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 Clerks Office Superior Court
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 34. Pages 15. 16. 17
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 County Records.

DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS

FOR

GRAN FOREST

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EXHIBITS

- A Description of Project Properties
- B Description of Project Properties

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
GRAN FOREST

THIS DECLARATION is made on the date hereinafter set forth by HOLYOKE CORPORATION, a Georgia corporation (hereinafter referred to as "Declarant*").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Land Lots 353, 354 and 355 of the 2nd District, 1st Section of Forsyth County, Georgia, which property is more particularly described in Exhibit "A" attached hereto and made a part of this Declaration; and

WHEREAS, Declarant intends to develop on the real property described above a development to be known as Gran Forest (hereinafter referred to as the "Development"): and

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined):

NOW, THEREFORE, Holyoke Corporation, as Declarant, hereby declares that all of the property described in Exhibit "A" shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions and Restrictions, which is for the purpose of enhancing and protecting the desirability and attractiveness of said real property. The Declarant further declares that this Declaration shall run with the title to said real property, and be binding on all parties having any right, title or interest in the described property or any part thereof, and shall, subject to all limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns, and to the benefit of the Association.

ARTICLE I

DEFINITIONS

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

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

1.02 Association. "Association" means Gran Forest Swim and Tennis Club, Inc. (a non-profit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

1.03 Board. "Board" means the Board of Directors of the Association.

1.04 Builder. "Builder" means Centex Real Estate Corporation, its successors and assigns.

1.05 Bylaws. "Bylaws" means the . . . of the Association.

1.06 Common Property. "Common Property" means all real property, including any portion of a Lot, (together with any and all improvements now or hereafter located thereon) and all personal property now or hereafter owned by the Association, or in certain

instances over which the Association has been granted permanent easements, for the common use and enjoyment of the **Owners**.

1.07 **Declarant.** "Declarant" means Holyoke Corporation, its successors and assigns. The term shall also be applied to any person, **firm**, corporation, partnership, association, trust, or other legal **entity**, or any combination thereof, which lawfully acquires the rights, privileges and options of Declarant in accordance with this Section 1.06. Should any of the Property or the Additional Property become subject to a first mortgage given by Declarant (as defined herein) as security for the repayment of a loan to improve the Property and/or Additional Property for development as part of this residential community, then all rights, privileges and options herein reserved to the Declarant, if held by the Mortgagor under said Development Loan, shall inure to the benefit of the holder of such first mortgage upon its becoming the actual owner of the Property and/or Additional Property then subject to such first mortgage through judicial foreclosure or sale made pursuant to any power of sale contained in such first mortgage or by conveyance of a deed in lieu of foreclosure. The Declarant as hereinabove defined, may transfer all of its rights, privileges and options as Declarant to a successor-in-title to all or some portion of the Property or the Additional Property, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of such property, and provided further, that in a written instrument, such **successor-in-title** is expressly assigned all of Declarant's rights, privileges and options herein reserved to Declarant. Such an assignment may be included as a recital in any deed executed by Declarant which conveys any portion of the Property or the Additional Property.

1.08 **Declaration.** "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Gran Forest.

1.09 **Lot.** "Lot" means any numbered parcel of land shown upon that plat of survey of Gran Forest, Phase I, recorded in Plat Book 34, Page 15, 16, 17 and 18, Forsyth County, Georgia records, or as similarly shown on supplemental surveys of such tract or such additional tracts as may be added to the Property from time to time, as provided herein; provided however, that no portion of the Common Property shall ever be a Lot except as may be provided for in Article II.

1.10 **Member.** "Member" means any member of the **Association**.

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

1.12 **Property.** "Property" means that certain real property (other than Common Property) hereinabove described together with such additional real property as the Declarant may acquire and subject to the provisions of this Declaration of Covenants, Conditions and Restrictions in accordance with the provisions of Article X hereof.

1.13 **Restrictions.** "Restrictions" means all covenants, restrictions, **easements**, liens and other obligations created or imposed by this Declaration.

1.14 **Structure.** "Structure" means:

(a) any thing or object the placement of which upon any Lot may affect the appearance of such **Lot**, including by way of

illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, antennas and satellite dishes, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

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

(c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.14 applies to such change.

ARTICLE II

COMMON PROPERTY

2.01 Conveyance of Common Property.

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

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use. The Declarant may, at **Declarant's** sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper **for the** completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or Recreation Area (or which is designated by any words which similarly signify such property is for the use of the Owners in the Development) whether by recorded plat of survey or otherwise, or designated for public use, shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

