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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
BRYARTON SUBDIVISION**

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**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
BRYARTON SUBDIVISION**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR BRYARTON SUBDIVISION ("Protective Covenants") is made this 13 day of January, 1998 by CENTEX HOMES, a Nevada general partnership, its successors and assigns ("Declarant"), and BRYARTON HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation ("Association").

WHEREAS, Declarant is the owner in fee simple of the real property more particularly described on Exhibit A ("Property") attached hereto and made a part hereof, which Property is subject to a final subdivision plat recorded in Book of Maps 1998, Pages 11 through 14, inclusive, of the public records of Wake County, North Carolina (the "County"); and

WHEREAS, Declarant desires to develop a community to be known as "Bryarton" (referred to as "Bryarton Subdivision" by the final subdivision plat of record) in multiple separate stages as hereinafter set forth; and

WHEREAS, the Property is the first stage of development of Bryarton and the subsequent stages may consist of the real property more particularly described on Exhibit B ("Additional Property"); and

WHEREAS, Bryarton is part of a cluster development and is subject to additional covenants, restrictions, easements and assessments; and

WHEREAS, upon the acquisition of the Additional Property, Declarant, in its sole discretion, has the right, but not the obligation, to submit the Additional Property to the terms and provisions of these Protective Covenants as hereinafter set forth; and

WHEREAS, in order to develop and maintain Bryarton as a planned residential community and to preserve the values and amenities of such community, it is necessary to declare, commit and subject the Property and the improvements now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements; and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance and enforcement; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities established to create a North Carolina non-profit corporation known as Bryarton Homeowners Association, Inc., which corporation has joined in these Protective Covenants and to which there have been and will be delegated and assigned: (i) certain powers and duties of ownership, operation, administration, maintenance and repair of portions of the Property, including, but not limited to, the "Association Property" (as hereinafter defined); (ii) the enforcement of the covenants and restrictions contained herein; and (iii) the collection and disbursement of the "Operating Expenses" (as hereinafter defined); and

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

ARTICLE I
DEFINITIONS

A. "Additional Property" means the real property more particularly described on Exhibit B attached hereto and made a part hereof, and any contiguous property subjected to the terms of these Protective Covenants in accordance with the provisions of Sections B.2 and B.3 of Article II.

B. "Amendment(s)" means any and all amendments to these Protective Covenants, all of which shall be consecutively numbered beginning with the "First Amendment to the Declaration of Protective Covenants and Restrictions for Bryarton and each of which shall be properly adopted pursuant to the terms of the Association Documents and recorded in the Public Records; provided, however, the failure to so consecutively number such amendments shall not impair their validity hereunder and such amendments to the extent not otherwise numbered will be deemed to have been numbered in chronological order of their appearance in the Public Records.

C. "Articles" mean the Articles of Incorporation of the Association.

D. "Assessments" mean the assessments for which all Owners are obligated to the Association and include "Individual Lot Assessments," "Individual Expense Assessments" and "Special Assessments" (as such terms are defined in Article V hereof) and any and all other assessments which are levied by the Association in accordance with the Association Documents.

E. "Association" means Bryarton Homeowners Association, Inc., a North Carolina corporation not for profit.

F. "Association Documents" mean in the aggregate these Protective Covenants, the Articles and Bylaws and all of the instruments and documents referred to or incorporated therein, including, but not limited to, amendments to any of the foregoing, as applicable.

G. "Association Property" means the lands, systems, facilities, rights and easements which may be deeded, leased, granted, reserved, assigned or transferred to the Association, as described in Section D of Article II hereof, or as designated Association Property by the Declarant prior to the Turnover Date, and thereafter by the Association, together with all improvements thereon and equipment, facilities and rights associated therewith. The Association Property includes, but is not limited to, the Recreation Center open space, and those areas described in Section D of Article II hereof. Association Property shall also include personal property and interests therein transferred to or acquired by the Association if so designated. Association Property shall also include all water and sewer lines serving more than one lot and located outside public street and City utility easements. Association Property shall not include any portion of the Master Common Area.

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

I. "Bryarton" or "Bryarton Subdivision" means the single-family residential community planned for development in multiple separate stages. The first stage will consist of the Property committed to land use under these Protective Covenants and which is intended to be comprised of eighty-nine (89) residential Lots and the Association Property located within the Property. The subsequent stages planned for development on the Additional Property, which may be added in Declarant's sole discretion, to the terms and provisions of the Association Documents, is planned to consist of the fifty-four (54) Lots and the Association Property located within the Additional Property, as reflected by the Site Plan. The Additional Property or any part of it, may be added to the terms and provisions of the Association Documents if a Final Plat thereof is approved by the City for the development of lots appropriate for single family dwelling units.

J. "Bylaws" mean the Bylaws of the Association.

- K. "City" means the City of Raleigh, Wake County, North Carolina.
- L. "Committee" means the Architectural Control Committee established and empowered as provided in Article X.
- M. "Contributing Lot" means any Lot which (a) has been issued a certificate of occupancy for a Home constructed thereon by the appropriate governmental agency, or (b) is designated a Contributing Lot by the Declarant in the deed of conveyance or any other instrument recorded among the Public Records of the County, upon which an affirmative covenant to pay Assessments, as more particularly set out in Article IV hereof, is imposed.
- N. "Contributing Lot Owner" means the Owner of a Contributing Lot.
- O. "County" means Wake County, North Carolina.
- P. "Declarant" means Centex Homes, a Nevada general partnership, and any successor or assign thereof, which (a) acquires any Lot from Declarant for the purpose of development and to which Centex Homes specifically assigns all or part of the rights of Declarant hereunder by an express written assignment recorded in the Public Records of the County; or (b) owns any portion of the Additional Property to which Centex Homes specifically assigns all or part of the rights of Declarant hereunder by an express written assignment recorded in the Public Records of the County.
- Q. "Director" means a member of the Board.
- R. "Final Plat" means a final subdivision plat approved by the City consistent with the Site Plan for a portion of the Property or the Additional Property (in the event such portion becomes part of the Property) and recorded in the Public Records of the County.
- S. "Home" means a residential dwelling unit in Bryarton intended as an abode for one family constructed upon a Lot.
- T. "Improvement" means any building, fence, wall, patio area, driveway, walkway, antenna, satellite dish, sign, mailbox, pool, tennis court, deck, or other structure or improvement, including landscaping, which is constructed, made, installed, attached, placed or developed within or upon, or removed from, any portion of the Property, or any change, alteration, addition or removal of any such structure or improvement other than normal maintenance and repair which does not materially alter or change the exterior appearance, condition and color of same.
- U. "Institutional Mortgagee" means any lending institution owning a first mortgage covering a Home or Lot, including any of the following institutions:
- (i) Any federal or state savings and loan association or bank, or real estate investment trust, or mortgage banking company or any subsidiary thereof, or a national banking association chartered under the laws of the United States of America; or
 - (ii) Any "secondary mortgage market institution," including the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation and such other secondary mortgage market institution as the Board shall hereafter approve in writing; or
 - (iii) Any pension or profit-sharing funds qualified under the Internal Revenue Code; or

(iv) Any and all investing or lending institutions, or the successors and assigns of such lenders ("Lenders"), which purchase mortgages on any portion of the Property from any other Institutional Mortgagee; or

(v) Such other institutional lenders as the Board shall hereafter approve in writing as an Institutional Mortgagee which have acquired a mortgage upon any portion of the Property; or

(vi) Declarant, if Declarant holds a mortgage on any portion of the Property and the transferee of any mortgage encumbering the Property which was originally held by Declarant; or

(vii) Any life insurance company; or

(viii) The Veterans Administration or the Federal Housing Administration or the Department of Housing and Urban Development.

V. "Interest" means the maximum nonusurious interest rate allowed by law on the subject debt or obligation, and if no such rate is designated by law, then eighteen percent (18%) per annum.

W. "Legal Fees" mean reasonable fees for attorney and paralegal services incurred in connection with: (i) negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and post-judgment proceedings; (ii) collection of past due Assessments including, but not limited to, preparation of notices and liens; and (iii) court costs through and including all trial and appellate levels and post-judgment proceedings.

X. "Lot" means a portion of the Property as shown on a Final Plat, upon which a Home is permitted to be erected.

Y. "Master Association" means The Crossroads Master Owners Association, Inc., a North Carolina corporation not for profit, organized to administer the Master Declaration and having among its member all owners of fee simple title to a lot in the Master Development (as such terms are therein defined), which includes, the Owners of Lots in the Property.

Z. "Master Common Area" means the real property, together with any improvements thereon, owned by the Master Association, whether in fee, by easement or otherwise, for the common use and enjoyment by the members of the Master Association, such property being shown on a Final Plat as a "Master Common Area" for dedication to the Master Association. Portions of the Master Common Area are located within the Property, and other portions of the Master Common Area may be located within the Additional Property and the Townhome Property.

AA. "Master Declaration" means the Declaration of Covenants, Conditions and Restrictions for the Crossroads Cluster Unit Development recorded in Book 7859, Page 852 of the Public Records and all amendments thereto, whereby all owners of the residential parcels within the Master Development are subjected to certain rights, restrictions and obligations, including membership in the Master Association, the right to the use and benefit of the Master Common Area, and the payment of assessments for the maintenance of the Master Common Area.

BB. "Master Development" means the Crossroads Cluster Unit Development, an approved cluster unit development (as such term is defined by the applicable zoning code of the City), to be developed on the Overall Property (of which the Property and the Additional Property are a part) in

accordance with the preliminary cluster unit development plan approved by the City and on file with the City Planning Department, as same may be amended from time to time with the approval of the City.

CC. "Member" means a member of the Association.

DD. "Operating Expenses" mean the expenses for which Owners are liable to the Association as described in these Protective Covenants and any other Association Documents and include, but are not limited to, the costs and expenses incurred by the Association in administering, operating, reconstructing, maintaining, financing, repairing, replacing or improving the Association Property, Special Retention Devices, or any portion thereof and improvements thereon and all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other Association Documents, including, but not limited to, the cost of any reserves and any other expenses designated to be Operating Expenses by the Board.

EE. "Open Space" means those portions of the Property identified as such on a Final Plat or the Site Plan.

FF. "Overall Property" means all of the property to be included in the Master Development, being the Property, the Additional Property and the Townhome Property, and any contiguous property subjected to the terms of the Master Declaration in accordance with the provisions thereof.

GG. "Owner" means the owner of the fee simple title to a Lot and includes Declarant for so long as Declarant is the owner of the fee simple title to a Lot but excluding those having such interest merely as security for the performance of any obligation and excluding purchasers under executory contracts of sale of a Lot.

HH. "Person" means a natural individual or any other entity with the legal right to hold title to real property.

II. "Property" means the real property more particularly described on Exhibit A attached hereto and made a part hereof. The term "Property" shall also mean the "Additional Property" in the event same becomes encumbered by these Protective Covenants as provided herein by the recordation of a Supplement.

JJ. "Protective Covenants" means this document and any amendments and supplements hereto.

KK. "Public Records" means the office of the County Registry of Deeds.

LL. "Recreation Center" means that portion of Bryarton (defined below) designated as the Recreation Center on the Site Plan and which shall be used for recreational and social purposes. The Recreation Center forms a portion of the Association Property shown on the Site Plan attached as Exhibit C hereto.

MM. "Site Plan" means the subdivision plan of Bryarton for the real property comprising the Property and the Additional Property, approved by the City, a copy of which is attached hereto as Exhibit C, as such Site Plan may be supplemented or amended from time to time as approved by the City.

NN. "Storm Water Management System" means the drainage areas, drainage easements, retention areas, storm water piping systems, drains, catch basins and other related apparatus and facilities intended to provide storm water management and control for the Property, including the Special Retention Devices.

OO. "Special Retention Devices" means those storm water collection and filtration devices (and related equipment and facilities) which are installed by Declarant as part of a chamber storm water collection and filtration system to function as part of the Storm Water Management System for the Property.

PP. "Total Planned Lots" means the total number of Lots planned for Bryarton by the Site Plan as such may exist from time to time and as reflected by the Site Plan as such is updated from time to time with the approval of the City.

QQ. "Townhome Property" means that portion of the Overall Property delineated on the approved preliminary cluster unit development plan for the Master Development on file with the City Planning Department for the development of single family townhome dwelling units, which is not a part of the Property or the Additional Property, and not intended to be subjected to these Protective Covenants or included within Declarant's plan of development for Bryarton.

RR. "Turnover Date" means the earlier of (i) three (3) months after seventy-five percent (75%) of the Total Planned Lots have been improved with a Home and conveyed to an Owner other than a successor Declarant for use as a primary residence, (ii) the date on which Declarant records in the Public Records a document relinquishing its control of the Association to the members at large, or (iii) the date that is seven (7) years following the date these Protective Covenants are first recorded in the Public Records.

ARTICLE II
PLAN OF DEVELOPMENT:
ASSOCIATION PROPERTY: RULES AND REGULATIONS

A. Plan of Development

1. Bryarton

Bryarton is planned to be developed in multiple stages. The real property which, initially, is and shall be held, transferred, sold, conveyed and occupied subject to these Protective Covenants is more particularly described on Exhibit A hereto will contain eighty-nine (89) Lots and the Association Property located on the Property. The subsequent stages are intended to consist of fifty-four (54) Lots and the Association Property located on the Additional Property.

Declarant's general plan of development of Bryarton contemplates the construction of Homes thereon and, further, that various improvements will be constructed on the Lots and other portions of the Property which will enhance Bryarton and benefit the Owners of all Lots, however there is no obligation imposed by these Protective Covenants on the Declarant to build a Home on any particular Lot. Declarant's general plan of development further contemplates that such Homes shall be whatever types of structures Declarant may choose (subject to the applicable zoning and density requirements of the City). Declarant's general plan of development of Bryarton is reflected by the Site Plan and may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to the community. Declarant reserves the right to increase or decrease the number of Lots reflected and/or permitted by the Site Plan as approved by the City in accordance with applicable law, and such change shall not require an amendment to these Protective Covenants.

