfere with an Owner's ingress to or egress from his Town Home. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the member's property in favor of the Association

Section 6. Termination of Membership: Membership shall cease only when a person ceases to be an Owner.

Section 7. Meetings of the Membership All matters concerning the meetings of members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law

Section 8. Association Acts Through Its Board of Directors Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the members of the Association must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been elected by a vote of the Class B member) shall be personally liable to any owner of any Town Home for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 9 Professional Management The Association may, but shall not be obligated to, obtain and pay for the services of any person or other entity to manage the affairs of the Association, or any part thereof, and may enter into such agreements for the management of the Association Property as the Board of Directors deems to be in the best interests of the Association.

Section 10. Control by Declarant: (a) Notwithstanding any other language or provisions to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove all members of the Board of the Association, and all officers of the Association until the first of the following events shall occur: (i) the expiration of seven (7) years after the date of the recording of this Declaration; (ii) the date upon which seventy-five (75) percent of all of the Residences submitted or proposed to be submitted to this Declaration have been conveyed to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Town Homes; and a special meeting of the Association shall be called at such time. At such special meeting, the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and 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.

#### ARTICLE V.

#### ASSESSMENTS

Section 1. Assessments; Lien Therefore The Declarant, as the owner of all of the Town Homes, hereby covenants, and each person who shall own any Town Home, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title thereto, shall be deemed to covenant and agree to pay to the Association, in addition to any and all annual and special assessments as stated in Article V, all monthly assessments and charges which are levied by the Association against the Town Home(s) owned by such person in accordance with the terms and provisions of this Declaration

All sums lawfully assessed by the Association against any Town Home and the owner thereof, shall, from the time the sums became due and payable, be the personal obligation of the owner of such Town Home and constitute a lien in favor of the Association on such Town Home prior and superior to all other liens whatsoever, except:

- (a) liens for ad valorem taxes on the Town Home;
- (b) the lien of any First Mortgage or the lien of any other Mortgage recorded in the Deed Records of Cobb County, Georgia prior to the recording of this Declaration; or
- (c) the lien of any secondary purchase money Mortgage covering the Town Home, provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Town Home

Section 2. Personal Obligation of Members Each member of the Association, by acceptance of a deed or other conveyance to the Town Home(s) owned by such member, irrespective of whether it shall be so expressed in any such deed or other conveyance, and by acceptance of ownership of such Town Home(s), and by taking record title to such Town Home(s), shall be deemed to covenant and agree to pay to the Association:

- (a) His share of the Assessments which shall be levied by the Association in accordance with Section 2 hereof; and
- (b) When properly authorized in accordance with Section 6 hereof, special assessments, such monthly and special assessments to be fixed, established and collected from time to time as hereinafter provided.

All such assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be the personal obligation of the person who is the owner of the Town Home against which such assessments are levied at the time such assessments become due and

payable The covenant to pay assessments herein stated is and shall be a covenant running with the land

**Section 3. Capital Contribution** In addition to the monthly assessment provided in Section 1 above, at the closing of the initial sale of each Town Home to a party other than the builder thereof, the purchaser thereof shall pay to the Association \$200.00 as an initial working capital contribution with respect to each Town Home, which is not refundable in the event of a sale or transfer of the Town Home.

**Section 4. Purposes of Assessments**. The assessments levied on a monthly basis by the Association pursuant to Section 5 of this Article VI shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to this Declaration, the Articles of Incorporation and the Bylaws (such costs and expenses being herein referred to as the 'Annual Expenses'). Without limiting the generality of the foregoing, the Expenses shall include the costs of: repair and maintenance of all Association Property which is to be maintained by the Association; payment of all governmental charges, taxes and assessments which shall be levied against all Association Property; payment of all costs and expenses incurred by the Association in connection with its operations; payment of the premiums for all policies of property and liability insurance maintained by the Association with respect to Association Property; payment of the premiums for all fidelity bonds which shall be obtained by the Association; the maintenance of reserves for the repair and replacement of improvements located on the Association Property and for such other purposes as the Board of Directors shall determine; the payment of the fees of such management firms as the Board of Directors shall employ; and payment of the fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including legal, accounting and architectural services

**Section 5. Determination of Assessment and Shares Thereof**. Prior to the commencement of each fiscal year of the Association (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserve fundings based upon such estimate and providing for the total assessment to be levied against the members of the Association for such fiscal year (the total assessment which shall be so determined and levied against all of the members of the Association for any fiscal year is herein referred to as the "Assessment") The amounts so determined by the Board of Directors shall be levied against all of the members of the Association other than the Declarant and all Town Homes not owned by the Declarant. The amount of the Assessment that shall be levied against each Town Home shall be equal. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Assessment so determined for such fiscal year and the amount of such Assessment which shall be levied against each Town Home, to the owner of every Town Home prior to the commencement of the fiscal year during which such Assessment is to be paid. The amount of such Assessment which shall be levied against each Town Home shall be due and payable to the Association in such installments as the Board of Directors shall determine, and after notice of the same shall have been given to all of the members of the Association by the Board of Directors, and shall be paid to the Association when due without further notice.

**Section 6. Special Assessments**. If for any reason, including non-payment of any assessments to the Association by the persons liable therefore, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Town Homes and the owners thereof (other than the Declarant) to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this Section 6 shall be payable at such times and in such installments as the Board of Directors shall determine. Each Town Home not owned by the Declarant shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this Section 6.

