

MASTER DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS

FOR

HABERSHAM MASTER ASSOCIATION

This Master Declaration of Covenants, Conditions and Restrictions is made this ~~day of~~ the 16th day of June \_\_\_\_\_, 1999, by Habersham, Inc., a South Carolina corporation, hereinafter referred to as the "Declarant", joined herein by Centex Homes, a Nevada general partnership, hereinafter referred to as "Centex".

WITNESSETH

WHEREAS, Declarant and Centex, collectively, are the owners of certain real property in Pickens County, South Carolina, described on Exhibit "A" attached hereto and incorporated herein by reference (herein referred to as the "Owned Property"); and

WHEREAS, Declarant intends to develop the Property, or portions thereof, by the construction of roads, utilities and drainage facilities for the construction and occupancy of single family detached residential dwellings as may be permitted by applicable zoning ordinances; and,

WHEREAS, Declarant has recorded that certain Declaration of Covenants and Restrictions for Habersham (herein referred to as the "Habersham, Phase One DCCR") recorded in the Office of the Register of Deeds \_\_\_\_\_, Pickens County, South Carolina, thereby encumbering the Lots situated in the first phase of development of the Habersham community as depicted on the plat of Habersham, Phase One recorded in the Office of the Register of Deeds \_\_\_\_\_, Pickens County, South Carolina (herein referred to as the "Phase One Plat"), and subjecting such Lots to the covenants, conditions, easements and restrictions set forth therein; and

WHEREAS, Declarant has recorded that certain Declaration of Covenants, Conditions and Restrictions for Habersham, Phase Two (herein referred to as the "Habersham, Phase Two DCCR") recorded in the Office of the Register of Deeds, Pickens County, South Carolina, thereby encumbering the Lots situated in the second phase of development of the Habersham community as depicted in the Plat of

Habersham, Phase Two recorded in Book 339 at Page 10, and Book 324 at Page 16-A, Pickens County, South Carolina (herein referred to as the "Phase Two Plat"), and subjecting such Lots to the covenants, conditions, easements and restrictions set forth therein; and

WHEREAS, Declarant has created the Habersham Homeowners' Association, Inc. (herein referred to as the "Phase One HOA"), as a South Carolina non-profit corporation to own, operate and maintain the common properties in the portion of the Habersham community depicted on the Phase One Plat; and

WHEREAS, Declarant has created the Habersham, Phase Two Homeowners Association, Inc. (herein referred to as the "Phase Two HOA"), as a South Carolina non-profit corporation to own, operate and maintain the common properties in the portion of the Habersham community depicted on the plat Phase Two Plat; and

WHEREAS, Declarant desires to establish a master association which will be made up of the Phase One HOA and the Phase Two HOA, and will own, operate and maintain the Master Common Property (herein described) and will operate and maintain such other property as may be owned by or dedicated to any governmental entity lying within the rights-of-way or easements owned by or dedicated to such governmental entity and serving the residents of the Habersham community but not being maintained by the governmental entity; and

WHEREAS, pursuant to the rights reserved by Declarant in the Habersham Phase One DCCR, and the Phase One HOA, this Master Declaration shall be deemed a supplement and amendment to the Habersham Phase One DCCR and Phase One HOA;

THEREFORE, in consideration of the premises and the covenants herein contained, Declarant hereby declares that henceforth the Property and all additions thereto, shall be owned, held and conveyed subject to the covenants, restrictions, easements, reservations and liens herein established, which shall be covenants running with the land and shall be binding upon and inure to the benefit of Declarant and all owners of land within the Property and their respective successors and assigns.

## ARTICLE 1

### DEFINITIONS

The following words and terms when used in this Master Declaration or any Supplemental Declaration hereto (unless the context shall clearly indicates otherwise) shall have the following meanings:

Section 1.1. "Area of Common Responsibility" shall mean the Master Common Property, together with those areas, if any, which by the terms of this Master Declaration or by contract or agreement with the Phase One HOA or the Phase Two HOA, or governmental agency become the responsibility of the Master Association.

Section 1.2. "Articles" and "Bylaws" shall mean the Articles of Incorporation of the Master Association as they may exist from time to time, and the Bylaws in the form attached hereto as Exhibit "D", and incorporated herein by reference.

Section 1.3. "Board" shall mean the Board of Directors of the Master Association, appointed or elected in accordance with the Bylaws of the Master Association.