2. Crossroads Cluster Unit Development

The Property is the first portion to be developed of an approved cluster unit development (as that term is defined by the applicable zoning ordinance and code of the City) to be

developed on the Overall Property, which development is herein referred to as the "Master Development". The remaining portions of the Master Development consist of the Additional Property and the Townhome Property. The Townhome Property is not a part of Bryarton and shall developed separately from the Property and the Additional Property, and accordingly is not subject (or intended to be subject to) these Protective Covenants and the rights, privileges and obligations of membership in the Association. The Property is the first portion of the Overall Property to be subjected to the Master Declaration in accordance with the terms thereof. The Master Declaration sets forth certain requirements, restrictions, rights and obligations applicable to all owners of the residential portions of the Master Development, effective upon the recordation of a Final Plat for any portion of the Overall Property. The Master Common Area consists of portions of the Overall Property which shall be owned and maintained by the Master Association in accordance with the Master Declaration. The Master Common Area within the Property and the Additional Property is depicted on the Site Plan attached to these Protective Covenants and on the Final Plat(s). Pursuant to the Master Declaration, Lot Owners within the Property (and upon the recordation of a Supplement, the Additional Property) shall have the right to use those portions of the Master Common Area (if any) located within the Townhome Property, and the owners of the residential portions of the Townhome Property shall have the right to use those portions of the Master Common Area located within the Property (and if applicable, the Additional Property). Each Member of the Association shall also be a member of the Master Association and subject to the terms and provisions of the Master Declaration, including the obligation to pay assessments established by the Master Association in accordance with the applicable terms of the Master Declaration and Section I of Article V of these Protective Covenants.

B. Supplement

1. Additional Property

Prior to the Turnover Date, Declarant may, from time to time, bring such portion of the Additional Property under the provisions of these Protective Covenants and thereby add same to the Bryarton community by recording a "Supplement", which Supplement shall not require the consent of the then existing Owners, the Association or any other person (except for the consent of the City, as provided in Section O of Article XII of these Protective Covenants; and if applicable, the consent of HUD/VA as provided in Section I.5 of Article XII). The Supplement may contain such complementary additions and modifications to the terms of these Protective Covenants as may be necessary or desirable to reflect the different character, if any, of the portion of the Additional Property being subjected to these Protective Covenants and as are not inconsistent with the general scheme of these Protective Covenants. To the extent that the Additional Property is made part of Bryarton by a Supplement, reference herein to the Property shall be deemed to include such Additional Property. Notwithstanding the foregoing, Declarant is not obligated to add to the Property, to develop any Additional Property under a common scheme, or be prohibited from changing development plans with respect to future portions of Bryarton comprised of any portion of the Additional Property. All Owners by acceptance of a deed to their Lots, consent to any change, rezoning or addition made by Declarant and shall evidence such consent in writing if requested to do so by Declarant at any time without obviating the effect of this provision.

2. Other Contiguous Property

Prior to the Turnover Date, Declarant shall have the right, without the approval or joinder of the Association, the Owners or any other Person (except for the consent of the City, as provided below and in Section O of Article XII of these Protective Covenants; and if applicable, the consent of HUD/VA as provided in Section I.5 of Article XII), to bring under the provisions of these Protective Covenants and thereby add to the Bryarton community, any real property owned or acquired by Declarant which is contiguous to the Property or which is contiguous with a public or private street adjacent to the Property, provided that the annexation of such real property is for the purposes of reflecting changes or modifications to the Site Plan which have been approved by the City. In the event any additional

contiguous property is so approved by the City for annexation to Bryarton, the definition of the Additional Property shall be expanded to include such property as if such property had originally been a part of the Additional Property. To the extent that such portion of the Additional Property is thereafter made part of Bryarton by a Supplement, reference herein to the Property shall be deemed to include such portion of the Additional Property, including such portion being deemed part of the Site Plan for Bryarton and the number of Total Planned Lots shall be increased by the number of Lots (if any) depicted on the final subdivision plat of such portion of the Additional Property.

After the Turnover Date, upon the vote or written consent of the Owners of not less than ninety (90%) of the Lots, any real property which is contiguous to the Property or which is contiguous with a public or private street adjacent to the Property may be brought under the provisions of these Protective Covenants and thereby added to the Bryarton community, provided that the annexation of such real property is for the purposes of reflecting changes or modifications to the Site Plan which have been approved by the City, and has been approved for annexation into the Master Development in accordance with the terms and provisions of the Master Declaration. To the extent that any contiguous property approved for annexation by the Owners after the Turnover Date is thereafter made part of Bryarton by a Supplement, reference herein to the Property shall be deemed to include such property.

3. Association Property within Additional Property

If any portion of the Additional Property (or any property which is contiguous to the Property and otherwise meets the criteria set forth in Section B.2 of this Article II above) is made part of Bryarton and subjected to these Protective Covenants by the recording of a Supplement, any Association Property located within such newly annexed portion of the Property shall be conveyed to the Association prior to the date the first Lot in such property is conveyed to an Owner as provided in Section D.14 of this Article II.

C. Withdrawal

Prior to the Turnover Date, Declarant reserves the right to amend these Protective Covenants at any time, without prior notice and without the consent of any Person (except for the consent of the City, as provided in Section O of Article XII of these Protective Covenants, and if applicable, the consent of HUD/VA as provided in Section I.5 of Article XII) for the purpose of removing certain portions of the Property and/or the Additional Property then owned by Declarant from the provisions of these Protective Covenants to the extent that such real property was included originally in error or as a result of changes in the plans for Bryarton desired by Declarant.

D. Association Property

The Association Property is for the use, enjoyment, and benefit of the Association and the Owners, the residents of the Property, and their respective guests and invitees, tenants, the Institutional Mortgagees, and subject to the ordinance of the City, and any other person authorized to use the Association Property or any portion thereof by Declarant or the Association for all proper and reasonable purposes and uses for which same are reasonably intended, subject to the terms of these Protective Covenants, and the terms of any easement, restriction, reservation or limitation of record affecting the Association Property or contained in the deed or instrument conveying the Association Property to the Association. The Association Property shall consist of the property hereinafter described.

1. Storm Water Management System

Certain portions of the Storm Water Management System shall consist of Association Property (including the Special Retention Devices), but those portions thereof consisting of the

downspouts and collection chambers which shall be located completely within the Lots shall be owned and maintained by the Owners of the Lots as provided in Section B.3 of Article IX. The Association shall use and maintain those portions of the Storm Water Management System owned by the Association substantially in the same fashion as constructed by Declarant. The Storm Water Management System shall be integrated among the Property and the Additional Property. Any easements shown on a Final Plat as a drainage easement, drainage area maintenance easement, storm water retention area easement, or similar easement with respect to the Property or any portion of the Additional Property that may be submitted to these Protective Covenants as provided herein, shall be maintained, administered, and owned by the Association.

2. Special Retention Devices

The Association shall own the Special Retention Devices and shall maintain such in substantially in the same fashion as constructed by Declarant. A drainage area maintenance easement upon each Lot, the location of which shall be the ten foot (10') strip adjacent to the abutting Roadway (defined in Section D.3 of this Article II), is reserved for the installation and maintenance of the Special Retention Devices. The Association shall also maintain Special Retention Devices located in public streets and subject to an encroachment agreement with the City.

3. Roadways and Rights of Way

Any portion of the Property shown on a Final Plat as a roadway ("Roadway") or rights of way ("Rights of Way") and all improvements thereon shall be dedicated to the City or other applicable governmental agency as a public right-of-way for ingress and egress to and from all portions of the Property. The Association shall have no responsibility for the maintenance thereof, but shall have the right, but not the obligation, to provide supplemental maintenance together with the City or other governmental agency, as the Board may determine in its sole discretion.

4. Landscape Areas

Any portion of the Property shown on a Final Plat as a landscape area or otherwise established for landscape use ("Landscape Areas") shall be used and maintained by the Association substantially in the same fashion as constructed by Declarant. To the extent that any portion of a Landscape Area is located upon any Lot, an easement upon the applicable portion of such Lot is hereby reserved in favor of Declarant and the Association as provided in Section B.8. of Article VIII.

5. Open Space Areas

Any portion of the Property shown on a Final Plat as an open space area or otherwise established for use as an open area ("Open Space Areas") and owned by the Association shall be used and maintained by the Association in accordance with the requirements and regulations of the City and the applicable governmental authorities. Fee simple title to the Open Space Areas in the Property which are used to meet the requirements of the applicable zoning code of the City shall be owned by the Master Association and designated on the Final Plats as a "Master Common Area". Open Space Areas owned by the Association (if any) shall be separate and distinct from the Open Space Areas owned by the Master Association as Master Common Area.

6. Entryway and Signage Areas

Any portion of the Property shown on a Final Plat as an entryway area ("Entryway Area") or signage area ("Signage Area") shall be used and maintained by the Association in substantially the same fashion as landscaped and constructed by Declarant. To the extent that any portion of an Entryway Area or Signage Area is located upon any Lot, an easement upon the applicable portion

of such Lot is hereby reserved in favor of Declarant and the Association as provided in Section B.8 of Article VIII.

7. Recreation Center

That portion of Bryarton shown on the Site Plan or Plat as an recreation center or recreation area ("Recreation Center") shall be part of the Association Property and shall be used for recreational purposes by the Association, Declarant and the Lot Owners and their family members, guests, invitees and lessees. Individuals entering the Recreation Center must carry identification which may be checked by an agent or employee of the Association. Such portion, if any, of the Recreation Center upon which Declarant has constructed, or hereinafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located or to be located thereon. The Recreation Center shall be used for recreational purposes and such proper ancillary uses as may be determined by Declarant (who shall have the right to determine such uses until the Association assumes such right after the Turnover Date). All remaining portions of the Recreation Center shown on the Site Plan, including, but not limited to, the swimming pool, shall always be kept and maintained by the Association for recreational uses or beautification and attendant uses (e.g., parking spaces within the Recreation Center shall be used for proper purposes by those using the recreational facilities while using such facilities) and shall be used for such purposes and not for residential, commercial or industrial construction of any kind. The Recreation Center shall be maintained, administered and ultimately owned by the Association.

Until the Turnover Date, Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional recreational facilities upon the Recreation Center. Until the Turnover Date, the decision as to whether to construct additional recreational facilities and the construction thereof shall be in the sole discretion of Declarant.

NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL FOR THE RECREATION CENTER, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS. ANY INDIVIDUAL USING THE RECREATION CENTER SHALL DO SO AT HIS OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

8. Other Property

In addition to the Association Property specifically described in this Section D of Article II, Association Property shall also consist of such other property, real or personal, and interests therein as may be determined by Declarant to be of use or benefit to the Association, its Members or Bryarton and designated as Association Property by Declarant

9. Maintenance of Other Property benefitting the Association

In addition to the Association Property specifically set forth in these Protective Covenants, the maintenance responsibility of the Association may include, without limitation, any landscaping on public roadways or other property adjacent to the Property selected by the Board for maintenance and determined by the Board as benefitting Bryarton with the approval of the owner of such property or the governmental authority responsible for maintenance of same.

10. Right to Add Additional Improvements

Such portions of the Association Property upon which Declarant has constructed, or hereinafter constructs, Improvements shall be kept and maintained for use in a manner consistent with

the nature of such Improvements located, or to be located thereon. Until the Turnover Date, Declarant reserves the right, but shall not be obligated, to construct additional facilities upon the Association Property. Until the Turnover Date, the decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of Declarant.

11. Administration and Costs of Maintenance

Except as specifically provided to the contrary herein, all costs associated with operating and maintaining the Association Property shall be the obligation of the Association; such costs shall be an Operating Expense. The Association Property shall be conveyed to the Association in accordance with the provisions of Section E.14 of this Article II. The administration, management, operation and maintenance of the Association Property shall be the responsibility of the Association, all as is provided herein and in the other association Documents.

12. Private Use

Except for any City greenway easements, for the term of these Protective Covenants, the Association Property is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, and the Lot Owners in Bryarton, their family members, guests, invitees and lessees, but only in accordance with these Protective Covenants and the laws of the City.

13. Declarant's Rights to Use Association Property

Notwithstanding anything in these Protective Covenants to the contrary, however, Declarant, subject to the ordinances of the City, hereby expressly reserves the right to use the Association Property and the Lots in connection with the sale and marketing by Declarant of Homes in Bryarton and Additional Properties developed by Declarant, including, but not limited to, the holding of sales and marketing meetings, sales promotions and related activities.