**Section 7. Town Homes Owned by Declarant** Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Town Home owned by the Declarant shall be subject to any assessment provided for in this Article VI. Rather, all Town Homes owned by the Declarant shall be exempt from the payment of all assessments for so long as such Town Homes are owned by the Declarant. At such time as any Town Home which is owned by the Declarant shall be conveyed or transferred away by the Declarant, all liens and assessments provided for in this Article VI shall become immediately levied against such Town Home and the owner of such Town Home shall immediately become liable for the payment of all such assessments. The amount of each Assessment which shall become so payable with respect to any Town Home shall be prorated according to the respective portions of the fiscal year that such Town Home was owned by the Declarant and by such successor owner.

**Section 8. Effect of Non-Payment of Assessments; Remedies of the Association**

(a) In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any monthly or special assessment, or any installment of any monthly or special assessment, which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Town Home owned by the delinquent member, which lien shall bind such Town Home or Town Homes in the hands of the then owner, and his heirs, devisees, successors and assigns.

(b) All amounts which the Board of Directors shall declare to be due and payable pursuant to this Section 8 shall bear interest from the date of delinquency at the lower of the rate of ten (10%) percent per annum or the highest rate permitted by law, and the Association may bring legal action against the member of the Association personally obligated to pay the same, or foreclose its lien upon the Town Home or Town Homes of such member, in either of which events such member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts.

**Section 9. 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 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 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 purpose.

**Section 10. Uniform Rate** The monthly assessments must be fixed at a uniform rate for all Town Homes.

**Section 11. Contribution by Declarant** For so long as Declarant has the authority to appoint and remove directors and officers of the Association, Declarant shall not be liable for the payment of any monthly or special assessments. Provided, however, during said period Declarant may advance funds to the Association, sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association, and the sum of monthly, special, and specific assessments collected by the Association in any Assessment Year, and such advances shall be deemed to be loans to the Association and shall be evidenced by promissory notes from the Association to Declarant, which shall be due and payable upon demand, with interest at a rate of twelve (12) percent per annum after demand.

**Section 12. Certification of Payment** Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Town Home owned by said Owner as of the date of such certificate, or

that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the town Home in question.

**Section 13. Approval by Declarant** Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint and remove officers and directors of the Association.

## ARTICLE VI

### ARCHITECTURAL CONTROL

**Section 1. Architectural Control Committee Creation and Composition:** (a) An Architectural Control Committee (the "ACC") shall be established consisting of not less than three (3) or more than five (5) individuals, provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all of the Town Homes in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association.

(b) Each initial member of the ACC shall be appointed for a term expiring on \_\_\_\_\_ . Thereafter, each member of the ACC shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall, subject to the provisions of Section 1(a), be filled by the Declarant (or the Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Declarant while the Declarant has power to appoint members of the ACC pursuant to the provisions of Section 1(a) hereof (or by the Board if at the time the Board has the right to appoint members of the ACC).

**Section 2. Purpose, Powers, and Duties of the ACC:** The purpose of the ACC is to assure that any alteration of any Town Home, shall be submitted to the ACC for approval as to whether the proposed alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any alteration of any Town Home.

**Section 3. Officers, Subcommittees, and Compensation:** The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC shall be reimbursed by the Association for traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC.

#### **Section 4. Operations of the ACC:**

(a) **Meetings:** The ACC shall hold regular meetings at least once every six (6) months or more often as may be established by the ACC. Special meetings may be called by the Chairman at any time, and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority



of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary of the Association. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

(b) Activities:

(i) The ACC shall adopt and promulgate the Design Standards described in Section 5 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ACC on its own motion or to appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit 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.

Section 5. Design Standards: (a) The ACC shall from time to time 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 procedures 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, 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 general quality of the Development.

(b) The ACC shall make a published copy of its current Design Standards readily available to Owners and prospective Owners and to all applicants seeking the ACC's approval.

Section 6 Submission of Plans and Specifications. No alteration to a Town Home is permitted which materially changes the exterior appearance of the Town Home, unless plans and specifications therefore 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 in the Design Standards, including, without being limited to:

- (a) specifications of materials, color scheme, and other details affecting the exterior appearance of the Town Homes.

(b) a landscape plan indicating all proposed changes to the existing landscape, including changes in grade, changes to existing landscaping, proposed landscaping, site lighting, and drainage

Section 7. Approval of Plans and Specifications: Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, one (1) copy of such plans and specifications, as approved, shall be deposited for permanent record with the ACC, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Town Home 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 Town Home. Approval of any such plans and specifications relating to any Town Home, however, shall be final as to that Town Home, 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 all conditions attached to any such approval.

Section 8. Disapproval of Plans and Specifications: The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

- (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 standards for the Development as set forth in the Design Standards or the Development-Wide Standard, or (ii) as to location to be incompatible with topography, finished ground elevation, or surrounding Structures. In any case in which the ACC shall disapprove any plans or 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 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.

Section 9. Obligation to Act: The ACC shall take action on any plans and specifications submitted as herein provided within fourteen (14) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the ACC to take action within fourteen (14) days after receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

Section 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 Town Home thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of the Town Home or the use of any Town Home 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.

Section 11. Violations: If any alteration is made to an existing Town Home, 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, and the Board shall take appropriate measures to correct the violation; 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 Article XIII hereof.

Section 12. Certification of Compliance: (a) Upon completion of the alteration to the Town Home in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such alteration, and stating that the plans and specifications have been

approved and that such alteration complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or lender in good faith and for value or title insurer, such Certificate shall be conclusive evidence that all alterations on the Town Home comply with all of the requirements of this Article; provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction or workmanship of the alteration, or to represent or warrant to anyone the quality, function or operation of the alteration or of any construction, workmanship, engineering, materials or equipment.