Section 1.4. "Builder" shall mean Centex and other any purchaser of one or more Lots from Declarant for the construction and resale of Units.

Section 1.5. "Common Expenses" shall mean the actual and estimated expenditures, including reasonable reserves, for maintenance, operation and other services required or authorized to be performed by the Master Association with respect to Areas of Common Responsibility or Master Common Property, as may be found to be reasonably necessary by the Board pursuant to this Master Declaration, the Bylaws, and the Articles of Incorporation of the Master Association.

Section 1.6. "Declarant" shall mean Habersham, Inc., a South Carolina corporation, and its successors and assigns who take title to any portion of the Properties for the purpose of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant as set forth in Article 3.

Section 1.7. "Declaration" or "Master Declaration" shall mean and refer to this Master Declaration of Covenants Conditions and Restrictions for Habersham Master Association as it may be amended or supplemented from time to time.

Section 1.8. "Habersham" or "Habersham Community" shall mean and refer to the real property depicted on the Phase One Plat and the Phase Two Plat, together with any additional lands properly encumbered by this Master Declaration of Covenants Conditions and Restrictions for Habersham Master Association as it may be amended or supplemented from time to time.

Section 1.9. "Institutional Lender" shall mean and refer to the owner and holder of a Mortgage encumbering a Unit or Lot, which owner and holder of said Mortgage may be a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, an agency of the United States government, private or public pension fund, U.S. Department of Veterans Affairs, the Federal National

Mortgage Association, the Federal Home Loan Mortgage Corporation, a credit union, real estate or mortgage investment trust or a lender generally recognized in the community as an institutional lender.

Section 1.10. "Lot" or "Lots" shall mean any parcel of land depicted on the Phase One Plat or the Phase Two Plat together with any future additions thereto designated and intended as the site for construction and occupation of a residential dwelling.

Section 1.11. "Master Association" or "Association" shall mean and refer to the Habersham Master Association, Inc., a South Carolina non-profit corporation created for the purposes set forth herein.

Section 1.12. "Master Common Area" or "Master Common Property" shall mean and refer to those tracts of land, together with any improvements thereon, which are actually and specifically dedicated by plat, deeded or leased to the Master Association for the use and enjoyment of all Owners of Lots or Units, as herein defined, and designated in said plat dedication, deed or lease as "Master Common Property" or "Master Common Area". The term "Master Common Area" or "Master Common Property" shall also include any personal property acquired by the Master Association for the use and benefit of the Members. Master Common Property is specifically reserved for the use and benefit of all Owners of Lots or Units in the Property. The initial Master Common Property to be conveyed to and owned by the Master Association is described on Exhibit "B" attached hereto and incorporated herein by reference.

Section 1.13. "Master Common Expense" shall mean the expenses and obligations incurred by the Master Association in the performance of its obligations according to the Master Declaration, the Articles of Incorporation and Bylaws.

Section 1.14. "Member" shall mean and refer to all those persons or entities who are members of the Master Association as provided in Article 3 hereof.

Section 1.15. "Mortgage" shall mean a permanent or construction mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.

Section 1.16. "Mortgagee" shall mean a beneficiary or holder of a Mortgage.

Section 1.17. "Notice" shall mean delivery of any document by mail with postage prepaid to the last known address according to the records of the Association of the person or entity who appears as Owner in the records of the Association. If available from the records of the Association, notices to an Owner will be sent to a tenant of

Owner occupying the Unit. Notice to one of two or more co-owners shall constitute notice to all Owners.

Section 1.18. "Owner" shall mean and refer to the owner as shown by the records of the Association (whether it be the Declarant, one or more persons, firms or legal entities) of fee simple title to any Lot or Unit located within the Properties. Owner shall not mean or refer to the holder of a Mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

Section 1.19. "Recreation Parcels" shall mean those parcels of Master Common Areas which are shown as recreational areas on any plat of the Habersham community. The Recreation Parcels shall be owned by the Master Association and shall be used for the common benefit and enjoyment of the members of the Master Association, their invitees and guests and shall not be open to the general public.

Section 1.20. "Sub-Association" shall mean the Phase One HOA and the Phase Two HOA.

Section 1.21. "Sub-Association Common Area" shall mean any Common Area or Common Property owned, operated or maintained by a Sub-Association.