14. Conveyance of Association Property

Declarant (or the landowner developing the applicable portion of the Property) agrees that fee simple title to the Association Property shall be conveyed to the Association by deed, bills of sale, easements or leases, as applicable, and the Association is obligated to accept, fee simple title to the Association Property, as applicable, subject to: (i) the terms and provisions of these Protective Covenants; (ii) all applicable Association Documents; (iii) real estate taxes for the year of such conveyance; (iv) all applicable zoning ordinances; and (v) utility, drainage and greenway easements. While Declarant (or the landowner developing the applicable portion of the Property) shall have the right to convey or cause to be conveyed all or such portions of the Association Property as such developers shall from time to time determine, the conveyance of the Association Property shall be effectuated no later than the sale of the first Lot of each recorded phase. Notwithstanding the foregoing, if the Property is subject to the requirements of the Veteran's Administration ("VA"), The Federal Housing Administration, the Federal Home Loan Mortgage Corporation or any other governmental or quasi-governmental agency which insures, guaranties, or purchases mortgages, the conveyance of Association Property shall be effectuated no later than the date that the United States Department of Housing and Urban Development ("HUD") insures the first mortgage in the portion of the Property in which the Association Property is located. At the time of conveyance of the Association Property or any portion thereof, the Association shall be required to accept such conveyance of the Association Property or portions thereof and the personal property and improvements appurtenant thereto. The Association hereby agrees to accept the Association Property and the personal property and improvements appurtenant thereto "AS IS", without any representation or warranty, expressed, implied, in fact or by law, as to the condition or fitness of the Association Property or portions

thereof and the personal property and improvements thereon, subject to the obligation of Declarant (or the landowner developing the applicable portion of the Property) to convey the Association Property to the Association free of any liens or encumbrances, including, but not limited to, any mortgages, deeds of trust, or mechanic's or materialmen's liens for any work performed by or on behalf of such developers for the completion of the Improvements to the Association Property.

Notwithstanding anything contained in these Protective Covenants to the contrary, the Association Property shall not be mortgaged by the Association without the approval of two-thirds (2/3) of the Members (other than Declarant), all rights of the mortgagee shall be subordinate to the rights of the Association and its members.

Association Property may also be conveyed to any public agency, authority or utility. The Association shall have the right to participate in equal exchange of real property as may be permitted by City ordinances.

15. Conveyance of Master Common Area

Those portions of the Master Common Area which are located in the Property shall be conveyed by Declarant to the Master Association in accordance with the terms of the Master Declaration.

E. Rules and Regulations

The Association shall, from time to time, impose rules and regulations regulating the use and enjoyment of the Association Property. The rules and regulations so promulgated shall, in all respects, be consistent with the provisions of the Association Documents. The right to use the Association Property shall be subject to the rules and regulations established by the Association. The rules and regulations shall not apply to Declarant as an Owner.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION: BOARD: DURATION OF THE ASSOCIATION

A. Membership and Voting Rights

Each Member shall be entitled to the benefit of, and be subject to, the provisions of the Association Documents. The qualification of Members of the Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be established and terminated as set forth below (and as more particularly set forth in the Articles):

1. Membership in the Association for Owners other than Declarant shall be established by the acquisition of ownership of fee title to a Lot as evidenced by the recording of an instrument of conveyance amongst the Public Records of the County. Otherwise, voting rights attributable to an ownership interest shall vest upon the recording of this Declaration. Where title to a Lot is acquired by conveyance from a party other than Declarant by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby acquiring such Lot shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association, but if the Lot so acquired is a Contributing Lot as defined in these Protective Covenants, the person, persons or entity thereby acquiring such Lot shall be deemed to be a Contributing Lot Owner upon the acquisition of such Lot and liable to the Association for Assessments attributable to such Lot in accordance with the provisions of Article IV and V, regardless of the membership status of such Contributing Lot Owner.

2. The Association shall have two (2) classes of voting membership:

(i) "Class A Members" shall be all Members, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned.

(ii) "Class B Members" shall be Declarant who shall be entitled to two times the total number of votes of the Class A Members plus one. Class B membership shall cease and be converted to Class A membership upon the Turnover Date.

On the Turnover Date, Class A Members including Declarant shall assume control of the Association and elect the Board.

3. The designation of different classes of membership are for purposes of establishing the number of votes applicable to certain Lots, and, nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of Members, unless otherwise specifically set forth in Association Documents.

4. No Member may assign, hypothecate or transfer in any manner his membership in the Association except as an appurtenance to his Lot.

5. Any Member who conveys or loses title to a Lot by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of a Member resulting from ownership of such Lot, but shall remain personally liable to the Association for any unpaid Assessments levied upon the subject Lot which accrue during the period of such Person's ownership of the Lot.

6. There shall be only one (1) vote for each Lot, except for Class B Members as set forth herein. If there is more than one Member with respect to a Lot as a result of the fee interest in such Lot being held by more than one all such persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Lot shall govern. Fractional voting shall not be allowed. Unless otherwise notified by a co-owner as to a dispute between the co-owners regarding their vote prior to the casting of that vote, the vote of any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

7. Unless a higher percentage is required by the Declaration, Bylaws, or Articles, a quorum shall consist of persons entitled to cast at least forty percent (40%) of the total number of votes of the Members.

B. Board

The Association shall be governed by the Board which shall be appointed, designated or elected, as the case may be, as set forth in the Bylaws.

C. Duration of Association

The duration of the Association shall be perpetual, as set forth in the Articles.

ARTICLE IV
COVENANT TO PAY ASSESSMENTS FOR OPERATING EXPENSES:
ESTABLISHMENT OF LIENS: COLLECTION OF ASSESSMENTS: COLLECTION BY
DECLARANT: CERTAIN RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES:
NON-MONETARY DEFAULTS: FINES

A. Affirmative Covenant to Pay Operating Expenses

In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the Association Documents; and (ii) maintain, operate and preserve the Association Property for the use, safety, welfare and benefit of the Members and their family members, guests, invitees and lessees, there is hereby imposed upon each Contributing Lot and Contributing Lot Owner (with the exception of Declarant for so long as Declarant pays the Deficit during the Guarantee Period referred to in Section F of Article V) the affirmative covenant and obligation to pay to the Association (in the manner herein set forth) all Assessments, including, but not limited to, the Individual Lot Assessments, Special Assessments and Individual Expense Assessments. Each Owner (except if applicable as provided in Section F of Article V, Declarant) by acceptance of a deed or other instrument of conveyance conveying a Lot within the Property from Declarant, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments for Operating Expenses in accordance with the provisions of the Association Documents.

B. Establishment of Liens

Any and all Assessments made by the Association in accordance with the provisions of the Association Documents with Interest thereon and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Contributing Lot against which each such Assessment is made. Each Assessment against a Contributing Lot, together with Interest thereon, including, but not limited to, Legal Fees, shall be the personal obligation of the Contributing Lot Owner of such Contributing Lot. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, where an Institutional Mortgagee of record obtains title to a Contributing Lot as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such acquirer of title, its successors or assigns, shall not be liable for the share of Assessments pertaining to such Contributing Lot or chargeable to the former Contributing Lot Owner thereof which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the Assessment against the Contributing Lot in question is secured by a claim of lien for Assessments that is recorded prior to the recordation of the mortgage which was foreclosed or with respect to which a deed in lieu of foreclosure was given.

C. Collection of Assessments

In the event any Contributing Lot Owner shall fail to pay any Assessment, or installment thereof, charged to such Contributing Lot Owner within fifteen (15) days after the same becomes due, then the Association, through its Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

1. To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

2. To advance on behalf of the Contributing Lot Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Contributing Lot Owner(s) is liable to the Association and the amount or amounts of monies so advanced, together with Interest and all costs of collection thereof, including, but not limited to, Legal Fees, may thereupon be collected by the Association and such advance by the Association shall not waive the default.

3. To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.

4. To file an action at law to collect said Assessment plus Interest and Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.

5. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five Dollars (\$25.00) by the Association to defray additional collection costs.

D. Collection by Declarant

In the event for any reason the Association shall fail to collect the Assessments, then, in that event, Declarant shall at all times have the right prior to the Turnover Date (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments and, if applicable, any such sums advanced by Declarant; using the remedies available to the Association against a Contributing Lot Owner as set forth in Section C of this Article IV, which remedies (including, but not limited to, recovery of Legal Fees) are hereby declared to be available to Declarant.

E. Rights of Declarant and Institutional Mortgagees to Pay Assessments and Receive Reimbursement

Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Contributing Lots. Further, Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association where the same are overdue and where lapses in policies or services may occur. Declarant and any Institutional Mortgagees paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to, Legal Fees, and the Association shall execute an instrument in recordable form to this effect and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement.

F. Rental and Receiver

If an Owner remains in possession of his Home and the claim of lien of the Association against his Lot is foreclosed, the court, in its discretion, may require the Owner to pay a reasonable rental for the Home, and the Association is entitled to the appointment of a receiver to collect the rent.

G. Assignment of Claim and Lien Rights

The Association, acting through its Board, shall have the right to assign its claim and lien rights for the recovery of any unpaid Assessments and any other monies owed to the Association, to any third party.

H. Unpaid Assessments Certificate

Within fifteen (15) days after written request by any Owner or any Institutional Mortgagee holding or making a mortgage encumbering any Lot, the Association shall provide the Owner or Institutional Mortgagee a written certificate as to whether or not the Owner of the Lot is in default with respect to the payment of Assessments or with respect to compliance with the terms and provisions of these Protective Covenants, and any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any Lot shall be protected thereby.

I. Application of Payments

Any payments made to the Association by any Owner shall first be applied towards any sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the Association in order to preserve and protect its lien, next toward reasonable attorneys' fees incurred by the Association incidental to the collection of assessments and other moneys owned to the Association by the Owner and/or for the enforcement of its lien; next towards interest on any Assessments or other moneys due to the Association, as provided herein, and next towards any unpaid Assessments owed to the Association, in the inverse order that such Assessments were due.

J. Non-Monetary Defaults

In the event of a violation by any Owner or any tenant of an Owner, or any person residing with them, or their guests or invitees, (other than the non-payment of any Assessment or other monies) of any of the provisions of these Protective Covenants, the Articles, the Bylaws or the rules and regulations of the Association, the Association shall notify the Owner and any tenant of the Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the Association or if any similar violation is thereafter repeated, the Association may, at its option:

1. Impose a fine against the Owner or tenant as provided in Section K of this Article IV; and/or
2. Commence an action to enforce the performance on the part of the Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
3. Commence an action to recover damages; and/or
4. Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the "Committee" or erected in accordance with the Committee's approval (as herein defined), or performing any maintenance required to be performed by these Protective Covenants.

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of ten percent (10%) of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce these Protective Covenants, including reasonable Legal Fees, shall be assessed against the applicable Owner as an Individual Expense Assessment in accordance with Section D of Article V. The Association shall have a lien for any such Individual Expense Assessment

and any interest, costs or expenses associated therewith, including Legal Fees incurred in connection with such Assessment, and may take such action to collect such Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the Public Records of the County in which the Property is located.

K. Fines

The amount of any fine shall be determined by the Board, and shall not exceed the greater of \$25.00 or one (1) month's Assessment for Operating Expenses for the first offense, the greater of \$50.00 or two (2) months' Assessment of Operating Expenses for a second similar offense, and the greater of \$100.00 or three (3) months' Assessment for Operating Expenses for a third or subsequent similar offense. Notwithstanding the foregoing, if any violation of these Protective Covenants or the rules and regulations is of a continuing nature, and if the Owner fails to cure any continuing violation within thirty (30) days after written notice of such violation, or if such violation is not capable of being cured within such thirty (30) day period, if the Owner fails to commence action reasonably necessary to cure the violation within such thirty (30) day period or shall thereafter fail to diligently proceed to cure the violation as soon as is reasonably practical, a daily fine may be imposed until the violation is cured in an amount not to exceed the greater of \$10.00 or 1/4 of one (1) months' Assessment for Operating Expenses. Prior to imposing any fine, the Owner or tenant shall be afforded an opportunity for a hearing after reasonable notice to the Owner or tenant of not less than fourteen (14) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of these Protective Covenants, Bylaws or rules and regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. The Owner of a leased Home shall have the right to participate in any hearing involving the tenant of such Home, and the Association shall provide notice to the Owner of such Home concurrently with the Association's notice to the tenant of the subject Home. The Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Owner or tenant. If the Owner or tenant fails to attend the hearing as set by the Board, the Owner or tenant shall be deemed to have admitted the allegations contained in the notice to the Owner or tenant. Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the Board's decision at the hearing. Any fine levied against an Owner shall be deemed an Individual Expense Assessment, and if not paid when due all of the provisions of these Protective Covenants relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

L. Negligence

An Owner shall be liable and may be assessed by the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or Home or the Association Property.

M. Responsibility of an Owner for Occupants, Tenants, Guests, and Invitees

To the extent otherwise provided by law, each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Home, and for all guests and

invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Association Property, or any liability to the Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of these Protective Covenants, the Articles, or the Bylaws, by any resident of any Home, or any guest or invitee of an Owner or any resident of a Home, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if the violation was that of the Owner.

N. Right of the Association to Evict Tenants, Occupants, Guests and Invitees

With respect to any tenant or any person present in any Home or any portion of the Property other than an Owner and the members of his immediate family permanently residing with him in the Home, if such person shall materially violate any provision of these Protective Covenants, the Articles, or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the Property, or shall willfully damage or destroy any Association Property or personal property of the Association, then upon written notice by the Association such person shall be required to immediately leave the Property and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property and, where necessary, to enjoin such person from returning. The expense of any such action, including Legal Fees, may be assessed against the applicable Owner as an Individual Expense Assessment, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association. The Association shall provide notice to the Owner of a leased Home concurrently with any notices sent to the tenant of such Home pursuant to this Section K of Article IV, and such Owner shall have the right to participate in any hearings or eviction proceedings involving the tenant of such Owner's Home. The right of eviction provided for in this section shall be inserted in every lease, but the omissions from the lease agreement of such right shall not affect the right to evict as set forth herein.