The issuance of the Certificate shall in no way be construed to certify to any party that the alterations have been completed in accordance with any applicable rule or regulation or in accordance with every detail on the approved plans and specifications.

Section 13 Fees: The ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and specifications and of inspections performed pursuant to Section 10. The fee shall be established from time to time by the ACC and published in the Design Standard.

Section 14. Non-Discrimination by ACC: The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

Section 15. Disclaimer as to ACC Approval: Plans and specifications are not reviewed for engineering, structural design, structural integrity, quality of materials, or compliance with any local, state, or federal laws, including local building codes and zoning ordinances, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any Town Home alteration 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 non-feasance 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 and 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, quitclaims, and covenants not to sue all such persons and entities for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or non-feasance 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.

## ARTICLE VII MORTGAGEE PROVISIONS

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

Section 1 Notices of Action. An institutional holder insurer, or guarantor of a first Mortgage, who provides written request to the Association, such request to state the name and address of such holder, insurer, or guarantor and the Town Home 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 Town Home 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 owed by an Owner of a Town Home subject to the Mortgage of such eligible holder, where 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 Town Home of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

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

(d) any proposed action which would require the consent of a specified percentage of Mortgage Holders;

(e) an annual financial statement, or audit if available, of the Association for the immediately preceding fiscal year, free of charge;

(f) any proposed amendment of the Declaration effecting a change in (A) the boundaries of any Town Home or the exclusive easement rights appertaining thereto; (B) the interests in the Association Property or the liability for common expenses appertaining thereto; (C) the number of votes in the Association appertaining to any Town Home; or (D) the purposes to which any Town Home or Association Property are restricted; or

(g) any proposed termination of administration of the Association Property pursuant to this Declaration;

Section 2 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 Town Home in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Association Property.

Section 3 Notice to Association. Upon request, each Town Home owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Town Home

Section 4 Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development ("HUD ") or the Veterans Administration ("VA") subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any 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.

Section 5 VA/HUD Approval. As long as there is a Class B Membership and so long as the project is approved by HUD for insuring any Mortgage in the Development (as determined by consulting the current list of approved subdivisions regularly published by HUD and furnished to Mortgage companies) or the VA for guaranteeing any Mortgage in the Development (as determined by telephone inquiry to VA), the following actions shall require the prior approval of the VA and/or HUD as applicable: annexation of additional property to the Development except for annexation by Declarant in accordance with Article II pursuant to a plan of annexation previously approved by VA or HUD; dedication of Association Property to any public entity; mergers and consolidations; dissolution of the Association; mortgaging of Association Property; and material amendment of the Declaration, Bylaws, or Articles of Incorporation.

Section 6 Association Property. To the extent permissible under the law of the state of Georgia, the following provisions shall apply:

(a) Any restoration or repair of the Association Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the Eligible Holders of first mortgages on Town Homes to which at least fifty-one (51%) percent of the votes of Town Homes subject to mortgages held by such Eligible Holders are allocated, is obtained

(b) Any Election to terminate the administration of the Association Property pursuant to this Declaration after substantial destruction or a substantial taking in condemnation of the Property must require the approval of the Eligible Holders of first mortgages on Town Homes to which at least fifty-one (51%) percent of the votes of Town Homes subject to mortgages held by Eligible Holders are allocated

Section 7 Amendments. The following provisions do not apply to amendments to the constituent documents or termination of the Association pursuant to Section 6 hereof made as a result of destruction, damage, or condemnation, or to the addition of land pursuant to any plan of expansion or phased development previously approved by HUD or the VA to the extent such approval is required by HUD or VA:

(i) The consent of Owners representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as it holds any land subject to this Declaration, and the approval of the Eligible Holders of first mortgages on Town Homes to which at least sixty-seven

percent (67%) of the votes of Town Homes subject to a mortgage appertain, shall be required to terminate the administration of the Property subject to this Declaration.

(ii) The consent of Owners representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as it holds any land subject to this Declaration, and the approval of Eligible Holders of first mortgages on Town Homes to which at least fifty-one percent (51%) of the votes of Town Homes subject to a mortgage appertain, shall be required to materially amend any provisions of this Declaration, the By-laws or the Articles of Incorporation to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (A) Voting;
- (B) Assessments, assessment liens or subordination of such liens;
- (C) Reserves for maintenance, repair and replacement of the Association Property;
- (D) Insurance or fidelity bonds;
- (E) Rights to use of the Association Property;
- (F) Responsibility for maintenance and repair of the several portions of the Property;
- (G) Expansion or contraction of the Property or the addition, annexation or withdrawal of land to or from the property;
- (H) Boundaries of any Easement Areas;
- (I) Leasing of Town Homes;
- (J) Imposition of any right of first refusal or similar restriction on the right of a Town Home
- (K) Establishment of self-management by the Association where professional management, if any, has been employed; and
- (L) The approval of Eligible Holders of first mortgages on Town Homes to which at least fifty-one percent (51%) of the votes of Town Homes subject to a mortgage appertain, shall be required to amend any provisions included in this Declaration, the By-Laws or the Articles of Incorporation which are for the express benefit of holders or insurers of first mortgages on Town Home.