Section 1.22. "Sub-Association Declaration" shall mean any declaration of covenants, conditions and restrictions applicable to a Sub-Association.

Section 1.23. "Sub-Association Expenses" shall mean the actual and estimated expenses incurred by a Sub-Association for the benefit of Owners of Units within a particular Sub-Association.

Section 1.24. "Supplemental Master Declaration" shall mean any supplement, amendment or modification of this Master Declaration.

Section 1.25. "Undeveloped Parcel" shall mean and refer to the lands described in Exhibit "C" attached to this Master Declaration, portions of which are presently unimproved parcels of land which Declarant may, but is not obligated to develop by future annexation, and which may be subjected to this Master Declaration.

Section 1.26. "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use and occupancy as a detached residence for a single family, and shall, unless otherwise specified, include within its meaning single-family detached houses on separately platted Lots as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided.

Section 1.27. "Voting Member" shall mean the Declarant as to votes allocated to the Class B member, any Builder as to votes allocated to a Class C member, and the Sub-Associations as to all the votes allocated to Class A Members.

Section 1.28. "Voting Representative" shall mean the elected president from each Sub-Association who shall be the person authorized by the Sub-Association to cast all votes attributable to Units in the Sub-Association pursuant to Articles 3 and 7.

## ARTICLE 2

### PROPERTY SUBJECT TO MASTER DECLARATION

Section 2.1. Property Subject to this Master Declaration. From and after the time that this Master Declaration is recorded in the Public Records of Pickens County, South Carolina, all of the Lots depicted on the Phase One Plat, and all Lots and Master Common Property depicted on the Phase Two Plat, shall be subject to the terms and conditions of this Master Declaration. All such Lots in the Habersham community shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions contained in this Master Declaration, which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors or assigns and shall inure to the benefit of each owner thereof.

#### Section 2.2. Annexation.

2.2.1. Within the period beginning with the date this Master Declaration is recorded in the Public Records of Pickens County, South Carolina and ending either (a) seven (7) years thereafter, or (b) five (5) years from the date of recording of the last recorded Supplemental Master Declaration annexing additional land to this Master Declaration, whichever event, (a) or (b), occurs later, the Declarant may, without the consent or joinder of the Owners or any other person or entity, annex additional real property (including Master Common Property) within the Undeveloped Parcel to the Properties. Annexations under this Subsection 2.2.1 shall be accomplished by filing a Supplemental Master Declaration describing the real property to be annexed (or withdrawn pursuant to Section 2.3 of this Article 2, as the case may be), and shall become effective when such Supplemental Master Declaration is filed among the Public Records of Pickens County, South Carolina, unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other person or entity the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the Properties and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

2.2.2. Subject to the consent of the owner thereof, the Master Association may annex real property, other than property within the Undeveloped Parcel, to the provisions of this Master Declaration and the jurisdiction of the Master Association. Such annexation shall require the affirmative vote of Voting Members representing two-thirds (2/3) of the votes of each class of Members of the Master Association. The annexation of land under this Subsection 2.2.2 shall be accomplished by the recordation in the Public Records of Pickens County, South Carolina, of a Supplemental Master Declaration describing the property being annexed and signed by the President and Secretary of the Master Association and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

2.2.3. No provision of this Master Declaration shall be construed to require Declarant or any other person or entity to annex any real property to this Master Declaration. Further, the Declarant is not obligated to bring all or any part of the remaining real estate in the Undeveloped Parcel into the Master Association.

2.2.4. Covenants and restrictions applicable to annexations to the Owned Properties shall be compatible with, but need not be identical to, the covenants and restrictions set forth in this Master Declaration.

2.2.5. In the event that either the Federal Housing Administration or the Department of Veterans Affairs insures or guarantees any mortgage encumbering a Lot, and the regulations or procedures of such agency require under such circumstances approval of annexations by such agency or determination by such agency that such annexation is consistent with the general plan of development for the Habersham community, then such approval or determination as described in Article 12 shall be a prerequisite to such annexation.