O. No Waiver

The failure of the Association to enforce any right, provision, covenant or condition which may be granted by these Protective Covenants, the Articles, or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

P. Rights Cumulative

All rights, remedies and privileges granted to the Association pursuant to any terms, provisions, covenants or conditions of these Protective Covenants, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

ARTICLE V

METHOD OF DETERMINING ASSESSMENTS AND ALLOCATION OF ASSESSMENTS

A. Determining Amount of Assessments

The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Association Documents. The total anticipated Operating Expenses (other than those Operating Expenses which are properly the subject of a Special Assessment) shall be apportioned equally among the Contributing Lots by dividing the total

anticipated Operating Expenses as reflected by the Budget, other than those Operating Expenses which are properly the subject of a Special Assessment (adjusted as hereinafter set forth), by the total number of Contributing Lots (as evidenced by the issuance of a certificate of occupancy), with the quotient thus arrived at being the "Individual Lot Assessment." Notwithstanding anything in the Association Documents to the contrary, any assessment for legal expenses incurred by the Association to begin legal proceedings against Declarant shall be deemed an Operating Expense which is properly the subject of a Special Assessment and not the subject of a regular Individual Lot Assessment.

Notwithstanding the foregoing, during the Guarantee Period referred to in Section F of this Article V, Contributing Lot Owners (with the exception of Declarant for so long as Declarant pays the Deficit during the Guarantee Period referred to in Section F of this Article V) shall pay Individual Lot Assessments in an amount which shall not exceed the Guaranteed Assessment referred to in Section F of this Article V.

B. Assessment Payments

The Individual Lot Assessments shall be payable in advance in monthly, quarterly, annual or semi-annual installments with the due dates being established by the Board. The Individual Lot Assessments, and the installments thereof, as well as all Assessments provided for herein and all installments thereof may be adjusted from time to time by the Board to reflect changes in the number and status of Contributing Lots (thus apportioning all such Assessments and installments thereof among all Contributing Lots in existence at the time such installment is due) or changes in the Budget or in the event that the Board determines that the Assessments or any installment thereof is either less than or more than the amount actually required. When a Contributing Lot not in existence when the Assessment was determined ("New Improved Lot") comes into existence during a period with respect to which an Assessment or installment thereof has already been assessed, the New Improved Lot shall be deemed assessed the amount of such Assessment or installment thereof which was assessed against Lots which qualified as Contributing Lots in existence at the time of such Assessment, prorated from the date the New Improved Lot comes into existence through the end of the period in question. If the due date for such Assessment or installment thereof occurred on or prior to the date the New Improved Lot came into existence, said prorated amount thereof shall be immediately due and payable on the date the New Improved Lot comes into existence.

C. Special Assessments

"Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Association Documents and whether or not for a cost or expense which is included within the definition of "Operating Expenses," those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring improvements for, or on, the Association Property or the cost (whether in whole or in part) of reconstructing or replacing such improvements. It is recognized and declared that Special Assessments shall be in addition to, and are not part of, any "Individual Lot Assessment". Any such Special Assessments assessed against Contributing Lots and Contributing Lot Owners thereof shall be paid by such Contributing Lot Owners in addition to any other assessments. Special Assessments shall be assessed in the same manner as the Individual Lot Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, in any fiscal year of the Association after the Turnover Date, the levying of any Special Assessment shall require the affirmative assent of at least two-thirds (2/3) of all Contributing Lot Owners represented in person or by proxy at a meeting called and held in accordance with the Bylaws. In any fiscal year of the Association prior to the Turnover Date, the levying of any Special Assessment which exceeds five (5%) of the budgeted Operating Expenses of the Association for that fiscal year, shall require the consent of at least affirmative

assent of at least two-thirds (2/3) of all Contributing Lot Owners represented in person or by proxy at a meeting called and held in accordance with the Bylaws.

D. Individual Expense Assessments

Individual Expense Assessments include any Assessment levied against any Lot Owner occasioned by such Lot Owner's or any such Lot Owner's family members, guests, invitees or lessees and their family members, guests and invitees use, maintenance, or treatment of the Association Property or Lots or such person's non-compliance with the Association Documents including, but not limited to, non-compliance of Homes and any other Improvements or personal property contained therein with the standards set forth in the Association Documents, or as adopted from time to time by the Association, which causes the Association or Declarant to incur additional costs and expenses which would not have been incurred if the Lot Owner's or the Lot Owner's family members, guests, invitees or lessees and their family members, guests and invitees had been in compliance with the foregoing ("Noncompliance"). The amount of the Individual Expense Assessment(s) shall be equal to any such additional costs incurred. The Individual Expense Assessment and any late charges relating thereto shall be assessed against the Lot Owner(s) in Noncompliance and collected and enforced in the same manner as any other Assessments hereunder as provided herein.

Notwithstanding anything to the contrary contained herein, it is recognized and declared that Individual Expense Assessments shall be in addition to and not part of any other Assessment; any such Individual Expense Assessment assessed against a Lot Owner shall be paid by such Lot Owner in addition to any other Assessment.

E. Liability of Contributing Owners for Individual Assessments

By the acceptance of a deed or other instrument of conveyance of a Lot in the Property, each Owner thereof acknowledges that each Contributing Lot and the Contributing Lot Owners thereof are jointly and severally liable for their own Individual Lot Assessment and their applicable portion of any Special Assessments as well as for all Individual Expense Assessments for which they are liable as provided for herein, provided that during the Guarantee Period referred to in Section F of this Article V, any Contributing Lot owned by Declarant shall not be subject to Assessment so long as Declarant pays the Deficit as provided in said Section F of this Article V. Such Contributing Lot Owners further recognize and covenant that they are jointly and severally liable with the Contributing Lot Owners of all Contributing Lots for the Operating Expenses (subject to any specific limitations provided for herein such as, but not limited to, the limitation with respect to matters of Special Assessments, the limitations on the liability of Institutional Mortgagees and their successors and assigns, and as provided below, the limitations on Contributing Lots owned by Declarant during the Guarantee Period so long as Declarant pays the Deficit). Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner who is or becomes a Contributing Lot Owner, for himself and his heirs, executors, successors and assigns, that in the event other Contributing Lot Owners fail or refuse to pay their Individual Lot Assessment or any portion thereof or their respective portions of any Special Assessments or any Individual Expense Assessments, then the remaining Contributing Lot Owners may be responsible for increased Individual Lot Assessments or Special Assessment or other Assessments due to the nonpayment by such other Contributing Lot Owners, and such increased Individual Lot Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments hereunder as provided in the Association Documents.

F. Guaranteed Assessment During Guarantee Period

Declarant covenants and agrees with the Association and the Contributing Lot Owners that for the period commencing with the date of recordation of these Protective Covenants and ending upon

the sooner to occur of the following: (i) the date upon which seventy-two (72) Lots have become Contributing Lots, or (ii) the date that is four (4) years after the date of first recordation of this Declaration ("Guarantee Period"), that the amount of the Individual Lot Assessment will not exceed the amount of Three Hundred Dollars (\$300.00) for any consecutive twelve (12) month period (or \$25.00 for any single monthly period) (the "Guaranteed Assessment Amount") and that Declarant will pay the difference, if any, between (a) the Operating Expenses (other than those Operating Expenses which are properly the subject of a Special Assessment) incurred by the Association during the Guarantee Period, and (b) the Guaranteed Assessment Amounts assessed as Individual Lot Assessments against the Contributing Lots and the "Working Capital Contributions" set forth in Section G of this Article V (the "Deficit"), which will be used to defray initial start up expenses. Thus, during the Guarantee Period, (i) Contributing Lot Owners shall not be obligated to pay Individual Lot Assessments in an amount greater than the Guaranteed Assessment Amount, and (ii) Declarant shall not be obligated to pay any Assessments with respect to any Contributing Lots owned by Declarant. The Guaranteed Assessment Amount shall be applicable only to the Individual Lot Assessments paid during the Guarantee Period, during which period Contributing Lot Owners shall also be obligated to pay any Special Assessments or Individual Expense Assessments, their respective Working Capital Contribution, and as members of the Master Association, the assessments payable pursuant to the Master Declaration referred to in Section I of this Article V. Declarant hereby reserves the right to extend the Guarantee Period to a date ending no later than the Turnover Date at Declarant's sole election by providing written notice to the Association of such election at least thirty days prior to the expiration of a Guarantee Period. After the Guarantee Period terminates, each Contributing Lot Owner (including if applicable, Declarant) shall be obligated to pay Assessments as set forth in Section A of this Article V.

Declarant's obligation to fund the Deficit during the Guarantee Period as set forth above, together with Interest thereon and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Lot owned by Declarant. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, Declarant shall be entitled to a satisfaction of the statement of lien in recordable form.

G. Working Capital Contribution

Each Owner who purchases a Lot from Declarant shall pay to the Association at the time legal title is conveyed to such Owner a "Working Capital Contribution." The Working Capital Contribution shall be an amount equal to a two months' share of the Guaranteed Assessment Amount (i.e. \$50.00). The purpose of the Working Capital Contribution is to insure that the Association will have cash available for initial start up expenses including, but not limited to Operating Expenses, to meet unforeseen expenditures or to acquire additional equipment and services deemed necessary or desirable by the Board. Working Capital Contributions are not advance payments of Individual Lot Assessments and shall have no effect on future Individual Lot Assessments.

H. Exempt Property

Operating Expenses shall be assessed only against Contributing Lots which are subject to Assessment under the provisions hereof, and all other portions of the Property shall be exempt therefrom including, but not limited to, the Association Property, any and all Lots or other portions of the Property which may from time to time be withdrawn from the provisions of these Protective Covenants by Declarant, any Lot which is not by definition a Contributing Lot, and during the Guarantee Period for so long as Declarant pays the Deficit as provided in Section F of this Article V, any Contributing Lots owned by Declarant.

I. Collection on Behalf of the Master Association

The Master Declaration provides that all "Owners" in the Master Development, as defined therein, including the Lot Owners in Bryarton, will be assessed for the payment of assessments to the Master Association in order to fund the expenses incurred by the Master Association for maintaining the Master Common Area and enforcing and administering the terms and provisions of the Master Declaration. So long as the Master Association shall require, the Association shall collect said assessments on behalf of the Master Association. Each Owner who is subject to assessment by the Master Association in accordance with the Master Declaration, will remit to the Association a separate check payable to the Master Association when its assessments are due and the Association will remit same to the Master Association, which also has a lien right against each Lot which it may foreclose in the event of the non-payment of any assessment due to the Master Association.

ARTICLE VI
OPERATING EXPENSES

The Assessments for Operating Expenses with respect to the Association Property are payable by each Contributing Lot Owner to the Association notwithstanding the fact that Declarant may not have yet conveyed title to the Association Property to the Association. The following operating expenses of the Association are hereby declared to be Operating Expenses which the Association is obligated to assess and collect and which the Contributing Lot Owners are obligated to pay as provided herein or as may be otherwise provided in the Association Documents:

A. Taxes

Any and all taxes levied or assessed at any and all times by any and all taxing authorities including all taxes, charges, assessments and impositions and liens for public Improvements, special charges and assessments and water drainage districts, and in general all taxes and tax liens which may be assessed against the Association Property and against any and all personal property and Improvements, which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue thereon shall be considered Operating Expenses. Any and all taxes levied or assessed against the Lots shall be the obligation of the respective Owners thereof.

B. Utility Charges

All charges levied for utilities providing services for the Association Property whether they are supplied by a private or public firm shall be considered Operating Expenses. It is contemplated that this obligation will include all charges for water, gas, electricity, telephone, sewer and any other type of utility or any other type of service charge. All charges levied for utilities providing services to the Lots shall be the obligation of the respective Owners thereof.

C. Insurance

The premiums on any policy or policies of insurance required to be maintained under these Protective Covenants and the premiums on any policy or policies the Association determines to maintain even if not required to be maintained by the specific terms of these Protective Covenants shall be Operating Expenses.

D. Destruction of Buildings or Improvements on the Association Property

Any sums necessary to repair or replace, construct or reconstruct damages caused by the destruction of any building upon the Association Property by fire, windstorm, flood or other casualty

regardless of whether or not the same is covered in whole or in part by insurance shall be Operating Expenses. In the event insurance money shall be payable, such insurance money shall be paid to the Association who shall open an account with a banking institution doing business in the County, for the purpose of providing a fund for the repair and reconstruction of the damage. The Association shall pay into such account, either in addition to the insurance proceeds or in the event there are no insurance proceeds, such sums as may be necessary so that the funds on deposit will equal the costs of repair and reconstruction of the damage or destruction. The sums necessary to pay for the damage or destruction as herein contemplated shall be considered Operating Expenses but shall be raised by the Association under the provisions for Special Assessments as provided in Section C of Article V of these Protective Covenants and subject to the limitations therein set forth with respect to Special Assessments. The Association agrees that it will commence the Special Assessments process to provide the funds for the cost of reconstruction or construction within ninety (90) days from the date the destruction takes place and shall go forward with all deliberate speed so that the construction or reconstruction, repair or replacement, shall be completed within eighteen (18) months from the date of damage.

E. Maintenance, Repair and Replacements

Operating expenses shall include all expenses necessary to keep and maintain, repair and replace any and all buildings, other improvements, personal property and furniture, fixtures and equipment upon the Association Property, including landscaping, lawn and sprinkler service, in a manner consistent with the development of Bryarton and in accordance with the covenants and restrictions contained herein, and in conformity with all orders, ordinances, rulings and regulations of any and all federal, state, County and City governments having jurisdiction over the Property as well as the statutes and laws of the State of North Carolina and the United States. This shall include any expense attributable to the maintenance and repair and replacement of pumps or other equipment, if any, located upon or servicing Bryarton pursuant to agreements with utility corporations. Any expenses for replacements which would not be in the nature of normal repair and maintenance shall be the subject of a Special Assessment as provided in Section C of Article V of these Protective Covenants and subject to the limitations thereon set forth with respect to Special Assessments. If the Association is permitted by the owner of property in close proximity to the Property or the governmental authority responsible for maintaining same to provide additional maintenance for such property, and the Board elects to do so in order to enhance the overall appearance of the Property, then the expense thereof shall be an Operating Expense.