The provisions of this Article shall not be construed to reduce the percentage vote that must be obtained from mortgagees of Town Home Owners where a larger percentage vote is otherwise required by applicable law or in any other provision in the Declaration, the By-Laws or the Articles of Incorporation for any of the actions contained in this Article

Section 8. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation (The Mortgage Corporation), the following provisions apply in addition to and not in lieu of the foregoing Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant, give their consent, the Association shall not:

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

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Town Homes and of the Association Property (the issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection);

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

(e) use of hazard insurance proceeds for any Association Property losses for other than the repair, replacement, or reconstruction of such property

Nothing contained in this Section 8 shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section 8.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Association Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of any Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 9. Applicability of Article 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.

Section 10. Failure of Mortgagee to Respond Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive written response from the Mortgagee within thirty (30) days of the date of the Association's request.

#### ARTICLE VIII DAMAGE OR DESTRUCTION OF TOWN HOMES

In the event of the occurrence of any damage or destruction by fire or other casualty to any one or more Town Homes, such damage or destruction shall be repaired or rebuilt in all events. All repair, reconstruction or rebuilding of any Town Home shall be substantially in accordance with the plans and specifications for such damaged or destroyed Town Home prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by both the owner of the Town Home which is to be so repaired, reconstructed or rebuilt, and by the Board of Directors. The work of repairing, reconstructing or rebuilding any damaged or destroyed Town Home shall be completed as soon after the occurrence of such damage or destruction as is reasonably practicable at no cost or expense to the Association. The owner of any Town Home which is to be repaired, reconstructed or rebuilt pursuant to the provisions of this Article VIII shall be responsible for the completion of such work in the manner, and within the time requirements, set forth in this Article VIII.

#### ARTICLE IX USE RESTRICTIONS AND RULES

Section 1. General In order to provide for the maximum enjoyment of the Town Homes by all of the residents thereof and to provide protection for the value of the same, the use of the Town Homes shall be restricted to, and shall be only in accordance with, the following provisions. These restrictions must be complied with by all Owners and Occupants. These use restrictions may be amended only in the manner provided in Article XII, hereof regarding amendment of this Declaration. The Board of Directors may, from time to time, without the consent of the members, promulgate, modify, or delete use restrictions and rules and regulations applicable to the Town Homes and Association Property. Such regulations and use restrictions shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, cancelled, or modified in a regular or special meeting of the total Association vote.

Section 2. Single-Family Use All of the Town Homes shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No Town Home shall at any time be used for any commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this Section 1 shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any Town Home as the Declarant shall determine (including, but not limited to, using any Town Home as a model home and a sales office); or (b) the owner of any Town Home from using such Town Home as an office, provided that such use does not create regular customer or client traffic to and from such Town Home and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Town Home.

Section 3. Prohibited Activities No noxious or offensive activity shall be conducted in any Town Home. Each owner of any Town Home, his family, tenants, guests and invitees, shall refrain from any act or use of his Town Home which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Town Home.

Section 4. Nuisances No nuisance shall be permitted upon or within any Town Home. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Town Home.

Section 5. Animals No Town Home shall be used for the keeping or breeding of

livestock, animals or poultry of any kind, except that a reasonable number of household pets may be kept, provided that they are neither kept for breeding nor maintained for any commercial purpose, and provided that none of such pets are permitted to be a source of annoyance to any other resident or residents of any other Town Home. Dogs which are household pets shall at all times whenever they are outside of a Town Home be confined on a leash.

Section 6 Signs. No sign of any kind or character shall be erected or displayed to the public on any portion of any Town Home without the prior written consent of the Board of Directors, except for customary name and address signs and one "for sale" sign advertising a Town Home for sale. The restriction herein stated shall include the prohibition of placement of any sign within any Town Home in a location from which the same shall be visible from the outside.

Section 7 Window Air-Conditioners. No air-conditioner shall be installed in any window of any Town Home, nor shall any air-conditioner be installed on any Town Home so that the same protrudes through any exterior wall of such Town Home.

Section 8 Subdivision of Town Homes. No Town Home may be further subdivided into any smaller Town Home.

Section 9 Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Development.

Section 10 Clotheslines, Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of neighboring Town Homes, streets and property located adjacent to the Town Home. All rubbish, trash and garbage shall regularly be removed from the Portico, Town Home, Patio and Easement Area and shall not be allowed to accumulate thereon. Declarant, however, expressly reserves the right to dump and bury rocks and trees on the property within the Development as needed for efficient construction and to allow developers and builders within the Development to do so. No clothesline shall be permitted on any Portico, Town Home, Patio or Easement Area.

Section 11 Guns. The use of firearms in the Development is prohibited. The term "firearms" includes "B-B guns, pellet guns, and firearms of all types.

Section 12 Solar Devices. No artificial or man-made device which is designed or used for collection of or heating by solar energy or other similar purposes shall be placed, allowed or maintained upon any portion of the Town Home, including the Portico, Patio, or Easement Area, without the prior written consent of the Architectural Committee.

Section 13 Pools. Pools, of any sort whatsoever, shall not be permitted on the Development.

Section 14 Satellite Dishes. No satellite dishes or antennas are permitted except satellite dishes less than twenty-one (21") inches in diameter and shall be located only on that portion of the Town Home which is least visible from public view and shielded so as to minimize any risks and to ensure a nuisance is not created.

Section 15 Obstruction of Ingress and Egress. No owner, tenant, or guest shall obstruct the rights of ingress and egress to any residence.