(e) **The Association hereby covenants and agrees to** accept all such conveyances of Common Property. If the Declarant conveys any improved Common Property to the Association the procedures contained in this Section **2.01(e)** shall be followed. Upon conveyance of any such Common Property or upon completion of the improvements, whichever is later, the Declarant shall notify the Architectural Control Committee (the "ACC"). (If at that time

the Architectural Control Committee is composed of Declarant's employees or agents, Declarant shall appoint three Class A Members as a special committee to fulfill those obligations described herein of the Architectural Control Committee.) Within thirty (30) days after said notification, the Declarant or its representative and the ACC shall jointly inspect the Common Property to the extent hereinafter provided. The Declarant and the ACC shall each be entitled to designate a qualified engineer and/or architect, or any other such Expert to accompany them during the inspection of the Common Property. Such inspection shall be limited to a visual inspection of the Common Property, it being understood that under no circumstances shall any improvements not visible to the naked eye be required to be uncovered and that no attempt shall be made to locate latent defects. Promptly after the completion of such inspection the ACC shall submit a written report (hereinafter the "Inspection Report") to the Declarant stating whether the Common Property has been constructed in a workmanlike manner in accordance with reasonable building standards and specifying the respects, if any, in which such construction does not conform with such standards. The Inspection Report shall constitute conclusive evidence that, except as otherwise set forth in such Report, the Declarant has constructed the Common Property in a workmanlike manner in accordance with the reasonable building standards and thereafter the Declarant shall have no further liability, duty or obligation with respect to the Common Property except to perform the work called for by the Inspection Report. Following the completion of such work, the Declarant shall after fourteen (14) days notice to the ACC, arrange for a re-inspection of the Common Property. The ACC shall then issue a written report to the Declarant stating whether the work called for by the Inspection Report has been substantially completed and specifying the respects, if any, in which such work has not been completed and is defective. The Declarant shall perform any work called for by such report of re-inspection as promptly as practicable. The reasonable fees and expenses of any Experts hired by the ACC in connection with the inspection and re-inspection provided for by this paragraph (e) shall be borne by the Association.

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

2.02 **Right of Enjoyment.** Every Owner shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to those items set forth in Section 2.03, which include suspension by the Association as provided in Sections **2.03(c)** and 3.05.

2.03 **Right of The Association.** The rights and privileges conferred in Section 2.02 hereof shall be subject to the right of the Association acting through one board to:

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

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

(c) suspend the voting rights **of** any Member, pursuant to Section 3.05, and the right of enjoyment granted or permitted by Section 2.02;

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

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

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

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

(h) to **sell, lease** or otherwise convey all or any part of its properties and interest therein; provided, however, that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of two-thirds (**2/3**) of each class of Members.

2.04 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (**2/3**) vote of each class of Members of the Association, be used for any different purpose or purposes. For so long as Declarant owns at least one (1) Lot held primarily for sale, or has an unexpired option to add additional property to these Restrictions, the Common Property may not be used for any different purpose without the written consent of the Declarant.

2.05 Entrance Easements. It is contemplated that certain easements **for** landscaping or for the erection and maintenance of entrance monuments, subdivision signs, walls, fences and other otructures intended to provide an attractive atmosphere or to provide privacy to **Owners** within the **Development will be reserved** by the Declarant and may be set forth on plats of survey of the Development recorded in the County records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well **as** the right to plant grass, plants,

flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. All Owners taking title to any Lot upon which such an easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth **in** the instrument conveying such easements to the Association. Such easements shall be Common Property.

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

2.07 **Delegation of Use.** Any Owner may delegate his right to use and enjoy the Common Property to the members of his family, his social **invitees** or his tenants who reside on a Lot. Tenants who reside on a Lot shall have the same rights of delegation as an Owner. Any delegation of rights must be made in accordance with the Bylaws and will be subject to reasonable regulation by the Board and in accordance with the procedures it may adopt.

ARTICLE III

THE HOMEOWNERS' ASSOCIATION

3.01 **Purposes, Powers and Duties of The Association.** The Association shall be formed as a non-profit civic organization for the primary purpose of performing certain functions for the common good and general welfare of the people of the Development. To the extent necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and (b) shall have the power to exercise all of the rights, powers and privileges of the Association as set forth in this Declaration.

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

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

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

for periods falling after the date of such termination.

(b) Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and during its existence the Class B Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled to **three (3)** votes for each Lot owned by **it**; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (a) the expiration of five (5) years from the date of recording of this Declaration; (b) the date as of which three-fourths (**3/4**) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either the Declarant or by a builder who purchased the Lot from Declarant **for** the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy; or (c) the surrender by the Declarant of the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed by the Declarant and recorded in the Office of the Clerk of the Superior Court of the county in which the Property is located; provided, however, that so long as any Mortgagee of Declarant holds a security interest in any portion of the Property, as security **for** a Development Loan to Declarant, the Class B membership shall not terminate without the prior written consent of such Mortgagee. If at the time of termination of the Class B membership, Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A Member.

3.04 Board of Directors and Officers.

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

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

(c) It is the intention of the Declarant that the Development will be developed in phases; each phase consisting of Lots and/or Common Property. Each such phase will be platted of record in the Office of the Clerk of the Superior Court in which the property lies in accordance with Article X of this Declaration. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases **added and in accordance with the formula** set forth in subsection (b) of Section 3.03 and in no event shall Class B membership cease and be converted to Class A Membership (as provided in subsection (b) of Section 3.03) until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development.

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

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

(a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of 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 Section 5.11, 6.02 or 8.02 hereof:

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

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of the Common Property.