Section 2.3. Withdrawal. Within the period beginning with the date this Master Declaration is recorded in the Public Records of Pickens County, South Carolina and ending either (a) seven (7) years thereafter, or (b) five (5) years from the date of recording of the last recorded Supplemental Master Declaration annexing additional land to this Master Declaration, whichever event (a) or (b) occurs later, without the consent or joinder of the Owners or any other person or entity, the Declarant may, when necessary or desirable, withdraw from the provisions of this Master Declaration any of the Owned Property that continues to be owned by the Declarant, and its successors or assigns, and which has not been dedicated or designated as Master Common Property. Withdrawals under this Section 2.3 shall be accomplished by filing a Supplemental Master Declaration describing the real property to be withdrawn and shall become effective when such Supplemental Master Declaration has been recorded in the Public Records of Pickens County, South Carolina, unless otherwise provided therein.

Section 2.4. Conveyance of Master Common Areas to the Master Association and/or Sub-Association Association. When Declarant or Centex conveys title to the first Unit within each Sub-Association to be conveyed to a Class "A" Member, the Declarant shall be obligated to convey title to all of the Master Common Areas located in such Sub-Association to the Master Association which shall be obligated to accept such conveyance pursuant to Article 9.

### ARTICLE 3

#### CREATION OF ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Creation of Association. Upon execution of this Master Declaration, Declarant shall cause the Association to be created by recording the Articles of Incorporation thereof with the Secretary of State of South Carolina.

Section 3.2. Membership. Every Owner of a Unit or Lot, and every Builder owning any Unit or Lot, by virtue of the ownership of such Unit or Lot, and the Declarant and its successors and assigns, shall be Members of the Association, and by acceptance of a deed or other instrument evidencing an ownership interest, each Owner, Builder and Declarant accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Master Declaration, the Articles of Incorporation, the Bylaws and other rules and regulations of the Association. The term "Member" shall include each person or entity owning any right, title or interest in any Unit or Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or entities also have the right of possession. Tenants or others occupying any Unit who do not have an ownership interest therein shall not be Members for the purposes of this Master Declaration. Membership in the Association is appurtenant to, and may not be severed from, the Unit or Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Master Declaration, the Articles of Incorporation or Bylaws of the Master Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot or Unit. Members shall be responsible for compliance with the terms and conditions of this Master Declaration, the Articles of Incorporation and Bylaws, and rules and regulations of the Master Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Unit, Master Common Area or other portion of the Habersham community.

#### Section 3.3. Sub-Associations and Voting Rights.

3.3.1. The Property will be developed in stages or phases that will be designated as separate Sub-Associations for the purposes of the Master Association.

Each Lot or Unit subject to this Master Declaration will be situated within a Sub-Association. Each Sub-Association will contain Lots or Units sharing common facilities and having similar interests. Each Sub-Association will be subject to this Master Declaration, and will also be subject to a separate Sub-Association Declaration that will, among other things, create a separate Sub-Association which will be governed by its own separate Articles of Incorporation and Bylaws pursuant to Article 7. The Owner of each Lot or Unit will be a member of a Sub-Association as well as a Member of this Master Association. The Sub-Associations will be subordinate to this Master Association and will be responsible for performing the services and obligations imposed on them by this Master Association pursuant to the governing documents. The Sub-Association for Habersham, Phase One, is the Habersham Homeowners' Association, Inc. (i.e., the Phase One HOA), as described in the Habersham Phase One DCCR, and the Sub-Association for Habersham, Phase Two, is the Habersham, Phase Two Homeowners Association, Inc. (i.e., the Phase Two HOA), as described in the Habersham, Phase Two DCCR.

3.3.2. Each Sub-Association shall exercise the voting rights herein established on behalf of all Members whose Units or Lots are within the jurisdiction of such Sub-Association. On all matters requiring the votes of Members as may be described in this Master Declaration, or in the Articles of Incorporation or Bylaws, such votes shall be conducted by the Sub-Associations. The result of the vote shall be reported to the Master Association by the Voting Representative of the Sub-Association and the total number of votes of each class of membership attributed to the Sub-Association shall be cast accordingly. Members shall not have the right to cast votes directly with the Master Association, and shall be bound by the outcome of the voting conducted by the Sub-Associations.

3.3.3. Members of the Master Association shall be allocated votes as follows:

Class A. Class A Members shall be all Owners with the exception of the Declarant and any Builders. Each Class "A" Member shall be entitled to one vote for each Lot or Unit owned.

Class B. The Class B Member shall be the Declarant, or its specifically designated (in writing) successor. The Class B Member shall be allocated three (3) votes for each Lot or Unit owned by it subject to assessment by this Master Association; provided, that the Class B membership shall cease and become converted to Class A membership as set forth in Section 3.5 of this Article 3. Upon conversion to Class A membership, the Declarant shall have one vote for each Unit or Lot owned by it subject to assessment by this Master Association.