Section 16 Enforcement by Members. In the event that the owner of any Town Home, or any person who is entitled to occupy any Town Home, shall fail to comply with or abide by any restriction set forth in either this Article IX, or in Article VI, Section 1 of this Declaration, then the owner of any other Town Home who is aggrieved by such failure of compliance or abidance shall have the right to proceed at law or in equity to compel such owner or such occupant to comply therewith and abide thereby. Additionally, any owner of any Town Home who, or whose lessee, shall fail to comply with or abide by any such restriction shall be liable for any damages as may be suffered by any other owner of any Town Home as a consequence of such failure.

Section 17. Recreational Vehicles, Commercial Vehicles, Boats, Trailers, Boat Trailers, Utility Trailers No trailer, recreational vehicle, commercial vehicle, boat, boat trailer, trailer house, or utility trailer shall be parked at any Town Home, except for those which are stored within the standard garage provided with the Town Home; such storage is permitted only when said items can be stored within the original garage with the garage door closed

Section 18 Occupants Bound All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide sanctions against Owners shall also apply to all Occupants of any Town Home even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine shall then be levied against the Owner

Section 19 Lighting Notwithstanding Article VI, above, the following exterior lighting may be installed without the necessity of obtaining the prior approval of the Architectural Committee: (a) seasonal decorative lights during the Christmas season; (b) illumination of other than the front or side yard of the Town Home; providing does not create a nuisance for the adjoining Town Homes; (c) illumination of model Town Homes and entrance features constructed by the Declarant. Plans for all other exterior lighting must be submitted and approved in accordance with Article VI.

Section 20 Drainage Catch basin and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Town Home may obstruct or re-channel the drainage flows after the location and installation of drainage swales, storm sewers, or storm drains. Declarant reserves the right to prepare sloping banks, cut, or fills on all streets and roads. Declarant hereby reserves a perpetual easement across all Association Property and Easement Areas for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense

Section 21 Detached Structures No detached structures shall be placed, erected, allowed or maintained upon any Association Property or Easement Area without the prior written consent of the ACC.

Section 22. Entry Features and Street Signs Owners shall not alter, remove or add improvements to any entry features or street signs constructed by the Declarant on any Lot or Town Home, or any part of an easement area associated therewith without the prior written consent of the ACC.

Section 23 Basketball Hoops and Goals Basketball hoops and goals shall not be attached to the exterior portion of any Town Home, garage or other building structure constructed on a Lot or Town Home

#### ARTICLE X. MAINTENANCE OF TOWN HOMES AND EASEMENT AREAS

Section 1. Maintenance and Repair of Town Homes, Porticos, Stoops and Patios The owner of each Town Home shall be obligated to maintain and repair the entirety of his Town Home, including all walls and the roof of such Town Home. The owner of each Town Home shall also be obligated to maintain and repair the Stoop and any Portico which is attached to his Town Home, and the Patio which is annexed to his Town Home, including all brick, stucco and concrete portions of the same. Such maintenance and repair work shall be performed at the sole cost and expense of the owner of such Town Home. All exteriors of all Town Homes and all Stoops and Porticos shall be maintained in a condition which is satisfactory to the Board of Directors. In no event shall any change be made in the exterior appearance of any Town Home (including, without limitation, painting and the application of any brick, stucco, paneling or other siding), unless such change has been first approved in writing by the ACC. The Board of Directors shall have the right to adopt rules for the placement of any items on the Porticos, Stoops and Patios and all items placed on the Stoops and Patios must comply with the terms of



such rules

Section 2 Maintenance of Easement Areas.

(a) Except as provided otherwise in paragraph (b) hereof, the Association shall be responsible for maintaining the grass and the grounds of the portion of each Easement Area which is not located inside a fence. Such maintenance shall consist of normal grass mowing and any other activity necessary to keep such grounds in a condition that is satisfactory to the Board of Directors.

(b) The owner of the Town Home to which each Easement Area is annexed shall be obligated to maintain any trees, flowers, shrubbery or bushes as shall have been placed in the Easement Area pursuant to the exercise of the easement rights set forth in Section 6 of Article III of this Declaration in a condition which is satisfactory to the Board or Directors. Such maintenance shall include, without limitation, removing dead trees, shrubs and other plants and pruning and otherwise maintaining all plants, shrubbery, trees, flowers, bushes, ivy and other foliage.

(c) The owner of the Town Home to which each Easement Area is annexed shall be obligated to keep and maintain any portion of the Easement Area which is enclosed within a fence erected in accordance with Section 3 of this Article X in a neat, sanitary and attractive condition which is satisfactory to the Board of Directors. Such maintenance shall include, without limitation, cutting the grass, weeds and other vegetation, removing dead trees, shrubs and other plants and pruning and otherwise maintaining all plants, shrubbery, trees, flowers, bushes, grass, ivy and other foliage as may be planted in and on the Easement Area pursuant to the exercise of the easement rights set forth in Section 7 of Article III of this Declaration.

Section 3 Fences. The owner of every Town Home shall have the right to erect on the Association Property a fence to enclose all or any part of the Easement Area that is annexed to his Town Home. Any such fence that shall be so erected shall contain a gate providing access into said Easement Area which shall not contain any lock or locking device. In no event shall the owner of any Town Home lock or otherwise secure said gate in such a way that it cannot be opened to permit access into said Easement Area. No such fence may be erected outside the Easement Area that is annexed to such Town Home. It shall be the duty of the Board of Directors to maintain in effect a standardized design for the fence that may be so erected upon the Association Property.