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

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

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

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

ARTICLE IV

ASSESSMENTS AND MAINTENANCE CHARGES

4.01 **Covenant for Assessments and Creation of Lien and Personal Obligations.** The Declarant, to the extent that Declarant is required herein, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

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

(b) to pay to the Association any special assessments for capital improvements and any **finances, penalties** or other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all assessments, fines, penalties and other charges are made to secure payment of such items and any penalties and interest thereon as provided in Section 4.07 hereof and costs of collection, including reasonable attorneys' fees;

(d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) all first mortgages and deeds to secure debt, and (iii) all mortgages and deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) or (2) to finance the construction, repair or alteration of Structures or (3) to pay for medical or educational expenses.

(e) that no **sale or transfer at foreclosure** or in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessment thereafter assessed;

(f) that all annual and special assessments (together with interest thereon and late charges as provided in Section 4.07 of this Declaration and cost of collection including

reasonable attorneys' fees) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

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

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

4.04 Annual Assessment or Maintenance Charge.

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

(b) The annual maintenance charge and assessment will commence as to each Lot on the first day of the month following the earliest to occur of the following events: (i) upon the occupancy of the Lot as a residence; or (ii) upon the conveyance of the Lot by Declarant to an Owner or tenant for residential occupancy; or (iii) upon the conveyance of the Lot by a builder who purchased the land from Declarant for the purpose of erecting a dwelling thereon to an Owner or tenant for residential occupancy.

(c) Beginning on the date this Declaration is executed through December 31, 1992, the annual maintenance charge and assessment will not exceed \$ 360.00 per annum (said rate of charge being the "maximum annual assessment" for 1991 and 1992). Beginning January 1, 1993, and from year to year thereafter, the maximum annual assessment may be increased by the Board of Directors; however, the maximum annual assessment may be increased each year not more than the greater of (i) ten percent (10%) above the maximum annual assessment for the previous year or (ii) an amount equal to the percentage increase in the CPI-U between the **CPI-U** for the **first full month of the preceding calendar year** and the last month of the preceding calendar year, without a vote of the membership, which shall require approval of two-thirds (2/3) of each class of members present, in person or by proxy, at a meeting duly called for such purpose, with at least sixty percent (60%) of the Owners or other proxies present. If sixty percent (60%) of the Owners do not attend, a second meeting may be called

and the quorum will be reduced to thirty percent (30%) of the Owners or their proxies. If not otherwise increased as provided herein, the maximum annual assessment for each successive year shall automatically increase by an amount equal to the percentage increase in the CPI-U. The "CPI-U", as used in this Declaration, is the Consumer Price Index-Seasonally Adjusted U.S. City Average for All Urban Consumers (1967=100) published in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI-U is discontinued, comparable statistics on the purchasing power of the consumer dollar shall be used. The annual assessment for each year shall be determined by the Board of Directors as the needs of the Development may in the judgment of the Directors require; however, the annual assessment for each year shall not exceed the maximum annual assessment set for that year. In addition, if for any reason the Board of Directors fail to determine the annual assessment for any successive year, the annual assessment for the previous year shall continue for such successive year until a new annual assessment is determined by the Board of Directors.

(d) Assessments may be used by the Association to provide for, by way of clarification, and not limitation, any and all of the following: normal, recurring maintenance of the Common Property (including, but not limited to, mowing, edging, watering, clipping, **sweeping**, pruning, raking and otherwise caring for the existing landscaping and maintaining and repairing recreational facilities) and the acquisition and installation of capital improvements to such areas; provided that the Association shall have no obligation (except as expressly provided in this Declaration) to make capital improvements to the Common Property; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the Property to which said assessments apply; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employment of security guards or watchmen, if determined necessary; caring for vacant lots; and doing any other thing or things necessary or desirable in the opinion of the Board or membership of the Association to keep the property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that when and if presented to the Members, the judgment of the majority of the Members of the Association in the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association may also establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Property.

(e) Unless required as a matter of law, neither the Declarant, Declarant's predecessors, Builder, Builder's predecessors, nor any builder who has purchased land from Declarant or a predecessor of Declarant, or Builder or a predecessor of Builder, for the purpose of erecting a dwelling thereon, shall at any time be subject to any assessments; however, the Declarant hereby agrees that until such time as Declarant no longer has the right to appoint members to the Board of the Association, Declarant will pay to the Association any deficit amounts not covered by the income of the Association which are reasonably necessary to meet the actual operating expenses of the Association. In determining whether such a deficit exists, "actual operating expenses" shall not include paper expenses, such as depreciation, nor allocations for capital reserves. Any such deficit amount required to be paid by Declarant shall be treated as an assessment and subject to the provisions of Section 4.07; provided, however, any lien for such an assessment shall apply only to those Lots owned by Declarant which are subject to this Declaration, and the amount thereof shall be divided equally among all such Lots, and provided further, that in no event shall Declarant be required to pay any amounts, specifically including