Class C. Centex and all other Builders, as defined herein, shall be Class C Members. Class C Members shall have one (1) vote for each Lot or Unit they own in the Owned Property.

3.3.4. When any Unit or Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Sub-Association, such Owner shall select one official representative to qualify for voting in the Sub-Association and shall notify in writing the Secretary of the Sub-Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant or a Builder) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot or Unit. If the Owners fail to designate their official representative, then the Sub-Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

Section 3.4. Change of Membership.

3.4.1. Change of membership in the Master Association shall be established by recording in the Public Records of Pickens County, South Carolina, a deed or other instrument conveying record fee title to any Lot or Unit, and by the delivery to the Master Association, and to the Sub-Association, of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Master Association and of the Sub-Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said instrument is not delivered to the Master Association and to the Sub-Association, said Owner shall become a Member, but shall not be entitled to voting privileges until delivery of a copy of the conveyance instrument to the Master Association and the Sub-Association. The foregoing shall not, however, limit the Master Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot or Unit acquired.

3.4.2. The interest, if any, of a Member in the funds and assets of the Master Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Master Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or

conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

Section 3.5. Class B Membership Status.

3.5.1. The Declarant's Class B membership status shall continue, and shall be in effect, during the period from the inception of this Master Declaration until either (1) seven (7) years from the date this Master Declaration is recorded; or (2) five (5) years after the date of recording of the last Supplemental Master Declaration annexing additional property into this Master Association, whichever event, (1) or (2) occurs later; or (3) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (4) in any event, ninety (90) days after the conveyance of the Unit to a Class A Member that causes the total number of votes held by all Class A Members of this Master Association to equal the number of votes in all Sub-Associations held by the Class B Member, whichever event, (1), (2), (3) or (4), occurs first; provided however, that if Class B status is converted to Class A pursuant to clause (4) and, subsequent to such event, the Declarant annexes an additional Sub-Association to the Master Association or annexes additional Lots to an existing Sub-Association which annexation causes the number of Lots or Units owned by the Declarant in all Sub-Associations to exceed twenty-five percent (25%) of the total number of Lots and Units within all Sub-Associations, Declarant's Class B status shall be restored as to all Lots and Units then owned by Declarant, and shall continue until the next occurrence of an event of conversion described above. For the purposes of this Master Declaration, all Lots and Units owned by the Declarant in all Sub-Associations shall be included in the determination of Class B status even if Declarant owns fewer than twenty-five percent (25%) of the Lots or Units within any particular Sub-Association. The rights, privileges and obligations of Class B status shall prevail within all Sub-Associations as long as Declarant shall be a Class B Member of this Master Association, even if Declarant owns only one Lot or Unit within such Sub-Association.

3.5.2. The Declarant shall have the right to partially assign its status as Declarant and Class B Member, by recorded instrument executed by the original Declarant and acknowledged and accepted by the assignee Declarant, to any person or entity acquiring any portion of the Property, or the adjacent land eligible for annexation into the Property, for the purpose of development of a residential subdivision, and any such assignee shall thereafter be deemed to be the Declarant as to the Lots or Units owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots and Units, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots and Units owned by such original Declarant. If any action of the Master Association, or any Sub-Association requires the approval, consent or vote of the Declarant, and the

original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

#### ARTICLE 4

#### FUNCTIONS OF MASTER ASSOCIATION

Section 4.1. Area of Common Responsibility. The Master Association, subject to the rights of the Owners set forth in this Master Declaration, shall be responsible for the exclusive management and control of the Area of Common Responsibility and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep the Area of Common Responsibility in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and any agreement with another association or governmental agency.

Section 4.2. Personal Property and Real Property for Common Use. The Master Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Master Association, shall accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant.

Section 4.3. Services. The Master Association shall have the power to perform the following services, however, the Board of Directors shall determine in its sole authority, the actual services and functions to be performed by the Master Association, and the description of the following powers is for informational purposes only, and shall not be deemed to impose on the Master Association the obligation to perform such services or functions:

4.3.1. Maintenance of Areas of Common Responsibility, Recreation Parcels, landscaping, and all city, county, district or municipal properties and rights-of-way (to the extent permitted by any governmental authority) which are located within or in a reasonable proximity to the Owned Properties where deterioration of any of the described items would adversely affect the appearance of the Owned Properties or the operation of systems appurtenant to the Habersham community.