In no event shall any fence be erected pursuant to the provisions of this Section 3 unless the design of such fence shall conform to the standardized design which shall be so maintained in effect by the Board of Directors.

In the event that the owner of any Town Home shall elect to erect any such fence pursuant to the provisions of this Section 3, the owner of the Town Home to which such fence is annexed shall be responsible for the repair, maintenance and replacement of such fence.

Section 4 Failure of Maintenance. In the event that the owner of any Town Home shall fail to maintain any portion of such Town Home, or the Stoop or any Portico that is attached to such Town Home, or the Patio that is annexed to the same, or any Easement Area that is annexed to the same (including any fence that may have been erected in such Easement Area), all as required under the terms and provisions of this Article X, the Board of Directors shall have the right, exercisable by it or through its agents or employees, and after giving the owner of such Town Home at least five (5) days notice and an opportunity to correct the unsatisfactory condition, to enter upon the Town Home, Portico, Stoop, Patio and/or Easement Area, as applicable, and correct the unsatisfactory condition. The owner of the Town Home upon which, or upon the Portico, Stoop, Patio or Easement Area attached or annexed to which, such maintenance work is performed by the Association (or its agents or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the performance of such maintenance work, and the liability for such costs shall be secured by all of the liens, and shall be subject to the same means of collection, as are the assessments and charges provided for in Article V of this Declaration. In addition, all such costs shall be paid to the Association by such owner at the same time as the

next due annual assessment payment, as provided in Section 4 of Article V of this Declaration, or at such earlier time, and in such installments, as the Board of Directors shall determine

## ARTICLE XI INSURANCE AND CASUALTY LOSSES

Section 1 Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority but not the obligation to obtain insurance for all insurable improvements located on the Association Property or property required to be maintained by the Association under Article III, Section 8 hereof, including coverage for (i) loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard, and (ii) comprehensive general liability insurance covering all of the Association Property. The Board shall also have the authority, but not the obligation to obtain director's and officer's liability insurance, said insurance to cover the members and officers of the Board of Directors; and the members of the Architectural Committee as duly appointed under the provisions of Article VI, insuring the same against any negligence or nonfeasance. Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of Association, as trustee, for the respective benefited parties. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company authorized to do business in Georgia
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto
- (c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Development is located.

Section 2. Damage and Destruction -- Town Homes. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Portico, Town Home, Patio or Easement Area shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XIII of this Declaration

Section 3. Insurance Deductible. 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, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property

Section 4. Additional Insurance. In addition to coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time by either the Veterans Administration or the Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.

The Association shall have the authority, but not the obligation, to obtain and maintain a blanket fidelity bond for all officers, directors, and employees of the Association and all other persons who handle, or are responsible for, funds of or administered by the Association. If the Association engages a management agent who has responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or administering the funds of the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the management agent at any time during the period of each bond. However, in no event may the aggregate

amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Town Homes plus reserve funds. The bonds shall contain waivers by the issuer of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior notice to the Association.

Section 5 Town Homes. The owner of each Town Home shall obtain and maintain in effect at all times a master multi-peril policy of property insurance covering all insurable portions of such Town Home, and the Stoop, Patio and any Portico which is annexed to such Town Home, on a replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value, based upon replacement cost, of the same.

## ARTICLE XII AMENDMENT

Section 1. Amendment by Association The terms, provisions, covenants and restrictions of this Declaration may be amended upon the approval of such amendment by: (a) those members of the Association who own, in the aggregate, no-fewer than sixty-seven percent (67%) of the Town Homes not owned by the Declarant; (b) the Declarant, if the Declarant shall then own any Town Homes or any other portion of the Property; and (c) HUD and VA, if the Class B membership has not terminated, as provided in Article IV, Section 3 of this Declaration. The approval of any such amendment by each of the Class A members shall be given by such Class A member either casting a vote in favor of such amendment at a meeting of the members of the Association duly called for such purpose, or by such Class A member signing a written approval of such amendment after the date on which such meeting was held, notwithstanding anything set forth to the contrary in the Articles of Incorporation or Bylaws. If any such amendment is required to be approved by the Declarant and/or by HUD and VA, such approval shall be given only by such Person executing a written approval of the same.

Any amendment to the terms, provisions, covenants or restrictions of this Declaration shall become effective only upon the recording in the Deed Records of Cobb County, Georgia, of an instrument certified by the incumbent Secretary of the Association: (a) setting forth such amendment; (b) stating that the approval of the Class A members of the Association which, under the provisions of this Article XII, is required for such amendment to be effective, has been given and obtained; and (c) containing the written approval of the Declarant and/or HUD and VA, if the same is required (as hereinafter provided).

The matters set forth in such instrument shall be presumed to be true and accurate and the amendment which is set forth in such instrument shall be effective, unless it shall be determined by a court of competent jurisdiction that the matters certified to in such instrument are not true and accurate.

Each person who shall own any Town Home, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title thereto, and each holder of a Mortgage upon any portion of any Town Home, by acceptance of such Mortgage, thereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided in this Article XII.