any deficit amount, which would exceed an amount equal to the number of Lots owned by Declarant and subject to the Declaration at the time Declarant becomes responsible for payment, or the time the deficit is incurred, multiplied by an amount equivalent to **one-fourth (1/4)** of the annual assessment which should have been paid or has become due and payable by any other Owner of a Lot from the time Declarant became responsible for such payments (including assessments), or the time the deficit was incurred (for purposes of this proviso, "the time the deficit is incurred" means the time in which the expense creating such deficit becomes a binding obligation upon the Association). If the Declarant's right to appoint members to the Board of the Association expires prior to that date upon which three-fourths **(3/4)** of the Lots which may be developed on the Property have been conveyed to individual Owners for residential occupancy, then beginning on the first day of the month next following the expiration of Declarant's rights, Declarant, **Declarant's** predecessors, and/or any builder owning a Lot which is part of the Property shall be subject to an annual maintenance charge and assessment in an amount equal to one-fourth **(1/4)** of the full annual assessment being paid by all other Owners. Beginning on the first day of the month next following that date upon which three-fourths **(3/4)** of the Lots which may be developed on the Property have been conveyed to individual Owners for residential occupancy, Declarant, Declarant's predecessors, and/or any builder owning a Lot which is part of the Property shall be subject to an annual maintenance charge and assessment in an amount equal to one-tenth **(1/10)** of the full annual assessment being paid by all other Owners. Notwithstanding the preceding, the full annual maintenance charge and assessment will commence as to each Lot owned by Declarant, a predecessor of Declarant, or a builder upon its occupancy as a residence in accordance with Section **4.04(b)**. In addition and notwithstanding anything to the contrary herein, the Declarant and Builder may contribute assessments due from them in services or materials or a combination of services and materials, rather than in money, (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any kind of contribution shall be the fair market value of the contribution. If the Declarant or Builder and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant or Builder cannot agree as to the value of any contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant or Builder are still unable to agree on the value of the contribution, the value shall be deemed to be **the average of the bids received from the independent contractors.** This subsection **4.04(e)** may only be amended with the prior written consent of the Declarant and Builder and/or any predecessor to Declarant or to Builder if any such predecessor still owns at least one (1) Lot for sale.

4.05 Special Assessments for Working Capital Fund. Nonrecurring Maintenance, and Capital Improvements. In addition to the annual assessments authorized by this Article IV, the Association may levy:

(a) upon the first sale of each and every Lot to an Owner who will individually or through tenants or assigns occupy a Lot, such sale to be made by Declarant, Builder or by a builder **who has purchased the Lot from Declarant or Builder** for the purpose of erecting a dwelling thereon, a special assessment payable by said Owner, equal to two (2) months' estimated regular assessments, which shall be collected at the closing of such sale for the benefit of the Association. The aggregate fund established by such special assessment shall be maintained in a segregated account, and

shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board: and

(b) in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part any Association expenses not covered by the annual budget, including, but not limited to, the cost of nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by a two-thirds (2/3) vote of each class of Members of the Association who are present in person or by proxy at a meeting duly called for such purpose.

4.06 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action requiring vote under Sections 4.04 or 4.05 shall be sent to all members, or delivered to their residence, not less than twenty-one (21) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of **Members** or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.07 Effect of Nonpayment of Assessments. If any assessment or installment is not paid within fifteen (15) days after the Due Date there shall be imposed a late or delinquency charge in the amount of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due. Any assessment or installment, and any late charge connected therewith, which is not paid within thirty (30) days after the Due Date of the assessment shall bear interest (from the Due Date with respect to the assessment or installment, and the date such charge was imposed with respect to the late charge), at the rate of ten percent (10%) per annum or at such rate as the Board may from time to time establish; provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. If any one or more installment of any assessment is not paid within thirty (30) days after the Due Date the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment or installment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with any delinquency charges, interest, costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorney's fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration. In addition to the above, if any Owner has not paid any assessment or installment, or any late charges or expenses related thereto, within sixty (60) days after the Due Date of the assessment or installment, the Association shall have the right to notify any or all mortgagees having a security interest in such **Owner's Lot or Lots that such Owner IS in default in the performance of his obligations under these Restrictions, and of those actions taken or proposed to be taken by the Association as a result of the default.**

4.08 Certificate 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 Lot 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 Lot in question.

4.09 Contributions by Declarant. In accordance with subsection **4.04(e)** above, it is the Declarant's intention to support the Association by funding deficits during such time as the Declarant has the right to appoint members to the Board of the Association. It is not, however, the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by an Owner or Owners. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, the following covenants shall apply:

(a) Declarant shall be reimbursed for all amounts paid by Declarant in the funding of deficits caused by the nonpayment of assessments by an Owner or Owners;

(b) Declarant shall be promptly reimbursed by the Association for all refundable deposits made by Declarant on behalf of the Association upon the Association's receipt of any and all such deposits;

(c) For the calendar year in which the Declarant's right to appoint members to the Board of the Association expires or is terminated, Declarant shall be reimbursed for all advance payments made by Declarant on behalf of the Association for which the actual expense is covered in the annual budget. In other words, at the end of the calendar year, the Association shall owe the Declarant an amount to be determined as follows:

(i) Begin by determining the difference between expenses actually incurred for the calendar year and the amount of regular annual assessments actually collected for the calendar year (not including portions allocated to capital reserves);

(ii) If the difference determined in (i) above equals zero, or if there is an excess in regular annual assessments actually collected, then Declarant shall be reimbursed for all deficit payments made by Declarant for the calendar year;

(iii) If the difference determined in (i) above is greater than zero, said difference shall be multiplied by a fraction, the numerator of which equals the number of days Declarant had the right to appoint members to the Board of the Association for the calendar year, and the denominator of which equals 365. The resulting product shall be reimbursed to Declarant.