F. Indemnification

The Association covenants and agrees that it will indemnify and save harmless Declarant, and the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about the Property or the appurtenances thereto from and against all costs, Legal Fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. The costs of fulfilling the covenant of indemnification herein set forth shall be deemed to be Operating Expenses.

Included in the foregoing provisions of indemnification are any expenses that Declarant may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in these Protective Covenants to be kept and performed by the Association. The indemnification provisions of this Section F of Article VI shall not apply to any expenses which may be incurred by Declarant to avoid the performance of any of the obligations to be kept and performed by Declarant, or any liability which may be incurred by an Owner as the Owner of a Lot.

G. Administrative and Operational Expenses

The costs of administration of the Association including, but not limited to, any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association shall be deemed to be Operating Expenses. In addition, it is contemplated that the Association may retain a management company or companies or contractors (any of which management companies or contractors may be, but are not required to be, a subsidiary, affiliate or an otherwise related entity of Declarant) to assist in the operation of the Association Property and other obligations of the Association hereunder. The fees or costs of this or any other management company or contractors so retained shall be deemed to be part of the Operating Expenses hereunder. All contracts with management companies shall contain a provision which allows the Association to unilaterally terminate the contract after ninety (90) days notice.

H. Compliance with Laws

The Association shall take such action as it determines necessary or appropriate in order for the Association Property and the Improvements thereon to be in compliance with all applicable laws, statutes, ordinances and regulations of any governmental authority, whether federal, state, county or local, including, without limitation, any regulations regarding zoning requirements, setback requirements, drainage requirements, sanitary conditions and fire hazards, and the cost and expense of such action taken by the Association shall be an Operating Expense.

I. Failure or Refusal of Lot Owners to Pay Individual Lot Assessments

Funds needed for Operating Expenses due to the failure or refusal of Contributing Lot Owners to pay the Assessments levied shall, themselves, be deemed to be Operating Expenses and properly the subject of an Assessment; provided, however, that any Assessment for any such sums so needed to make up a deficiency due to the failure of Lot Owners to pay a Special Assessment shall, itself, be deemed to be a Special Assessment subject to the limitations thereon with respect to Lots owned by Declarant.

J. Extraordinary Items

Extraordinary items of expense under these Protective Covenants such as expenses due to casualty losses and other extraordinary circumstances shall be the subject of a Special Assessment subject to the limitations thereon with respect to Lots owned by Declarant set forth in Section C of Article V.

K. Costs of Reserves

The funds necessary to establish an adequate reserve fund ("Reserves") for periodic maintenance, repair, and replacement of the Association Property and the facilities and Improvements thereupon in amounts determined sufficient and appropriate by the Board from time to time shall be an Operating Expense, provided, however, no such Reserves shall be established for any Association Property for which a certificate of occupancy has not as yet been obtained. Reserves shall be deposited in a separate account to provide such funds and reserves. The monies collected by the Association on account of Reserves shall be and shall remain the exclusive property of the Association and no Lot Owner shall have any interest, claim or right to such Reserves or any fund composed of same.

L. Miscellaneous Expenses

The cost of all items or costs or expenses pertaining to or for the benefit of the Association, the Association Property or the Lots, or any part thereof, not herein specifically enumerated

and which is determined to be an appropriate item of Operating Expense by the Board shall be an Operating Expense.

ARTICLE VII INSURANCE AND CONDEMNATION

The Association shall purchase and maintain the following insurance coverages subject to the following provisions, and the cost of the premiums therefor shall be a part of the Operating Expenses:

A. Casualty Insurance

Property and casualty insurance in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all improvements and personal property which is owned, or to be owned, by the Association and now or hereafter located upon the Association Property, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Association Property in developments similar to Bryarton in construction, location and use.

B. Public Liability Insurance

A comprehensive policy of public liability insurance naming the Association and, until Declarant's ownership of Lots within the Property ceases, Declarant as named insureds thereof insuring against any and all claims or demands made by any person or persons whomsoever for injuries received in connection with, or arising from, the operation, maintenance and use of the Association Property and any improvements located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000) for damages incurred or claimed by any one person for any one occurrence; not less than One Million Dollars (\$1,000,000) for damages incurred or claimed for any one occurrence; and for not less than Fifty Thousand Dollars (\$50,000) property damage per occurrence with no separate limits stated for the number of claims.

C. Fidelity Coverage

Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Directors and all other who handle and are responsible for handling funds of the Association shall be maintained in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

D. Other Insurance

Such other forms of insurance and in such coverage amounts as the Association shall determine to be required or beneficial for the protection or preservation of the Association Property and any improvements now or hereafter located thereon or in the best interests of the Association.

E. Cancellation or Modification

All insurance policies purchased by the Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without at least ten (10) days prior written notice to the Association and to each first mortgage holder named in the mortgage clause.

F. Condemnation

In the event the Association receives any award or payment arising from the taking of any Association Property owned in fee or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and improvements thereon to the extent deemed advisable by the Association and the remaining balance thereof, if any, shall be placed in a reserve fund of the Budget.

ARTICLE VIII
EASEMENTS

A. Recognition of Existing Easements

Each Owner, by acceptance of a deed or other instrument of conveyance, recognizes and consents to the easements reserved and/or granted with respect to the Property under these Protective Covenants.

B. Grant and Reservation of Easements

Declarant hereby reserves and grants the following perpetual easements over and across the Property as covenants running with the Property for the benefit of the Owners, the Association and Declarant and where specified, the owners and occupants of the Additional Property as hereinafter specified for the following purposes:

1. Utility and Services Easements

Easements in favor of governmental and quasi-governmental authorities, utility companies, telecommunications companies, cable television companies, ambulance or emergency vehicle companies, garbage collection, and mail carrier companies, over and across all roads existing from time to time within the Property, and over, under, on and across the Association Property, as may be reasonably required to permit the foregoing, and their agents and employees, to provide their respective authorized services to and for the Property, and the Additional Property. Also, easements as may be allowed over, under, on and across Association Property for the installation, maintenance, repair and providing of utility services, equipment and fixtures in order to adequately serve the Property and the Additional Property including, but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage, television antenna and cable television facilities, and electronic security. However, such easements affecting title to any Lot which serve any other portion of the Property shall only be subsurface, and they shall only be for utility services actually constructed, or reconstructed, and for the maintenance thereof, unless otherwise approved in writing by the Owner of the Lot. An Owner shall do nothing on his Lot which interferes with or impairs the utility services using these easements. The Board or its designee shall have a right of access to each Lot to inspect, maintain, repair or replace the utility service facilities contained under the Lot and to remove any improvements interfering with or impairing the utility services or easement herein reserved; provided such right of access shall not unreasonably interfere with the Owner's permitted use of the Lot.

2. Easement for Encroachment

If (i) any Improvements which are constructed as Association Property or upon Association Property, or (ii) any Improvements constructed upon a Lot, encroach upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of such Improvements, and such Improvements have been constructed, reconstructed or repaired in accordance with the provisions of these Protective Covenants, an easement for the encroachment and for its maintenance shall exist so long as the encroachment remains, provided, however, that in no event shall such an easement exist for willful

encroachments. If any Lot Improvement encroaches upon the Association Property as a result of construction, reconstruction, repair, shifting, settlement or movement of the subject Lot Improvements, and such Improvements have been constructed, reconstructed or repaired in accordance with the provisions of these Protective Covenants, an easement for the encroachment and for its maintenance shall exist so long as the encroachment remains.

3. Easement to Enter Upon Lots

An easement or easements for ingress and egress in favor of Declarant, the Committee, the Association, including the Board or the designee of the Board, to enter upon the Lots for the purposes of inspecting any construction, proposed construction of Improvements, or fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the Association Documents, including the making of such repairs, maintenance or reconstruction as are necessary for the Association Property.

4. Easement Over Association Property

An easement of use and enjoyment in favor of all Owners, their family members, guests, invitees and lessees in and to the Association Property which shall be appurtenant to and shall pass with title to every Lot, subject to the following:

(a) the right of the Association to suspend the voting rights and rights to use the Association Property of any Owner for any period during which Assessments against his Lot(s) remain unpaid;

(b) the right of the Association to grant permits, licenses and easements over the Association Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operating of the Property and the Additional Property; and

(c) all provisions set forth in the Association Documents.

5. Drainage and Irrigation Easement; Storm Water Control Maintenance Easement

An easement for drainage, flowage and irrigation over, under and upon the Property in favor of the Association and each of the Owners including, but not limited to, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate, replace, and repair the Storm Water Management System and to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action that Declarant or the Association deem reasonably necessary or appropriate. After such action has been completed, Declarant or the Association shall grade and seed the affected property and otherwise restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant or the Association shall give reasonable notice of its intent to take such action to all affected Owners.

In particular, an easement for the installation, maintenance, repair, replacement and relocation of the Special Retention Devices is hereby reserved in favor of Declarant, the Association or any party now or hereafter responsible for the maintenance of the Special Retention Devices. The easement for the maintenance of the Special Retention Devices shall be located upon each Lot in the ten foot (10') strip of land which is adjacent to the abutting Roadway.

6. Additional Easements

Declarant (until the Turnover Date) and the Association, on their behalf and on behalf of all Owners, each shall have the right to (i) grant and declare additional easements over, upon, under and/or across the Association Property in favor of Declarant or any person, entity, public or quasi-public authority or utility company; or (ii) with the consent of the applicable party affected by any easement benefitting the Property or the party who acquired or is benefitted by any easement affecting the Property (as applicable), modify, relocate, abandon or terminate existing easements benefitting or affecting the Property. In connection with the grant, modification, relocation, abandonment or termination of any easement, Declarant reserves the right to relocate roads, parking areas, utility lines, and other improvements upon or serving the Property. So long as the foregoing will not unreasonably and adversely interfere with the use of Lots for dwelling purposes, no consent of any Owner or any mortgagee of any Lot shall be required or, if same would unreasonably and adversely interfere with the use of any Lot for dwelling purposes, only the consent of the Owners and Institutional Mortgagees so affected shall be required. To the extent required, all Owners hereby irrevocably appoint Declarant and/or the Association as their attorney-in-fact for the foregoing purposes.

7. Sale and Development Easement

Declarant reserves and shall have an easement over, upon, across and under the Property as may be reasonably required in connection with the development, construction, sale and promotion, or leasing, of any Lot or Home within the Property or within any other property owned by Declarant, provided that no such easement shall be located within or upon any Home and shall not materially adversely impair or diminish any Owner's use or enjoyment of such Owner's Lot or Home.

8. Landscape Area, Entryway Area, and Signage Area Easement

An easement for the installation, maintenance, repair, and replacement of any entry monument, sign, landscaping, or other facilities located in the Landscape Areas, Entryway Areas, and Signage Areas is reserved in favor of Declarant and the Association over, upon, across and under the Landscape Areas, Entryway Areas, and Signage Areas.

9. Maintenance Easements

If any Home is located closer than five (5) feet from its Lot line, the Owner of said Lot shall have a perpetual access easement over the adjoining Lot to repair, maintain, perform, paint or reconstruct his Home. Within said easement area no fence or vegetation shall be located.

C. Assignments

The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to any City, County or state government or agency thereof, or any duly licensed or franchised public utility, or any other designee of Declarant. The Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Property or portions thereof in accordance with the provisions of these Protective Covenants.

Notwithstanding anything in these Protective Covenants to the contrary, all easement rights reserved or granted to Declarant shall terminate upon the Turnover Date. In addition, the easement rights granted or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

ARTICLE IX
MAINTENANCE AND REPAIR

A. By the Association

Except as otherwise specifically set forth herein, the responsibility of the Association is to repair, maintain and replace any and all Improvements located on the Association Property *commencing with the completion of same by Declarant and conveyance to the Association*. The improvements shall be maintained in the same condition as originally constructed by Declarant. In the event of any damage or destruction to the Association Property or to the improvements and facilities located thereon by fire, storms, acts of God, acts of government, acts of third parties or other calamity, the Association shall be required to rebuild such improvements and facilities as quickly as practicable.

B. By the Lot Owners

1. Each Owner shall maintain his Home and all Improvements and personal property upon his Lot in good condition at all times. The exterior of all Homes including but not limited to roofs, walls, doors, windows, patio areas, pools, screenings, and awnings shall be maintained in good condition and repair and in a neat and attractive manner. All exterior painted areas shall be painted as reasonably necessary, with colors which are harmonious with other Homes, and no excessive rust deposits on the exterior of any Home, peeling of paint or discoloration of same shall be permitted. No Owner shall change the exterior color of his Home without the consent of the Committee. All sidewalks, driveways and parking areas within the Owner's Lot or serving the Owner's Home shall be cleaned and kept free of debris; and cracks, damaged and/or eroding areas on same shall be repaired, replaced and/or resurfaced as necessary.

2. The Owner of each Lot containing a Home shall be required to maintain the landscaping of his Lot, and on any contiguous property between his Lot and the pavement edge of any abutting road, in accordance with the provisions of these Protective Covenants and the requirements of any controlling governmental authority. All such landscaping shall be maintained by the Owner in first class condition and appearance and, as reasonably required, mowing, watering, trimming, fertilizing, and weed, insect and disease control shall be performed by the Owner. Underground sprinkler systems may be installed, maintained and used to irrigate all landscaping on the Lot, or any other landscaping which the Owner of the Lot is required to maintain pursuant to this Section. All landscaped areas shall be primarily grass, and shall not be paved or covered with gravel or any artificial surface without the prior written consent of the Committee. All dead or diseased sod, plants, shrubs, trees, or flowers shall be promptly replaced, and excessive weeds, underbrush or unsightly growth shall be promptly removed. No artificial grass, plants, or other artificial vegetation shall be placed or maintained on the exterior of any Lot.