Section 2. Amendments by Declarant: During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing, filed and recorded in the Deed records of the Superior Court of Cobb County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Town Home or of the Association Property as set forth in this Declaration or if such amendment adversely affects the title to any Town Home, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 2 shall be certified by Declarant as having been duly approved by Declarant, and such members and mortgagees, if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by

acceptance of a deed or other conveyance to a Town Home, agrees to be bound by such amendments as are permitted by this Article XII, Section 2 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance with the provisions of any applicable governmental statute, rule or regulation or any 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 any Town Homes subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Town Home subject to this Declaration, (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Town Homes subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

#### ARTICLE XIII ENFORCEMENT

Section 1. 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, (ii) the Association, and (iii) each Owner, his heirs, devisees, legal representatives, successors and assigns

Section 2 Right of Abatement: (a) Except where different notice provisions are provided in Articles IV and VI, 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 said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Articles IV and VI hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Town Home 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 hereof, 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 costs thereof including the costs of collection including reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by law or twelve (12%) percent per annum to be a binding personal obligation of such Owner enforceable at law, as well as a lien on such Owner's Town Home enforceable pursuant to the provisions of Section 4 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 Town Home after such entry, 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 Article IV hereof, and (iii) any Prior Recorded First Mortgage on a Town Home or Town Homes. Such lien shall not be affected by any sale or transfer of a Town Home, except that a sale or transfer of a Town Home pursuant to a foreclosure of a Prior Recorded First Mortgage shall extinguish such lien.

Section 3. Specific Performance: Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association, or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. 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

Section 4 Collection of Assessments and Enforcement of Lien: (a) 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 Town Home or Town Homes 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 attorney's fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, costs or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Town Home or Town Homes subject to the lien at auction, at the usual place for conducting sales at the Courthouse in Fulton County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Fulton County, Georgia, are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and attorney-in-fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or its assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, legal representatives, devisees, successors, and assigns of such Owner, and that the conveyance to be made by the Association or its assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Town Home or Town Homes, and the Association or its assigns shall collect the proceeds of such sale, and after reserving there from the entire amount of assessment, interest, cost, and other charge due, together with all costs and expenses of sale and fifteen (15%) percent of the aggregate amount due for attorney's fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law and any mortgagee of said Town Home or Town Homes. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Town Home. No diminution or abatement of assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law or ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Section 5. Arbitration Any controversy or claim arising out of the enforcement of the provisions of this Declaration shall be settled as expeditiously as possible by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the judgment upon the award rendered by the arbitrator may be entered into any court having jurisdiction thereof. This provision in no way limits the lien rights and rights of abatement stated above.

#### ARTICLE XIV EASEMENTS

Section 1. Easements for Utilities There is hereby reserved to the Declarant its successors and assigns, for so long as the Declarant owns any Lot or Town Home, and to the Association, blanket easements upon, across, above and under all Association Property, Easements Areas and Town Homes for access, ingress, egress, installation, repairing, replacing and maintaining all utilities serving the Association Property, Easement Areas or Town Homes or any portion thereof, including, but not limited to gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the town Homes; and for slope control purposes, replanting, and maintenance of all entry features and retention ponds. It shall be expressly permissible for the Declarant, the Association or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the providing of such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 2. Easement for Association Maintenance Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Association

Property, Easement Areas and Town Homes determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article X. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the Owner's Town Home, reasonable steps shall be taken to protect such Town Homes, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 3 Easement for Entry. In addition to the right of the board to exercise self-help as provided in Article XIII, hereof, the board shall have the right, but shall not be obligated, to enter upon any Easement Area or Town Home for emergency, security and safety reasons, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner and the entering party shall include the right of the Board to enter to cure any condition which may increase the possibility of fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

Section 4 Easements for Entry Features and Street Signs. There is hereby reserved to the Declarant and the Association an easement over and upon each Town Home, Easement Area and Association Property for ingress, egress, installation, construction, landscaping and maintenance of entry features and street signs for the Development. The easement right and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to upgrade the land under and around the entry features.

#### ARTICLE XV. MISCELLANEOUS

Section 1 Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the owner of any Town Homes, then the owner of any other Town Homes shall have the right to file an action in the Superior Court of Cobb County, Georgia for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 2 Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 3 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration 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 last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 4 Notices. Any notice required to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of any Town Homes owned by such member. The date of service shall be the date of mailing.

Section 5 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such

prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable

Section 6 Enforcement Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons or other entities violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Town Homes, to enforce any liens created by this Declaration

Section 7 Successors to Declarant In no event shall any person or other entity succeeding to the interest of the Declarant by operation of law or through purchase of the Declarant's interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of the Declarant

Section 8 Construction and Sale Period Notwithstanding any provisions contained in this Declaration, the by-laws, Articles of Incorporation, use restrictions, rules and regulations, Design Standards, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided herein terminates, it shall be expressly permissible for Declarant to maintain and carry on, upon such portion of the Development as Declarant may deem necessary, such facilities and activities as may reasonably be required by the Declarant and such builder in the development, for construction and sales activities related to the property subject to this Declaration, including, but not without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the development; the right to tie into any portion of the Development, with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, cable television, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; the right to maintain sales signs and project signs on individual Lots or Town Homes, within the right-of-way of any road, and at the entrance(s) of the Development; and the right to construct and operate business offices, signs, construction trailers, material storage areas, model Town Homes, off-street parking areas, and sales offices Declarant may use Town Homes or offices owned or leased by Declarant as model Town Homes and sales offices. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing any damage at its sole expense

Section 9 Duration This Declaration and Restrictions contained herein shall run with and bind the land 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 Cobb County, Georgia, after which time this Declaration and restrictions shall be automatically renewed for successive periods of ten (10) years; provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the Office of the Clerk of the Superior Court of Cobb County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of the Class A Members of the Association

#### ARTICLE XVI GENERAL PROVISIONS

Section 1 Gender and Grammar The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine

Section 2 Captions The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article to which they refer