(d) Declarant shall be entitled to reimbursement from the Association in accordance with the covenants contained in this Section **4.09** at the time Declarant's right to appoint members to the Board of the Association expires or terminates. With regard to uncollected assessments, Declarant shall not be entitled to reimbursement until the assessment is actually collected. With regard to refunds of deposits, Declarant shall not be entitled to reimbursement until any such refund is received by the Association. The Declarant, however, shall have the right to pursue the collection of any unpaid assessments on behalf of the Association,

as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits 'paid for' by Declarant. With regard to amounts owed to Declarant as provided for in subsection 4.09(c) above, said amount owed to Declarant shall be fully due and payable by January 31st of the year next following the end of the calendar year in which Declarant's right to appoint **members** to the Board of the **Association** expires or terminates. In addition, at the time Declarant's right to appoint members to the Board of the Association expires or terminates, Declarant shall have the right to withdraw from the Association reserve account provided for in subsection 4.05(a) an amount equal to one-half of the amount on deposit at that time to cover Declarant's good faith estimate of amounts which shall be owed to Declarant in accordance with subsection 4.09(c) above. If for any reason the amount withdrawn exceeds the actual amount owed to Declarant as determined at the end of the calendar year then Declarant shall promptly refund such excess to the Association.

(e) In no event shall the Association's obligation to reimburse the Declarant as set forth in this Section 4.09 relieve the Declarant of the obligation to pay assessments in accordance with subsection 4.04(e) above; however, the Declarant may set off amounts due as assessments against amounts owed Declarant hereunder.

(f) This Section 4.09 may only be amended with the prior written consent of the Declarant, and each Owner, by acceptance of a deed to a Lot in the Property, and the Association, shall be deemed to have approved of the reimbursements to Declarant required by this Section 4.09.

ARTICLE V

ARCHITECTURAL CONTROL

5.01 Architectural Control Committee - Creation and Composition. An Architectural Control Committee (the "ACC") shall be established consisting of at least three (3) individuals to be appointed by the Board of Directors.

5.02 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any Structure on any Lot. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or 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, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. 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 installation, construction or alteration of any Structure on any Lot.

5.03 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 may, with the approval **of the Board; he reimbursed by the Association for traveling** expenses and other out-of-pocket costs incurred in the performance of their duties as members of the ACC.

5.04 Operations of the ACC.

(a) **Meetings.** The ACC may hold regular meetings

as may be established by the ACC; provided, however, that during such time as Declarant has the right to appoint and **replace** members of the Board of Directors the frequency of regular meetings will be established by the Board. Special meetings may be called by the Chairman 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 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. 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 may adopt and promulgate Design Standards, and where appropriate shall make findings, determinations, rulings, and orders with respect to the conformity and harmony with the external design and the general quality of the Development and any Design Standards adopted by the ACC, or 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 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 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.

5.05 Design Standards.

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

(i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;

(ii) governing the procedure for such submission of plans and specifications;

(iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and

(iv) assuring the conformity and harmony of external design and the general quality of the Development.

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

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

(a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;

(b) a foundation plan;

(c) a floor plan;

(d) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures shall appear after all back-filling and landscaping are completed;

(e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; ana

(f) plans for landscaping and grading.

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

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

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

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

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

(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 of the Development, or (ii) as to location, to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

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

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

5.11 **Violations.** If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature

of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action with thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

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

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

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

5.15 **Declarant and Builder.** The provisions contained in this Article, as well as all other architectural control provisions, including but not limited to building setbacks, contained in this Declaration, the Articles of Incorporation or the Bylaws, shall not apply to Declarant or to Builder, nor to any predecessors of Declarant or Builder. In addition, said provisions shall not apply to any builder who acquires a Lot from Declarant or Builder, or a predecessor of the Declarant or Builder, or through other builders who had acquired the Lot from said parties for the purpose of constructing a dwelling thereon; provided, however, any such builder must submit to and have its plans and specifications approved by Declarant or Builder, if title to the Lot passed through Declarant or Builder, and provided further, if title to the Lot **passed through** a predecessor of Declarant, or of Builder, and said predecessor still owns at least one (1) Lot for sale in the Development, then such plans and specifications must only be approved by ,said predecessor. The exemption from **architectural control provided by this Section 5.15 for the Builder** shall remain effective in all events; however, the authority of Builder to review and approve plans and specifications for other builders which are successors-in-title to Builder, shall not remain effective if that certain contract between Declarant and Builder for the sale and purchase of Lots within the Development is breached by Builder and further, such approval by Builder shall

only be effective if such plans and specifications are substantially similar to existing Structures within the Development in terms of quality of construction, principal materials of construction, architectural style and square footage. Notwithstanding the preceding sentence, any plans and specifications approved by Builder prior to such a breach of contract shall remain approved if such plans and specifications are substantially similar to existing Structures within the Development as required by the preceding sentence. If for any reason Builder shall fail or refuse to review plans and specifications for approval or disapproval, Declarant shall have the authority to do so. This Section 5.15 may only be amended with the prior written consent of the Declarant and Builder, and/or any predecessor to Declarant or to Builder if such predecessor still owns at least one (1) Lot for sale.