3. Declarant may install certain Improvements to each Lot which function in conjunction with the Storm Water Management System, including a downspout drainage system and related collection chamber or device, swales or areas intended to accept storm water runoff from the Home located upon the Lot and from Homes located upon contiguous Lots. The Owner of each Lot shall maintain those portions of the Storm Water Management System located upon such Owner's Lot (except for any Special Retention Devices) in substantially the same condition as installed by Declarant. No Owner shall modify, disrupt or alter any portion of the Storm Water Management System located upon such Owner's Lot or make any Improvement to such Owner's Lot which would interfere with or adversely affect the drainage or proper flow of storm water from the Home on such Lot, the Homes on any contiguous Lots, or any other portion of the Property or Improvement thereon, without the prior written consent of the Committee.

4. In the event that a Lot Owner fails to maintain his Lot or Home in accordance with these Protective Covenants, the Association shall have the right, but not the obligation, upon thirty

(30) days' written notice to the Lot Owner, to enter upon the Lot for the purpose of performing the maintenance and/or repairs described in such notice to the Lot Owner, as applicable. The cost of performing such maintenance and/or repairs and the expense of collection (including, but not limited to, Legal Fees) shall be assessed by the Association against the Lot Owner as an Individual Expense Assessment.

ARTICLE X ARCHITECTURAL CONTROL

A. Establishment

"Committee" shall mean the architectural control committee, which shall be the governing body charged with using its best efforts to promote and ensure a high level of design, quality, harmony and conformity throughout the Property consistent with these Protective Covenants. Until the Termination of Declarant Control, referred to below, Declarant shall constitute the Committee, and may approve Plans and Submissions or take other actions on behalf of the Committee in Declarant's own name or in the name of the Committee. After the Termination of Declarant Control, the Committee shall be composed of at least three (3) individuals appointed by the Board, each of whom shall be an Owner. The Committee shall act by simple majority vote. In the event of death, resignation or other removal of any Board appointed member of the Committee, the Board shall appoint a successor member. No member of the Committee shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of services performed pursuant to these Protective Covenants. Declarant shall cease to control and constitute the Committee on the earlier of: (a) the date on which Declarant records in the Public Records a document declaring the termination of its control of the Committee, or (b) at such time as Declarant no longer owns a Lot within the Property, or (c) the date which is seven (7) years following the date this Declaration is first recorded in the public land records (which may be referred to in this Declaration as "Termination of Declarant Control").

B. Purpose of the Committee

The Committee is established to provide a system of review for the construction or modification of all Improvements within the Property. No Improvement shall be commenced, improved or altered, nor shall any grading, excavation or change of exterior color or other work which in any way alters the exterior appearance of an Improvement be done without the prior written approval of the Committee.

C. Development Standards

The Committee is empowered to publish or modify from time to time, design and development standards for the Property, including, but not limited to, standards for the following ("Standards"): (i) architectural design of Improvements, including, but not limited to, design standards for any Home or other Improvement constructed upon a Lot; (ii) fences, walls and similar structures; (iii) exterior building materials and colors; (iv) exterior appurtenances relating to utility installation; (v) signs and graphics, mailboxes, satellite dishes and exterior lighting; (vi) decks, pools and pool decks, side yards and related height bulk and design criteria; (vii) pedestrian and bicycle ways, sidewalks and pathways; and (viii) all buildings, landscaping and Improvements on lands owned or controlled by the Association. After Termination of Declarant Control, a copy of any Standards promulgated by the Committee shall be subject to approval by the Board. After the Board's approval, a copy of the Standards will be made available to all Members.

D. Requirement of Committee Approval

No Improvement of any kind shall be erected, placed or maintained, and no addition, alteration, modification or change to any Improvement shall be made without the prior written approval of the Committee. For purposes of this Declaration, Declarant Improvements means any Improvement erected, placed, or maintained with the approval of Declarant, including, without limitation, any building, wall, fence, swimming pool, or screened enclosure, constructed, installed or placed by or with the approval of Declarant prior to the Termination of Declarant Control (collectively, "Declarant Improvements"). Notwithstanding anything to the contrary contained above, Declarant Improvements are not subject to the approval of the Committee and are deemed to conform to the plan of development for the Property.

E. Obtaining Committee Approval

In order to obtain the approval of the Committee, a complete set of plans and specifications ("Plans") for proposed Improvements shall be submitted to the Committee for its review. The Plans shall include, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, approximate costs, and nature, type and color of materials to be used. The Committee may also require the submission of additional information and materials as may be reasonably necessary for the Committee to evaluate the proposed Improvement or alteration ("Submissions"). The Committee shall have the right to refuse to approve any proposed Plans which, in its sole discretion, are not suitable or desirable. Any and all approvals or disapprovals of the Committee shall be in writing and shall be sent to each respective Owner submitting same. In the event the Committee fails to approve or to disapprove in writing any Plans and/or Submissions after: (i) submission to the Committee of the last item of the Plans and Submissions requested by the Committee; so that the Committee has a complete package of all Plans and Submissions requested by the Committee; and (ii) thirty (30) days have elapsed since submission and written request for approval or disapproval was delivered to the Committee by the Owner; then said Plans and Submissions shall be deemed to have been approved by the Committee provided, however, that no Improvement shall be erected or shall be allowed to remain which violates any conditions or restrictions contained in this Declaration, or which violates any applicable zoning or building ordinance or regulation. The approval by the Committee relates only to the aesthetics of the Improvements shown on the Plans and Submissions and not to their sufficiency or adequacy. Each Owner shall be responsible for obtaining all necessary technical data and to make application to and obtain the approval of the appropriate governmental agencies prior to commencement of any construction.

F. Scope of Review

The Committee shall review and approve or disapprove all Plans and Submissions solely on the basis of aesthetic standards as to the aesthetic quality of materials and workmanship to be used, suitability and harmony of location, structure and external design in relation to surrounding topography and structures and the overall benefit or detriment which would result to the immediate vicinity and to the Property as a whole and any other factors deemed relevant to the review by the Committee in its opinion, reasonably exercised. The Committee shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features, and shall not be responsible for reviewing, nor shall its approval of any Plans be deemed approval of, any design or plan from the standpoint of structural safety or conformance with building or other codes.

G. Variance from Standards

The Committee may authorize, in a reasonable manner so as not to destroy the general scheme or plans of the development of the Property, variances from compliance with any Standards which it has promulgated pursuant to its authority when circumstances such as topography, natural obstructions, hardship, aesthetics or environmental considerations may require. If any such variances are granted, no

violation of the restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to that particular property and particular provision hereof or Standards promulgated hereby which are covered by the variance. Such variance shall be evidenced in writing.

H. Enforcement

There is specifically reserved unto the Committee the right of entry and inspection upon any Lot or other portion of the Property for the purpose of determination by the Committee whether there exists any Improvement which violates the terms of any approval by the Committee or the terms of this Declaration. Except in emergencies, any exercise of the right of entry and inspection by the Committee hereunder should be made only upon reasonable notice given to the Owner of record at least twenty-four (24) hours in advance of such entry. The Association, acting pursuant to the direction of the Committee, is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any Improvement, or to remove any unapproved Improvements, the prevailing party in such litigation shall be entitled to recover all Legal Fees incurred in connection therewith. The Association shall indemnify and hold harmless any member of the Committee from all costs, expenses and liabilities, including attorneys fees incurred by virtue of any member's service as a member of the Committee, provided such member acted in good faith and without malice. After the Turnover Date and before the Termination of Declarant Control (i.e. while Declarant controls the Committee but not the Association) Declarant shall fund any legal action to determine the propriety of any Improvement or to remove any unapproved Improvements, when such enforcement action has not been approved or endorsed by a majority of the Board.

I. Subcommittees and Delegation of Authority

The Committee may establish subcommittees for the purpose of acting on behalf of the Committee with respect to similar circumstances, situations, or types of Improvements, such as a swimming pool subcommittee or a subcommittee which would deal with modifications of existing Improvements or additional new Improvements ancillary to an existing Home, in contrast to the construction of initial Improvements upon a previously unimproved Lot. All rights and powers of the Committee may be delegated to such subcommittee with regard to the subject matter of the subcommittee. The rights and powers of the Committee may be assigned to a management company, an architect, design professional or other entity, or any portion of such rights and powers applicable to a particular subcommittee or area of similar circumstance.

J. Right to Withhold Approval of Restricted Improvements

Notwithstanding the foregoing provisions, before the Termination of Declarant Control, no Improvements shall be approved by the Committee which the Committee believes, in its sole discretion, to be defined or considered Restricted Improvements (referred to in Section AA of Article XI) by the City.

ARTICLE XI USE RESTRICTIONS

For purposes of this Article XI, unless the context otherwise requires, Owner shall also include the family, invitees, guests, licensees, lessees and sublessees of any Owner, and any other permitted occupants of a Home. All the Property shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Section AA of this Article XI and if applicable, subject to any modifications set forth in a Supplement pertaining to the Additional Property.

A. Residential Use

The Homes shall be for single family use only. No commercial occupation or activity may be carried on in Bryarton without the consent of the Board except as such occupation or activity is permitted to be carried on by Declarant under these Protective Covenants. In addition, temporary guests are permitted so long as they do not create an unreasonable source of noise or annoyance to the other residents of the Property. No more than one Home may be built on one Lot.

B. Nuisances

No obnoxious or offensive activity shall be carried on about the Lots or in or about any improvements, Homes, or on any portion of Bryarton nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Homes which is a source of annoyance to Owners or occupants of Homes or which interferes with the peaceful possession or proper use of the Homes or the surrounding areas. No trade, business, profession or commercial activity, or any other non residential use shall be conducted on the Property or within any Lot or Home without the consent of the Board. The foregoing shall not prohibit an Owner from leasing his Home. No loud noises or noxious odors shall be permitted in any improvements, Homes or Lots. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment of large power tools, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any Lot, or exposed to the view of other Owners without the prior written approval of the Board and/or the Committee, if required.

C. Outside Storage of Personal Property

The personal property of any resident of the Property shall be kept inside the resident's Home or a fenced-in yard, except for patio furniture and accessories, and other personal property commonly kept outside, which must be kept in the rear of the Lot and must be neat appearing and in good conditions.

D. Parking and Vehicular Restrictions

Only automobiles, vans constructed as private passenger vehicles with permanent rear seats and side windows, and other vehicles manufactured and used as private passenger vehicles, may be parked within the Property overnight without the prior written consent of the Board, unless kept within an enclosed garage. In particular and without limitation, without the prior written consent of the Board, no vehicle containing commercial lettering, signs or equipment, and no truck, recreational vehicle, camper, trailer, or vehicle other than a private passenger vehicle as specified above, and no boat, may be parked or stored outside of a Home overnight. No overnight parking by an Owner or his tenant is permitted on any streets, lawns, or areas other than driveways and garages, without the consent of the Board. Notwithstanding the foregoing, automobiles owned by governmental law enforcement agencies are expressly permitted. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to, the Property. All vehicles parked within the Property must be in good condition and repair, and no vehicle which does not contain a current license plate or which cannot operate on its own power shall be parked within the Property outside of an enclosed garage for more than 24 hours, and no major repair of any vehicle shall be made on the Property. All-terrain vehicles and the like, of any Owner or his tenant, are not permitted to be operated within the Property or parked overnight outside of an enclosed garage, except with the prior written consent of the Board which may be withdrawn at any time, and any permitted

motorized vehicle must be licensed for street use and equipped with appropriate noise muffling equipment so that the operation of same does not create an unreasonable annoyance to the residents of the Property.

E. No Improper Uses

No improper, offensive, hazardous or unlawful use shall be made of any Home nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over the Property, relating to any Home shall be corrected by, and at the sole expense of the Owner of the Home.

F. Trash and Other Materials

Each Owner shall regularly pick up all garbage, trash, refuse or rubbish on his Lot, and no Owner or resident shall place or dump any garbage, trash, refuse, rubbish or other materials on any other portions of the Property. Garbage, trash, refuse or rubbish that is required to be placed at the front of the Lot in order to be collected may be placed and kept at the front of the Lot after 5:00 p.m. on the day before the scheduled day of collection, and any trash facilities must be removed on the collection day. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. All containers, dumpsters or garbage facilities shall be stored inside a Home or fenced-in area and screened from view and kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted.

G. Leases

No portion of a Home (other than an entire Home) may be rented. All leases must be in writing and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of these Protective Covenants, the Articles, Bylaws, of applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Homes. A copy of the proposed lease must be delivered to the Association prior to occupancy by the tenant. No lease shall be for a period of less than six (6) months without the approval of the Board. The Owner of a leased Home shall be jointly and severally liable with his tenant to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the Association whether before or after such lease was entered into.

With respect to any tenant or any person present in any Home or any portion of the Property other than an Owner and the members of his immediate family permanently residing with him in the Home, if such person shall materially violate any provision of these Protective Covenants, the Articles, or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the Property, or shall willfully damage or destroy any Association Property or personal property of the Association, then upon written notice by the Association such person shall be required to immediately leave the Property and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property and, where necessary, to enjoin such person from returning. The expense of any such action, including Legal Fees, may be assessed against the applicable Owner as an Individual Expense Assessment, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association. The Association shall provide notice to the Owner of a leased Home concurrently with any notices sent to the tenant of such Home pursuant to this Section K of Article IV, and such Owner shall have the right to participate in any hearings or eviction proceedings involving the tenant of such Owner's Home. The right of eviction provided for in this section shall be inserted in every lease, but the omissions from the lease agreement of such right shall not affect the right to evict as set forth herein.

H. Temporary Buildings, Etc.

No tents, trailers, shacks or other temporary buildings or structures shall be constructed or otherwise placed upon the Property except in connection with construction, development, leasing or sales activities permitted by the Committee. No temporary structure may be used as a Home.