4.3.2. Maintenance of any real property located within the Habersham community upon which the Master Association has accepted an easement for said maintenance.

4.3.3. Insect and pest control where necessary or desirable in the judgment of the Board to supplement the service provided by the state and local

governments. The provisions of this paragraph shall not be construed as an obligation on the part of Master Association to provide such services.

4.3.4. Taking any and all actions necessary to enforce all covenants, conditions and restrictions affecting the Owned Properties and to perform any of the functions or services delegated to the Master Association in any covenants, conditions or restrictions applicable to the Property or in the Articles or Bylaws.

4.3.5. Conducting business of the Master Association, including but not limited to administrative services such as legal, accounting and financial, and communication services informing Members of activities, Notice of Meetings, and other important events. The Master Association shall have the right to enter into management agreements with companies affiliated with the Declarant in order to provide its services, and perform its functions.

4.3.6. Adopting, publishing and enforcing such Rules and Regulations as the Board deems necessary.

4.3.7. At the sole option and discretion of the Board, conducting recreation, sport, craft, and cultural programs of interest to Members, their families, tenants and guests and charging admission fees for the operation thereof.

4.3.8. Constructing improvements on Master Common Property and easements as may be required to provide the services as authorized in this Article.

4.3.9. Establish use fees and promulgate rules and regulations respecting the use of Master Common Property and Master Association facilities by Members and persons other than Members.

4.3.10. Engage in any activities reasonably necessary and legally required to remove from the Areas of Common Responsibility any pollutants, hazardous waste or toxic materials, and by Special Assessment, recover costs incurred from the Owner(s) causing such condition or upon whose property such materials were located or generated.

4.3.11. Accept conveyance of all Master Common Areas from the Declarant, including all improvements, structures, equipment, apparatus or personal property thereon, and cooperate with and assist Declarant, its agents, employees and contractors in periodic inspection and maintenance thereof pursuant to Article 9.

The functions and services allowed in this Section to be carried out or offered by the Master Association at any particular time shall be determined by the Board taking into consideration proceeds of assessments and the needs of the Members of the Master

Association. The functions and services which the Master Association is authorized to carry out or to provide, may be added to or reduced at any time upon the affirmative vote of a majority of the Board; provided, however, the Board may not vote to reduce or abrogate the Master Association's responsibility to maintain Areas of Common Responsibility. The Master Association may provide the permitted services by contract with third parties, including agreements with applicable governmental agencies.

Section 4.4. Mortgage and Pledge. The Board shall have the power and authority (subject to the provisions of Article 5, Subsection 5.9.5 hereof) to mortgage the property of the Master Association and to pledge the revenues of the Master Association as security for loans made to the Master Association which loans shall be used by the Master Association in performing its functions.

Section 4.5. Conveyance to Master Association. The Master Association shall be obligated to accept any and all conveyances to it by Declarant of fee simple title, easements or leases to Recreation Parcels and Master Common Property as set forth in Article 9.

Section 4.6. Conveyance by Master Association. The Master Association may convey or dedicate lands or easements that are part of the Master Common Properties owned by the Master Association to Pickens County, the State of South Carolina, or other governmental authority or agency. The Master Association may also convey lands or easements that are part of the Master Common Properties owned by the Master Association to the Declarant in connection with any replatting of any portion of the Property.

## ARTICLE 5

### EASEMENTS

Section 5.1. Owners' Easements of Access and Enjoyment. Subject to the provisions below, every Owner shall have a right to use and an easement of enjoyment in and to the Master Common Areas, together with an easement of access to and from the Master Common Areas which shall be appurtenant to and shall pass with the title to the Lot or Unit owned by such Owner, subject to the following:

5.1.1. The right of the Master Association to take such steps as are reasonably necessary to protect the Master Common Areas against foreclosure;

5.1.2. All provisions of the Master Declaration and the Articles and Bylaws of the Master Association;

5.1.3. Rules and regulations governing the use and enjoyment of the Master Common Areas adopted by the Master Association; provided, however, that the Master Association may not restrict the persons described in Section 5.4 of this Article from the reasonable use of the Master Common Areas in connection with the construction and sale of Units and other improvements upon the Property.