ARTICLE VI

GENERAL COVENANTS AND RESTRICTIONS

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

6.02 Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such conditions. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

6.03 Restriction of Use. Lots may be used for single-family residential purposes only and for no other purpose provided that Declarant and Builder may operate a Sales Office and/or Model Home on a Lot or Lots. .

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

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

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

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

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

6.09 Signs.

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

(i) such signs as may be required by legal proceedings;

(ii) not more than one "For Sale" or "For Rent" sign, such sign having a maximum face area of four square feet; provided, however, that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used;

(iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC.

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

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

6.10 **Setbacks:**

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

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

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

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

6.13 **Antennae.** No exterior television or radio antennae of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC. No antennae shall be installed or used for the purpose of transmitting electronic signals.

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

6.15 **Parking and Related Restrictions.**

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

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

(c) Vehicles and equipment described in Section **6.15(b)** above, but which are less than twenty-four (24) feet in length, shall be permitted on a temporary basis only, unless stored within the garage with garage door closed.

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

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

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

6.16 **Recreational Equipment.** Recreational and playground equipment shall be placed or installed only upon the rear of a Lot

unless otherwise approved by the ACC.

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

6.18 **Waterfront Land**. On lots adjacent to a lake or creek or other water bodies or courses:

(a) no refuse **of** any kind shall be placed on or disposed of into the adjacent waters which are to be kept clean and free of pollution;

(b) no water shall be removed from a lake except in emergencies due to flooding, it being the intention that the lake be maintained at its natural level, subject to the control of governmental authorities;

(c) no power boats shall be used, nor shall any boat of a length greater than fifteen (15) feet, except canoes, be permitted therein, nor shall any boat be moored so as to obstruct navigation; and

(d) subject to that easement for maintenance provided for in Section **7.01(e)**, except as may be included as part of any Common Property adjacent to a lake, no alteration may be made of a lake bed or edge, nor shall any board canals be dug or excavated, nor shall any bulkheading, barges, docks, pilings, or other marine structures be erected adjacent thereto or thereupon.

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

6.20 **Solid Waste**.

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

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

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

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

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

6.22 Landscape and Monument Easements. On Lots subject to a Landscape or Monument Easement as set forth on any recorded plat of survey of the Development, such Lots are subject to those easement rights set forth in Section 2.05.

ARTICLE VII

EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01 *Easements-*

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

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

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

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

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

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

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

(c) The Declarant hereby expressly reserves to the Declarant, its successors and assigns, across the initial phase of the Property, and across each portion of any Additional Property subsequently submitted to this Declaration by Annexation as provided in Article X hereof, perpetual easements appurtenant to all or any portion of the Property and to all or any portion of the Additional Property not subject to this Declaration for the following uses and purposes:

(i) an easement for ingress and egress by vehicular and pedestrian traffic over (1) such drives, roadways, walkways and paths as are shown on the plat or plats recorded in connection with the initial phase of the Property and such portions of the Additional Property as are submitted to this Declaration, and (2) such drives, roadways, walkways and paths as may be constructed in the future;

(ii) an easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas,

water, sewage, storm drainage, electricity, street lights, telephone, and other utilities and services, including the right to connect with and to use in common with the Owners in the initial phase of the Property and portions of the Additional Property subsequently submitted to this Declaration, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners; and

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

(d) In addition to the above, the Declarant hereby grants a general easement in favor of utility, cable television and other such service companies across the initial phase of the Property, and across each portion of any Additional Property subsequently submitted to this Declaration by Annexation as provided in Article X hereof, to maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities **provided** for the benefit of the Owners.

(e) The Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and its successors and assigns for the use and enjoyment of the surface waters of those portions of any lake submitted as part of the Property, as well as a perpetual easement for the maintenance of lakes, **lakebed(s)** or **shoreline(s)**, if any, which are within the Development or which are made available for the use and enjoyment of the Owners within the Development. The easement to maintain any lake created hereby shall not relieve any Owner of a portion of a **lakebed** from maintaining said area as portion of his Lot. The Declarant, its successors and assigns, shall be under no duty to maintain any portion of any lakes; however, such an easement is reserved in case maintenance is necessary to facilitate the use and enjoyment of the surface waters. Any maintenance performed shall be undertaken with a minimum of interference to the quiet enjoyment of property adjacent to any lake. The easement area for maintenance shall extend to ten (10) feet above the shoreline of the lake which shall be determined at any time by the water level of the lake, and shall include those portions of the lake which extend over any Lots adjoining the Lake. The easement for use and enjoyment created hereby will not include any portion of a Lot above the water level, it being the intention of this easement to be limited to the waters of any lake. The right to use and enjoyment of said water shall be subject to the restrictive covenants set forth in Section 6.18 of this Declaration as well as those regulations which **may** be promulgated by the Board of the Association from time to time.