I. Garages

No garage shall be erected which is separate from a Home. No garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage space and no garage opening shall have a screen covering without the consent of the Committee. The foregoing shall not include any garages used or formerly used by Declarant as an office or other area in connection with the sale of Homes, which are Declarant Improvements and not subject to the restrictions in this Article XI. All garage doors shall remain closed when vehicles are not entering or leaving the garage.

J. Animals and Pets

Only common domesticated household pets may be kept on any Lot or in a Home, not to exceed a total of three (3) per Home with the prior consent of the Board but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, reptiles or poultry of any kind shall be kept, raised, bred or maintained on any portion of the Property. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Board. Under no circumstances may a pit bull be permitted on the Property. Any pet must not be an unreasonable nuisance or annoyance to other residents on the Property. The Board may adopt rules and regulations concerning animals which are more restrictive than the provisions of these Protective Covenants including rules requiring that all animals be kept on a leash when on the Association Property or outside a fenced yard and that animals be restricted to designated areas within the Association Property and that Owners are responsible for cleaning up any mess that a pet created within any Lot or the Association Property. The Board may require any pet to be immediately and permanently removed from the Property due to a violation of this Section.

Each Owner who determines to keep a pet thereby agrees to indemnify the Association and Declarant and hold them harmless against any loss or liability of any kind or character whatsoever arising from or growing out of his having any animal on the Property.

K. Additions and Alterations

No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any improvement, addition, or alteration to the exterior of his Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home or re-roofing with shingles of a different color or material, without the prior written approval of the Committee, which approval may be withheld for purely aesthetic reasons.

L. Increase in Insurance Rates

No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

O. Air Conditioning Units

Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted.

P. Clotheslines and outside Clothes Drying

No clotheslines or clothespoles shall be erected, and no outside clothes-drying is permitted, except where such activity is advised or mandated by governmental authorities for energy conservation purposes, in which event the Committee shall have the right to approve the portions of any Lot used for outdoor clothes-drying purposes and the types of devices to be employed in this regard, which approval must be in writing.

Q. Outside Antennas, Satellite Dishes and Flag Poles

No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar apparatus or equipment unless: (i) such apparatus is one (1) meter or less in diameter, (ii) the apparatus is screened from public view and located behind the Home either in the rear yard or affixed to the rear roof, (iii) the apparatus is not visible while standing at any point along the property boundary line in front of the house that abuts or is adjacent to a street, right-of-way or sidewalk, and (iv) the Committee has approved the apparatus, its location and the type of screening.

R. Garbage Containers, Oil and Gas Tanks, Air Conditioners

All garbage and refuse containers, air conditioning units, oil tanks, bottled gas tanks, and all permanently affixed swimming pool equipment and housing shall be underground or placed in walled-in or landscaped areas as approved by the Committee so that they shall be substantially concealed or hidden from any eye-level view from any street or adjacent property.

S. Signs

Except for unit identification signs required by the City, no signs shall be placed upon any Lot, and no signs shall be placed in or upon any Home which are visible from the exterior of the Home, without the prior written consent of the Committee, with the exception of one (1) "for sale" or "open house" sign limited to six (6) square feet in size.

T. Window Treatments and Hurricane Shutters

Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding one (1) week after an Owner or tenant first moves into a Home or when permanent window treatments are being cleaned or repaired.

Hurricane shutters are permitted as long as the prior approval of the Committee is obtained prior to the installation of the hurricane shutters.

U. Surface Water Management

No Owner or any other person shall do anything to adversely affect the surface water management and drainage of the Property, without the prior written approval of the Committee and any controlling governmental authority, including, but not limited to, the excavation or filling in of any Lot, provided the foregoing shall not be deemed to prohibit or restrict the initial construction of Improvements

upon the Property by Declarant in accordance with permits issued by controlling governmental authorities. In particular, no Owner shall install any landscaping or place any fill on the Owner's Lot which would adversely affect the drainage of any contiguous Home. No structures, trees or shrubs shall be placed on any drainage or utility easements or any other portion of the Storm Water Management System, except by Declarant, without the prior written consent of the Committee and the applicable governmental authorities and utility providers.

No Owner shall remove native vegetation that become established within any wetland areas located on or adjacent to any portion of the Property. Removal includes dredging, the application of herbicide, and cutting. No Owner shall add or introduce additional vegetation or other forms of plantlife or landscaping within any wetland areas located on or adjacent to any portion of the Property. Owners should address any question regarding authorized activities within any wetland areas to the Association and to the applicable governmental authorities. No Owner may construct or maintain any building, residence, or structure, or undertake or perform any activity in any wetland areas, buffer areas and any upland conservation areas without the prior approval of the Association and the applicable governmental authorities and utility providers.

V. Swimming Pools

No swimming pools, spas, or the like, shall be installed without the consent of the Committee.

W. Fences and Walls

If any Owner desires to construct a fence on his Lot, the Owner shall submit a plot plan to the Committee showing the proposed location of the fence upon the Lot and the height and type of fence to be installed, which must be approved by the Committee. In any event, no fence may be constructed on the portion of any Lot between the front of the Lot and the front of the Home constructed upon the Lot, and any fence constructed upon a Lot must be located in strict conformance with the plot plan approved by the Committee. All fences must be approved by the Committee.

X. Mailboxes

No mailboxes are permitted without the consent of the Committee, except for mailboxes which are identical to mailboxes originally provided for the Homes by Declarant.

Y. Damage and Destruction

In the event any Improvement contiguous with a Home is damaged or destroyed by casualty or for any other reason, the Owner of the Home shall repair and restore the damaged Improvement as soon as is reasonably practical to the same condition that the Improvement was in prior to such damage or destruction, unless otherwise approved by the Committee.

Z. Subdivision and Partition

No Lot on the Property shall be subdivided without the Committee's prior written consent except by Declarant.

AA. Restricted Improvements

The City has restricted the location and amount of any Improvement for the Property (including each Lot) which may restrict, inhibit or prevent the absorption of surface water into the ground.

Those Improvements generally include, but are not limited to, any building, structure, driveway, porch, sidewalk, walkway, patio, deck, or any other Improvement considered to be "impervious" in accordance with the regulations and policies of the City, which are herein referred to as the "Restricted Improvements". The City will only allow a certain percentage of the total surface area of the Property (and each Lot as a component of the Property) to be improved by Restricted Improvements. The Final Plat designates each Lot with an approximate minimum amount of 1,000 square feet of surface area allowed to be improved by Restricted Improvements. To the extent that the Home and Improvements constructed by Declarant on any Lot are less than such amount, Declarant reserves and retains the unilateral right to use such excess amount for the benefit of Declarant's future building Improvements on the Property until the time Declarant no longer owns any Lot within the Property. Therefore, in order for Declarant to specifically preserve the maximum amount of ground surface coverage for the benefit of Declarant's future building Improvements, the construction of any additional Restricted Improvements by an Owner (other than Declarant as part of Declarant's development of the Property) is prohibited until such time as Declarant no longer owns any Lot within the Property. After Declarant no longer owns any Lot within the Property, then the Committee shall have the right to approve what Restricted Improvements may be constructed upon the Property in accordance with the guidelines and requirements of the City.

BB Certain Rights of Declarant

The provisions, restrictions, terms and conditions of this Article XI shall not apply to Declarant as an Owner.

**ARTICLE XII
GENERAL PROVISIONS**

A. Conflict with Other Association Documents

In the event of any conflict between the provisions hereof and the provisions of the Articles and/or Bylaws and/or rules and regulations promulgated by the Association, the provisions of these Protective Covenants shall control.

B. Notices

Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, first class, postage prepaid, to: (i) any Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; and (ii) the Association, certified mail, return receipt requested, at 3739 National Drive, Suite 101, Raleigh, North Carolina 27612, or such other address as the Association shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at 3739 National Drive, Suite 101, Raleigh, North Carolina 27612, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Owners. Upon request of an Owner, the Association shall furnish to such Owner the then current address for Declarant as reflected by the Association records.

C. Enforcement

The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any Lot and/or Home), the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of

relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, Legal Fees. All rights, remedies and privileges granted to the parties entitled to enforce the covenants, restrictions and provisions of these Protective Covenants pursuant to any terms, provisions, covenants or conditions of these Protective Covenants, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude a party entitled to enforce the covenants, restrictions and provisions of these Protective Covenants from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

D. Captions, Headings and Titles

Article and Section captions, headings and titles inserted throughout these Protective Covenants intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of these Protective Covenants.

E. Context

Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

F. Severability

In the event any of the provisions of these Protective Covenants shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of these Protective Covenants deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. In the event that any court should hereafter determine that any provision of these Protective Covenants is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

G. Certain Rights of Declarant

Notwithstanding the other provisions of these Protective Covenants, Declarant reserves and Declarant and its nominees shall have the right to enter into and transact on the Property any business necessary to consummate the sale, lease or encumbrance of Homes or real property including, but not limited to, the right to maintain models and a sales and/or leasing office, place signs, employ sales and leasing personnel, use the Association Property and show Homes, and Declarant reserves and shall have the right to make repairs to the Association Property and to carry on construction activity for the benefit of the Property. Declarant and its nominees may exercise the foregoing rights without notifying the Association. Any such models, sales and/or leasing office, signs and any other items pertaining to such sales or leasing efforts shall not be considered a part of the Association Property and shall remain the property of Declarant. This Section G may not be suspended, superseded or modified in any manner by any amendment to these Protective Covenants unless such amendment is consented to in writing by

Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Association Documents may be assigned in writing by Declarant in whole or in part. The rights and privileges of Declarant as set forth in this Section G, which are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Association Documents, shall terminate upon Declarant no longer owning any portion of the Property (and having any equitable or legal interest therein) or upon such earlier date as Declarant shall notify the Association in writing of Declarant's voluntary election to relinquish the aforesaid rights and privileges.

H. Disputes as to Use

In the event there is any dispute as to whether the use of the Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in these Protective Covenants, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of the Property or any parts thereof in accordance with Section G of this Article XII shall be deemed a use which complies with these Protective Covenants and shall not be subject to a contrary determination by the Board.

I. Amendment and Modification

The process of amending or modifying these Protective Covenants shall be as follows:

1. Until the Turnover Date and except as specifically provided otherwise in this Section I of this Article XII, Declarant may amend this Declaration without the approval of any Member provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or of the Association Property as set forth in these Protective Covenants, and the amendment does not adversely affect the title to any Lot, and during any such period these Protective Covenants may not be amended without the written joinder of Declarant. Any other amendments of these Protective Covenants prior to the Turnover Date, shall require the vote or written consent of two-thirds (2/3) of the votes held by each class of Members of the Association as such classes are set forth in the Association Documents; provided, however, that the percentage of the votes attributable to each class of Members of the Association necessary to amend a specific provision of these Protective Covenants shall not be less than the prescribed percentage (if any) of affirmative votes required for action to be taken under that provision.

2. After the Turnover Date, and except for the annexation of additional property which shall be accomplished pursuant to the provisions of Section B.2 of Article II, these Protective Covenants may be amended by: (i) the consent of the Owners owning two-thirds (2/3) of all Lots; together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners owning two-thirds (2/3) of the Lots may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the Bylaws evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

3. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent of the Owners.

4. Notwithstanding anything to the contrary herein contained, no amendment to these Protective Covenants shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association or of any Institutional Mortgagee under the Association Documents without the specific written approval of such Declarant, Association and/or Institutional Mortgagee affected thereby.

Furthermore, notwithstanding anything to the contrary herein contained, no amendment to these Protective Covenants shall be effective which would prejudice the rights of a then Owner or his family members, guests, invitees and lessees to utilize or enjoy the benefits of the then existing Association Property unless the Owner or Owners so affected consent to such amendment in writing or unless such amendment is adopted in accordance with the procedures required for adoption of an amendment to these Protective Covenants after the Turnover Date. Additionally, notwithstanding anything to the contrary contained herein, no amendment to these Protective Covenants shall be effective which shall eliminate or modify the provisions of Section G of this Article XII and any such amendment shall be deemed to impair and prejudice the rights of Declarant hereunder.

5. Notwithstanding anything contained herein to the contrary, as long as the "Class B" membership exists, any dedication of the Association Property requires (i) the consent of the Owners owning two-thirds (2/3) of all Lots; together with the approval or ratification of a majority of the Board; and (ii) if the Property is subject to the requirements of the Veteran's Administration ("VA"), The Federal Housing Administration ("FHA"), the Federal Home Loan Mortgage Corporation or any other governmental or quasi-governmental agency which insures, guaranties, or purchases mortgages, the prior approval of HUD/VA. The aforementioned consent of the Owners owning two-thirds (2/3) of the Lots may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the Bylaws evidenced by a certificate of the Secretary or an Assistant Secretary of the Association. In addition, if the Property is subject to the requirements of VA, FHA, the Federal Home Loan Mortgage Corporation or any other governmental or quasi-governmental agency which insures, guaranties, or purchases mortgages, the amendment of these Protective Covenants and the annexation of additional property during the existence of the "Class B" membership requires the prior approval of HUD/VA.

6. A true copy of any amendment to these Protective Covenants shall be sent certified mail by the Association to Declarant and to all Institutional Mortgagees holding a mortgage on any portion of the Property requesting notice. The amendment shall become effective upon the recording of a Certificate of Amendment to these Protective Covenants setting forth the amendment or modification amongst the Public Records of the County.

7. Notwithstanding anything contained herein to the contrary, Declarant may, without the consent of any Owners, file any amendments which may be required by an Institutional Mortgagee for the purpose of satisfying its planned unit development criteria or such other criteria as may be established by such mortgagee's secondary mortgage market purchasers, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; provided, however, any such Declarant's filed amendments must be in accordance with any applicable rules, regulations and other requirements promulgated by the United States Department of Housing and Urban Development.