5.1.4. Restrictions contained on any and all plats of all or any part of the Master Common Areas or filed separately with respect to all or any part or parts of the Master Common Areas.

5.1.5. The additional restrictions set forth in Section 5.6 of this Article 5.

Section 5.2. Delegation of Use. Any Owner may delegate, in accordance with the appropriate Bylaws, his right of ingress and egress over and across the Master Common Areas and right of use and enjoyment of the Master Common Areas to his guests, invitees and family members, and to tenants and contract purchasers of his Unit, and their respective guests, invitees and family members.

Section 5.3. Utility Easements. The Declarant reserves to itself (and its successors or assigns) for so long as Declarant owns any of the Owned Properties, and the Master Association thereafter, the right to grant easements to any private company, public or private utility or governmental authority providing utility and other services within the Owned Properties and the Master Common Property upon, over, under and across the Owned Properties. Said easements shall only be given for the purpose of maintaining, installing, repairing, altering and operating sewer lines, irrigation lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal lines and systems, pipes, wires, fiber optics lines, power lines, telephone service, gas lines, syphons, valves, gates, pipelines, cable television service, alarm systems and all machinery and apparatus appurtenant thereto to all of the foregoing as may be necessary or desirable for the installation and maintenance of utilities and providing services to Owners, the Owned Properties and Master Common Property. All such easements to be of a size, width and location as Declarant, or the Master Association, in its discretion, deems best but selected in a location so as to not unreasonably interfere with the use of any improvements which are now, or will be, located upon the Owned Properties.

Section 5.4. Declarant and Builder Easements. Declarant hereby reserves to itself, its successors and assigns, and to Centex and all other Builders, and to such other persons as Declarant may from time to time designate in writing, a perpetual easement, privilege and right in and to, over, under, on and across the Lots, Units and Master Common Property for ingress and egress as required by its officers, directors, employees, agents, independent contractors, invitees and designees; provided,

however, that such access and use does not unnecessarily interfere with the intended use and enjoyment of these properties and facilities by the Owners. Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way on any of the Owned Properties owned by Declarant. The easements granted by Declarant shall not structurally weaken any improvements or unreasonably interfere with the intended use of the Owned Properties. The beneficiaries of this reservation shall have the right, pursuant to the reservation of this easement, to enter any Lot and perform any work necessary for the correction of any drainage problem upon the Lot or adjacent Lots to ensure adequate drainage of surface water runoff from the Lots. Any Owner denying any beneficiary of this right access to his Lot for such purposes shall be liable for any damage caused by the drainage problem. Any drainage problem caused by an Owner's landscaping or changing the grade or elevation of his Lot shall be corrected at the expense of the Owner, and no beneficiary of this right shall have an obligation to take any action on any drainage problem caused by an Owner unless such Owner shall be financially responsible for the cost of such correction and shall release the beneficiary from any liability for such expense. Declarant shall have the right to assign the rights herein reserved to the Master Association, or to any Lot Owner, for the correction of a drainage problem. Each Owner, by acceptance of the deed to his Lot or Unit, shall be deemed to have consented to the reservation of these rights by Declarant, Centex and all other Builders and is further deemed to have acknowledged and agreed that the rights of all Lot Owners, the Declarant, Centex and all other Builders and the Master Association to adequate drainage of all Lots is superior to the right of the Owner to install landscaping or alter the grade or elevation of his Lot in a way that interferes with adequate Lot drainage. Owners are cautioned that all swimming pools, landscaping, patios or other outdoor structures or improvements approved for construction by the appropriate Architectural Review Committee must be compatible with, and shall not interfere with, the approved grading or development plan for the Lots. Notwithstanding approval of plans by the Architectural Review Committee, each Owner is exclusively responsible for any interference with adequate drainage of his Lot or adjacent Lots caused by his outdoor improvements.

Section 5.5. Service Easements. Declarant hereby grants to delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities servicing the Owned Properties, and to such other persons as Declarant from time to time may designate, the nonexclusive, perpetual right of ingress and egress over and across the Master Common Property for the purposes of performing their services and investigations.

Section 5.6. Extent of Easements. The rights and easements of enjoyment created in this Article 5 shall be subject to the following:

5.6.1. The right of Declarant or the Master Association, in accordance with its Bylaws, to borrow money from any lender for the purpose of improving and/or maintaining the Recreation Parcels and Master Common Property and providing services authorized herein and, in aid thereof, to mortgage said properties.