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

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

7.03 **Entry.** The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have **committed** a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes. The

Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken by the same in an Easement Area pursuant to the provisions of Section 7.01.

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

ARTICLE VIII

ENFORCEMENT

8.01 **Right of Enforcement.** This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner or maintains the right to annex Additional Property in accordance with Article X hereof, (ii) the Builder so long as it is an Owner (iii) the Association and (iv) each Owner, his legal representatives, heirs, successors and assigns.

8.02 **Right of Abatement.**

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

(b) The Right of Abatement, as used in this Section and Sections 5.11 and 6.02 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions of this Declaration or the rules and regulations adopted by the **Association**, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or 10% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.05 hereof.

Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot 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 Section 4.01 hereof, **(iii)** all first mortgages and deeds to secure debt, and (iv) all **deeds** to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon), or (2) to finance the construction, repair or alteration of Structures or (3) to pay for medical or educational expenses.

8.03 Fines and Penalties and Creation of Lien.

(a) Except for nonpayment of any annual or special assessments, which violation of the Restrictions is controlled by Section 4.07, in addition to all other remedies set forth in this Declaration, the Association, acting through its Board of Directors, may establish fines and penalties for any or all violations of the Restrictions.

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

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

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

(e) Any fines or penalties assessed pursuant to this Section 8.03 for violations of the Restrictions, including any fines or penalties assessed for violation of rules and regulations relating to the use, operation and maintenance of the Common Property, together with the cost of collection and reasonable attorneys fees, shall be a binding personal obligation of the Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.05 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after their assessment whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or **other instrument**, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, **(ii)** the liens created by Section 4.01 hereof, **(iii)** all first mortgages and deeds to secure debt, and **(iv)** all **deeds to secure debt given to secure a loan the proceeds of which are used** (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon), or (2) to finance the construction, repair or alteration of Structures or (3) to pay for medical or educational expenses.

8.04 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 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.

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

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

ARTICLE IX

DURATION AND AMENDMENT

9.01 **Duration and Perpetuities.**

(a) This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) year from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of that county in which the Property is located, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of twenty (20) years, with the signed written consent of at least two-thirds (2/3rds) of the record Owners and in compliance with O.C.G.A. Section 44-5-60 (or with such lesser requirements as may be provided by O.C.G.A. Section 44-5-60 at the time of the renewal); provided, however, that after the end of said initial twenty (20) year period and during any renewal period (but only during the actual period of any such renewal), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the president of the Association and recorded in the office of the Clerk of the Superior Court of that county in which the Property is located, 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 those Class A Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

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

9.02 **Amendment.** So long as Declarant owns at least one

(1) Lot held primarily for sale, or has an unexpired option to add additional property to the Development these Restrictions may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these Restrictions (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to these Restrictions, (iv) if such amendment would enable any governmental agency, such as the Veterans Administration or reputable private mortgage insurance company to insure mortgage loans on the Lots subject to these Restrictions or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration; provided any such amendment shall not adversely affect the title to any Owner's Lot, unless any such Owner so affected thereby shall consent thereto in writing. These Restrictions may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) percent of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the owner of any real property subject to these Restrictions or any portion of the Additional Property; and provided further, however, no amendment affecting the Declarant's right to add Additional Property shall be effective unless also signed by Declarant. No amendment to the provisions of these Restrictions shall materially and adversely alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Notwithstanding the foregoing, nor any other provisions contained in this Declaration, no amendment to the Declaration, the Articles of Incorporation or the Bylaws, which modifies or affects the rights, privileges, options or exemptions of the Declarant or the Builder shall be effective unless consented thereto in writing by the party so affected. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of that county in which the Property is located. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to these Restrictions, by acceptance of a deed or other conveyance therefor, thereby agrees that these Restrictions may be amended as provided in this Section.

ARTICLE X

ANNEXATION

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

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

- (a) The option to submit portions of the Annexation

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

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

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

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

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

(f) Notwithstanding the provisions of this Article X which provides for the unilateral annexation of the Additional Property by Declarant, the Declarant cannot exercise the option to annex any portion of the Additional Property which extends beyond the boundaries of the main 100.31-acre tract described in Exhibit "B" without the written consent of Builder. This provision shall remain in effect unless that certain contract between Declarant and Builder for the sale and purchase of Lots within the Development is breached by Builder.

10.03 Effect of Annexation.

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

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

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

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

ARTICLE XI

LEASES

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

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

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

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

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

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

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

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

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

11.05 **Expenses of Eviction.** In the event the Association proceeds to evict the Lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specifically assessed against the Lot, becoming a lien thereon subject to enforcement in accordance with Sections 8.03 and 8.05 of this Declaration, and shall become the personal obligation of the Owner

thereof, such being deemed hereby as an expense which benefits the Lot and the Owner thereof.

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

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

(a) foreclose or take title to the Lot pursuant to remedies contained in any mortgage;

(b) take a deed or assignment in lieu of foreclosure; or

(c) sell, lease, or otherwise dispose of a Lot acquired by the mortgagee.