8. Notwithstanding anything contained herein to the contrary, no amendment of these Protective Covenants shall be effective unless such amendment has been approved by the City (which may act by or through the Raleigh City Attorney or any deputy City attorney) as provided in Section O.2 of this Article XII.

J. Delegation

The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant. All contracts with management companies shall contain a provision which allows the Association to unilaterally terminate the contract after ninety (90) days notice.

K. Term

These Protective Covenants and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the Property and inure to the benefit of Declarant, the Association, Owners, and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date of recording these Protective Covenants amongst the Public Records of the County, after which time these Protective Covenants shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such fifty (50) year term or any such ten (10) year extension there is recorded amongst the Public Records of the County an instrument agreeing to terminate these Protective Covenants signed by Owners owning two-thirds (2/3) of the Lots and Institutional Mortgagees holding first mortgages encumbering two-thirds (2/3) of all Lots encumbered by first mortgages held by Institutional Mortgagees, upon which event these Protective Covenants shall be terminated upon the expiration of the fifty (50) year term or the ten (10) year extension during which such instrument was recorded.

L. Rights of Mortgagees

1. Right to Notice

The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Association Documents and the books, records and financial statements of the Association to Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Property. In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Home upon written request to the Association.

2. Rights of Listed Mortgagee

Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a "Listed Mortgagee") of a mortgage encumbering a Lot and the legal description of such Lot the Association shall provide such Listed Mortgagee with timely written notice of the following:

(a) Any condemnation, loss or casualty loss which affects any material portion of the Association Property;

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

(c) Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Lot; and

(d) Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform his obligations under the Association Documents, including, but not limited to, any delinquency in the payment of Assessments, or any other charge owed to the Association by said Owner where such failure or delinquency has continued for a period of sixty (60) days.

3. Right of Listed Mortgagee to Receive Financial Statement

Any Listed Mortgagee shall, upon written request made to the Association, be entitled to financial statements for the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

M. Approval of Association Lawsuits by Owners

Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to the Association Documents;
- (c) the enforcement of the use and occupancy restrictions contained in the Association Documents;
- (d) in an emergency where waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Association Property or to Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Members);
- (e) filing a compulsory counterclaim; or
- (f) termination of employment relationship or enforcement of a contract.

N. Compliance with Provisions

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot except as elsewhere herein provided does and shall be conclusively deemed to have consented to and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

O. Rights and Requirements of Governmental Authorities and the City of Raleigh

1. Rights of Governmental Authorities in General

Any governmental authority or agency, including, but not limited to the City and the County, their agents, and employees, shall have the right of immediate access to the Property at all times if necessary for the preservation of public health, safety and welfare. Should the Association or its Board fail to maintain the Association Property in accordance with the specifications set forth in the applicable governmental approvals for Bryarton for an unreasonable time, not to exceed ninety days after written request to do so, the City, the County and any other applicable governmental authority, by and through the affirmative action of a majority of the governing body, shall have the same right (but not the obligation), power and authority as is herein given to the Association and its Board to enforce these Protective Covenants and levy Assessments necessary to maintain the Association Property, it being understood that in such event the applicable governing body may elect to exercise the rights and powers of the Association or its Board, to the extent necessary to take any action required and levy any Assessment

that the Association might have taken, either in the name of the Association or otherwise, to cover the cost of maintenance of any Association Property. The rules granted herein shall be supplemental to any governmental authority the City and County may have, and application of this provision shall not diminish, limit, or restrict the right of the City and County to apply any other legal rights it may have.

2. City Approval of Certain Actions

Notwithstanding anything contained elsewhere in the Association Documents to the contrary, the following actions shall require the prior written approval of the City (which may act by or through the City Attorney or any Deputy City Attorney) before being implemented or effective:

(i) The annexation of any additional land to the provisions of these Protective Covenants;

(ii) The withdrawal of any land from the provisions of these Protective Covenants; or

(iii) The amendment of these Protective Covenants.

3. Non-Liability of the City

The City shall not be responsible for failing to provide any emergency or regular fire, police or other public service to the Property, any Lot, or any Owner or occupant when such failure is due to the lack of access to the Property or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

4. Density

The current zoning classification of Bryarton is "R-6 CUD", which means that the maximum number of units per acre within Bryarton Subdivision without rezoning the Property and the Additional Property to another zoning classification is six (6) lots per acre. However, Bryarton was approved as part of a cluster unit development as that term is defined in the City's zoning ordinance, and the approved density for Bryarton is reflected by the Site Plan and may be lower than the maximum number of units permitted by such zoning classification. Notwithstanding any other provision of the Association Documents, the maximum amount of land area and the maximum number of dwelling units located on the Property subject to this Association shall not, without rezoning the Property, exceed 150 acres or exceed a total of 900 dwelling units, or exceed a density in any area of fourteen (14) dwelling units per acre.

5. Subdivision of Lots.

Although a Lot within Bryarton Subdivision may appear to contain enough land area to permit construction of additional dwelling units, because of the approval of Bryarton as a cluster unit development, prior approved density transfers may, in fact, preclude City approval of additional dwellings. No Lot within Bryarton Subdivision may be subdivided by sale or otherwise so as to reduce the total lot area shown on the Final Plat, except by and with the consent of the Declarant and, if required, by the City.

BK 7859PG0929

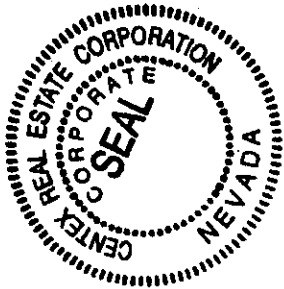
IN WITNESS WHEREOF, these Protective Covenants has been signed by Declarant and joined in by the Association on the respective dates set forth below.

DECLARANT:

CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation,
a Nevada corporation
Its: Managing General Partner

By: E. L. Batcher
Division President
Attest: W. H. Austin
Assistant Secretary



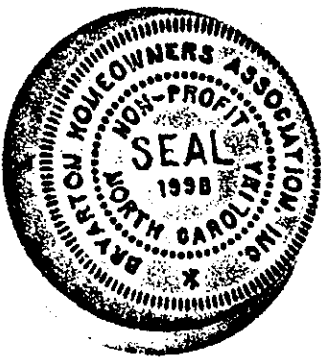
(SEAL)

Date: 1/13/98

ASSOCIATION:

BRYARTON HOMEOWNERS ASSOCIATION, INC.

By: W. H. Austin
President
Attest: [Signature]
Secretary



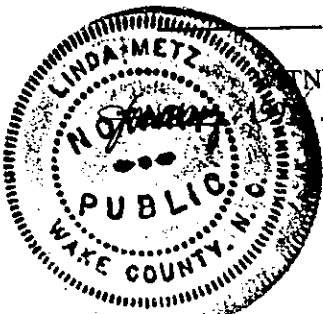
(SEAL)

Date: 1/13/98

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STATE OF NORTH CAROLINA §
COUNTY OF WAKE §

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by E. Scott Batchelor and Matthew Christensen, the Div. Pres. and Asst. Secretary, respectively of Centex Real Estate Corporation, a Nevada corporation, the Managing General Partner of CENTEX HOMES, a Nevada general partnership, that by authority duly given and as the act of the partnership, the foregoing instrument was signed in its name by the Division President of Centex Real Estate Corporation, sealed with the corporate seal and attested by him as the Assistant Secretary of Centex Real Estate Corporation. Matthew Christensen is personally known to me or has produced _____ as identification.



WITNESS my hand and official seal in the County and State last aforesaid this 13th day of _____

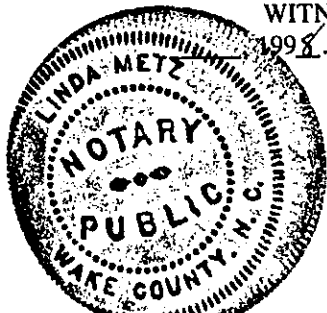
Linda Metz
Notary Public

LINDA METZ
Typed, Printed or Stamped Name of
Notary Public

My Commission Expires: 2.9.2001

STATE OF NORTH CAROLINA §
COUNTY OF WAKE §

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Matthew Christensen and Rob Neintreut, the President and Secretary, respectively of BRYARTON HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, freely and voluntarily under authority duly vested in them by said corporation, and that the seal affixed thereto is the true corporate seal of said corporation. Matthew Christensen is personally known to me or has produced _____ as identification. Rob Neintreut is personally known to me or has produced _____ as identification.



WITNESS my hand and official seal in the County and State last aforesaid this 13th day of January, 1998.

Linda Metz
Notary Public

LINDA METZ
Typed, Printed or Stamped Name of
Notary Public

My Commission Expires: 2.9.2001

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate, of _____
Linda Metz
Notary(y)(ies) Public

is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

LAURA M. RIDDICK, Register of Deeds

By Robert A. Schaefer
Asst./Deputy Register of Deeds

BK 7859PG0931

STATE OF NORTH CAROLINA - COUNTY OF WAKE

The foregoing certificate of _____, Notary
Public is certified to be correct. This instrument and these certificates are duly registered at the date and
time and in the book and page shown on the first page hereof.

Register of Deeds

That certain real property lying in Wake County, North Carolina, and being more particularly described as follows:

COMMENCING at an iron pipe found in the southern right of way of Jones Franklin Road, said iron pipe being a common corner marking the northeast corner of Lot 13, Subdivision of the Zadio R. Prince Estate as shown on Book of Maps 1969, Page 287, Wake County Registry and the northwest corner of the Howard Horton property as described in Deed Book 1107, Page 453, Wake County Registry; thence from said point of Commencement North 50 degrees 23' 53" East 205.64 feet to an iron pipe found in the southern right of way of Jones Franklin Road being the true point of BEGINNING;

thence from said beginning point along the southern right of way of Jones Franklin Road North 51 degrees 25' 32" East 595.97 feet to an iron pipe found in the southern right of way of Jones Franklin Road, being a common corner with the Silvers property more particularly described in Deed Book 1630, Page 357, Wake County Registry; thence leaving the southern right of way of Jones Franklin Road and following a common line with the above referenced Silvers property South 50 degrees 11' 40" East 290.87 feet to an iron pipe; thence North 48 degrees 47' 36" East 98.07 feet to a point along the common line with the Silvers property; thence leaving the common line with Silvers and following a common line with Tract 2, South 35 degrees 32' 55" East 125.99 feet to a point; thence following the curve of a line having radius of 703.05 feet, an arc length of 9.47 feet, a chord bearing of North 54 degrees 03' 55" East and a chord distance of 9.47 feet to a point; thence South 36 degrees 19' 15" East 170.00 feet to a point; thence North 53 degrees 40' 45" East 18.59 feet to a point; thence South 37 degrees 57' 41" East 132.40 feet to a point; thence continuing South 37 degrees 57' 41" East 22.50 feet to a point; thence following the curve of a line having a radius of 984.80 feet, an arc length of 3.98 feet, a chord bearing of South 52 degrees 09' 17" West and a chord distance of 3.98 feet to a point; thence South 37 degrees 43' 46" East 110.84 feet to a point; thence South 41 degrees 33' 22" West 24.93 feet to a point; thence South 50 degrees 31' 45" East 139.53 feet to a point; thence South 59 degrees 49' 16" East 70.67 feet to a point; thence South 62 degrees 02' 19" East 60.22 feet to a point; thence South 35 degrees 37' 48" West 286.87 feet to a point in the northern line of property now or formerly owned by Haven Free Will Baptist Church as shown on Book of Maps 1978, Page 381, Wake County Registry and described in Deed Book 2627, Page 751, Wake County Registry; thence leaving the common line with Tract 2 and following along a common line with the above referenced Haven Free Will Baptist Church property South 73 degrees 50' 21" West 213.13 feet to an iron pipe; thence along the common line with the property now or formerly owned by Prince South 75 degrees 57' 22" West 185.00 feet to an iron pipe; thence along a common line with Tract 3 South 74 degrees 48' 14" West 800.51 feet to a point, being the common corner of Tract 3, the herein described Tract 1, and Lot 8 and Lot 9, Subdivision of the Zadio R. Prince Estate, as shown on Book of Maps 1969, Page 287, Wake County Registry; thence along the common line with the Subdivision of the Zadio R. Prince Estate North 11 degrees 41' 23" West 594.15 feet to a point; thence along the southern line of the Howard Horton property North 46 degrees 41' 35" East 326.82 feet to an iron pipe; thence North 50 degrees 38' 08" West 153.67 feet to the point and place of BEGINNING; being the same 25.00 acres, more or less, shown as "Tract 1" on the survey entitled "BOUNDARY SURVEY FOR CENTEX HOLDINGS, A NEVADA GENERAL PARTNERSHIP", prepared by Priest, Craven & Associates, Inc., dated June 11, 1997.

EXHIBIT B

Legal Description of Additional Property

Being a portion of the real property located in Wake County, North Carolina which is described and depicted on a record map filed in Book of Maps 1971, Page 352 of the Wake County Registry, described as follows:

That portion of the real property depicted on Book of Maps 1971, Page 352 of the Wake County Registry consisting of approximately 19.14 acres and depicted as "Phase 2" on Exhibit "C" of these Protective Covenants, **SAVE AND EXCEPT** the following parcels: (i) the tract of land described on Exhibit "A" of these Protective Covenants, which land described on Exhibit "A" was conveyed to Centex Homes by a General Warranty Deed filed of record in Book 7509, Page 0106 of the Wake County Registry (shown as "Phase 1" on Exhibit "C"), and (ii) the tract of land depicted on Exhibit "C" of these Protective Covenants as the 11.6 acre parcel lying in between Tryon Road and the property described on Exhibit "A".