Section 3 Preparer This Declaration was prepared by Richard B. Dobkin, 1979 Lakeside Parkway, Suite 950, Tucker, Georgia 30084

Section 4. Conveyance of Common Property by Declarant to Association: Assignment of Contracts The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement, or other property interest. Such

conveyance shall be accepted by the Association, and the property shall thereafter be Association Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. The Association shall also accept assignment of any contracts entered into by the Declarant for the benefit of the Association or the Owners

Section 5 Indemnification. In accordance with the Georgia Nonprofit Corporation Code and to the full extent allowed, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of Association), by reason of the fact that such Person is or was serving as a member or officer of the Board of Directors or Architectural Committee of the Association against any and all expenses, including attorney's fees, imposed upon or reasonably incurred in connection with any action, suit or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person is proper under the circumstances

#### Section 6 Books and Records

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe

(b) Rules for Inspection. The Board shall establish reasonable 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;
- (iii) Payment of the cost of reproducing copies of the documents

(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 extra copies of documents at the reasonable expense of the Association.

Section 7. Financial Statements. Financial Statements for the Association shall be compiled annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's financial statements at the annual meeting, the Owners, by a Majority vote, may require that the financial statements of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all costs associated therewith, such holder shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request

Section 8 Notice of Sale or Lease. In the event the Owner sells or leases his or her Town Home, the Owner shall give to the Association, in writing, the name of the Purchaser or lessee of the Town Home and such other information as the Board may reasonably require

Section 9. Agreements. All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development. All such agreements and determinations shall be subject to the prior approval of Declarant, so long as the Declarant owns any property primarily for development and/or sale in the Development.

Section 10 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Development.

Section 11 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total



hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

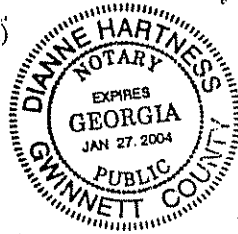
Section 12. Implied Rights. The Association may exercise any rights or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

IN WITNESS WHEREOF, Beazer Homes Corp. has caused this Declaration to be executed by their duly authorized officer on the day and year first above written.

Diana D. Doherty  
WITNESS

Dianne Hartness  
NOTARY PUBLIC

(Notary Seal)



[Signature] (SEAL)  
BEAZER HOMES CORP.  
By: Andy Stampler  
Its: Secretary



## EXHIBIT "A"

LEGAL DESCRIPTION  
Lake Ridge Drive Tract

All that tract or parcel of land lying and being in Lots 609, 610, 615, 616 and 681 in the 17<sup>th</sup> district, second section of Cobb County, Georgia, and being more particularly described as follows:

Beginning at the intersection of the northerly r/w of Lake Ridge Drive, (variable r/w), at the end of a curve deflecting to the left and having a radius of 25.00', and the southerly r/w of Highlands Parkway, (100' r/w), said point being the point of beginning;

Continuing along the southerly r/w of Highlands Parkway (100' r/w)  
 North 64° 14' 22" West, 159.31 feet; thence,  
 186.68 feet along the arc of a curve deflecting to the left and having  
 a radius of 923.59 feet and a chord bearing and distance of  
 North 70° 01' 48" West 166.36 feet; thence, departing said r/w  
 South 46° 20' 51" West, 359.00 feet; thence,  
 North 75° 12' 11" West, 82.71 feet; thence,  
 South 81° 07' 17" West, 551.74 feet; thence,  
 South 66° 45' 57" West, 181.86 feet; thence,  
 South 24° 17' 40" West, 239.01 feet; thence,  
 South 30° 36' 43" West, 129.30 feet; thence,  
 South 56° 17' 11" West, 196.44 feet; thence,  
 South 22° 44' 12" West, 42.73 feet; thence,  
 North 34° 13' 56" West, 44.23 feet; thence,  
 North 35° 59' 03" West, 104.99 feet; thence,  
 North 50° 17' 31" West, 63.26 feet; thence,  
 South 39° 32' 05" West, 401.85 feet; thence,  
 South 87° 57' 56" West, 8.40 feet; thence,  
 South 19° 34' 00" East, 510.76 feet; thence,  
 North 74° 41' 18" East, 567.46 feet to a point on the northwesterly r/w of Lake  
 Ridge Drive (70' r/w); thence, along said r/w the following courses and  
 distances;  
 73.43 feet along the arc of a curve deflecting to the right and having  
 a radius of 65.00 feet and a chord bearing and distance of  
 North 47° 19' 14" East 69.59 feet; thence,  
 13.43 feet along the arc of a curve deflecting to the left and having  
 a radius of 15.00 feet and a chord bearing and distance of  
 North 54° 01' 42" East 12.99 feet; thence,  
 North 28° 22' 11" East, 64.23 feet; thence,  
 605.18 feet along the arc of a curve deflecting to the right and having  
 a radius of 823.95 feet and a chord bearing and distance of  
 North 49° 24' 40" East 591.67 feet; thence,  
 North 70° 27' 09" East, 310.94 feet; thence,  
 435.74 feet along the arc of a curve deflecting to the left and having  
 a radius of 601.35 feet and a chord bearing and distance of  
 North 49° 41' 39" East 426.27 feet; thence,  
 North 28° 56' 09" East, 226.15 feet; thence,  
 40.65 feet along the arc of a curve deflecting to the left and having  
 a radius of 25.00 feet and a chord bearing and distance of  
 North 17° 39' 07" West 36.32 feet to the point of beginning,  
 containing 27.16 acres of land, more or less