ARTICLE XII

MISCELLANEOUS

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

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

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

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

12.05 **Notices.** All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent or any kind made pursuant to this Declaration, whether by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be delivered, as may be appropriate, to the following addresses:

(a) Declarant: Holyoke Corporation
Attn: Paul Hallock
P.O. Box 331
Alpharetta, GA 30239

(b) Owners: Each Owner's address as
registered with the Association
in accordance with the By-Laws

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

12.06 **No Liability.** Declarant nas, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other

person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

ARTICLE XIII

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on Lots in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

13.01 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, guarantor and the Lot 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 Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

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

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

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

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

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

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

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

13.03 Insurance.

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) **fire, vandalism, malicious mischief** and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the Common

Property. Any such policies of insurance shall require that the certificate holders and insured by giving thirty (30) days prior written notice of any cancellation of such policies.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

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

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

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

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

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

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

13.06 **Notice to Association.** Upon request, each Owner

shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Residence.

13.07 Amendment by Board. Should the Veterans' Administration, the Federal Housing Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which may have necessitated the provisions of this Article or make such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

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

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

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this 12th day of November, ~~1990~~, 1991.

Signed, sealed and delivered in the presence of:

DECLARANT:

HOLYOKE CORPORATION

BY: Paul Hallock (SEAL)
Paul Hallock

TITLE: President

(CORPORATE SEAL)

Mrs. L. Echols
Unofficial Witness

[Signature]
Notary Public


MY COMMISSION EXPIRES SEPTEMBER 17, 1992



EXHIBIT "A"

All those tracts or parcels of land lying and being in Land Lots 353, 354 and 355 of the 2nd District, 1st Section of Forsyth County, Georgia, being Lots 1 through 41, inclusive, of Gran Forest, Phase I, as shown according to plat of survey recorded in Plat Book 34, Pages 15, 16, 17 and 18, in the real estate records of Forsyth County, Georgia, which plat is incorporated herein by reference and made a part of this description.

EXHIBIT "B"

ALL THAT TRACT or parcel of land lying and being in Land Lots 353, 354, 355 and 368 of the 2nd District of the 1st Section of Forsyth County, Georgia, and being more particularly described as follows:

BEGINNING at a point common to the intersection of Land Lots 353, 354, 367 and 368, which is also the northeast corner of Land Lot 368; running thence South 01 degree 42 minutes 35 seconds West a distance of 703.60 feet to an iron pin found; running thence North 87 degrees 16 minutes 25 seconds West a distance of 376.0 feet to an iron pin found; running thence South 06 degrees 04 minutes 44 seconds West a distance of 596.89 feet to an iron pin found on the South Land Lot Line of Land Lot 368; running thence North 87 degrees 14 minutes 27 seconds West a distance of 600.93 feet to an iron pin found; running thence North 01 degree 32 minutes 56 seconds East a distance of 2605.69 feet to an iron pin found, said pin being at the North Land Lot Line of Land Lot 353; running thence South 89 degrees 36 minutes 09 seconds East a distance of 1026.44 feet along the North Land Lot Line of Land Lot 353 to an iron pin found at the northeast corner of Land Lot 353; running thence South 87 degrees 03 minutes 58 seconds East a distance of 778.01 feet along the North Land Lot line of Land Lot 354 to an iron pin found on the South right-of-way of Haw Creek Road (a dirt and gravel road); running thence South 69 degrees 45 minutes 10 seconds East a distance of 139.60 feet along the South right-of-way of Haw Creek Road to an iron pin found; running thence South 71 degrees 17 minutes East a distance of 150.59 feet along the South right-of-way of Haw Creek Road to an iron pin found; running thence South 76 degrees 26 minutes 05 seconds East a distance of 256.10 feet along the South right-of-way of Haw Creek Road to an iron pin found, said point being the intersection of the South right-of-way of Haw Creek Road and the West right-of-way of Haw Creek Circle; running thence South 21 degrees 41 minutes 28 seconds East a distance of 446.94 feet along the West right-of-way of Haw Creek Circle to an iron pin found; running thence South 09 degrees 10 minutes 56 seconds East a distance of 261.32 feet along the West right-of-way of Haw Creek Circle to an iron pin found; running thence South 10 degrees 12 minutes 27 seconds East a distance of 296.71 feet along the West right-of-way of Haw Creek Circle to an iron pin found; running thence South 18 degrees 07 minutes 57 seconds East a distance of 206.06 feet along the West right-of-way of Haw Creek Circle to an iron pin found; running thence South 81 degrees 52 minutes 12 seconds West a distance of 282.84 feet along a dirt road to an iron pin found; running thence North 87 degrees 55 minutes 30 seconds West a distance of 1380.91 feet to an iron pin found, said point being the POINT OF BEGINNING, the property shown as 100.31 acres on a plat of survey made by Richard T. Conner dated October 18, 1979, and entitled "Property of Sally Peavy".

ALSO INCLUDED as part of the Additional Property is all that land which is adjacent to or contiguous with the above-described tract or which is adjacent to or contiguous with the land comprising the Property, as the same may be expanded from time to time by annexation.