5.6.2. The right of the Master Association to suspend the rights and easements of enjoyment of any Member or any tenant of any Member for any period during which any assessment remains unpaid, and for any period, not to exceed sixty (60) days, for any infraction of its published rules and regulation, it being understood that any suspension for either non-payment of any assessment or breach of any rules and regulations of the Master Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment. Notwithstanding the foregoing, no such suspension shall be imposed in violation of applicable laws.

5.6.3. The right of the Master Association to charge reasonable admission and other fees for the use of any recreational facility that may be situated on or in the Recreation Parcel and Master Common Property.

5.6.4. The right of the Master Association to give, dedicate, mortgage or sell all or any part of the Master Common Property (including leasehold interests therein) to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be determined by the Master Association; provided that no such gift or sale or determination of such purposes or conditions shall be effective unless the same shall be authorized pursuant to Article 12, Section 12.2 of this Declaration. The Master Association shall establish the time period within which the Sub-Associations shall conduct the required voting, and the Sub-Associations shall deliver the written notice required by Section 12.2. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Master Association, and such certificate shall be annexed to any instrument of dedication or transfer affecting the Master Common Property, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the Members.

## ARTICLE 6

### ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Obligations of Assessments. Declarant covenants, and each Owner of any Lot or Unit shall by acceptance of a deed therefor, regardless of whether it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of this Master Declaration and to pay the Master Association: (1) Annual Assessments and (2) Special Assessments, all fixed, established and collected from time to time as hereinafter

provided. The Annual Assessments and Special Assessments, together with such interest thereon and costs of collection provided herein shall be a charge and continuing lien as provided herein on the real property and improvements of the Owner against whom each such assessment is made. Each such assessment, together with such interest thereon and cost of collection, shall also be the personal obligation of the person who is the Owner of such real property at the time when the assessment first becomes due and payable. In the case of co-ownership of a Unit or Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

The liability for assessments may not be avoided by waiver of the use or enjoyment of any Master Common Property or by the abandonment of the property against which the assessment was made. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Master Association or Board to take some action or perform some function required to be taken or performed by the Master Association or Board under this Master Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Master Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 6.2. Purpose of Annual Assessments. The Annual Assessments levied by the Master Association may be used for the improvement, maintenance, enhancement and operation of the Area of Common Responsibility, Recreation Parcel and Master Common Property, and further to provide services which the Master Association is authorized or required to provide by contract or otherwise, including, but not limited to, the payment of taxes and insurance thereon, construction, repair or replacement of improvements, payment of the costs to acquire labor, equipment, materials, management and supervision necessary to carry out its authorized functions, and for the payment of principal, interest and any other charges connected with loans made to or assumed by the Master Association for the purpose of enabling the Master Association to perform its authorized or required functions.

Section 6.3. Duty of the Board. It shall be the duty of the Board, at least thirty (30) days in advance of each fiscal year of the Master Association, to establish the annual budget and to fix the amount of the Annual Assessment against each Lot or Unit for the coming fiscal year, and to prepare a roster of the Lots and Units and assessments applicable thereto which shall be kept in the office of the Master Association and shall be open to inspection by the Owner. Failure to fix the amount of the Annual Assessment within the time period set forth above will not preclude the Board from fixing the Annual Assessment at a later date. In the event the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year, and the Annual Assessment for the

immediately preceding year shall continue for the current year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereof.

Section 6.4. Rate of Assessment. Annual Assessments shall be established by dividing the total Master Common Expenses of the Master Association by the total number of Lots or Units subject to assessment to derive a uniform base assessment amount applicable to all Lots. Thereafter the actual assessment applicable to Lots within a Sub-Association shall be adjusted for any Sub-Association Assessments applicable exclusively to that Sub-Association. Special Assessments for capital improvements or expenses applicable to all Lots shall be established in the same manner; however, Special Assessments applicable to a particular Lot or Sub-Association for expenses attributable exclusively to such Lot or Sub-Association shall be determined by dividing the applicable expense by the number of Lots to which it applies. After such amounts have been determined, the amounts due from the Class "B" and Class "C" Members shall be adjusted according to the following provisions. Declarant will have the following option for each assessment year:

6.4.1. During the period in which Declarant has the status of the Class B Member, all Lots and Units owned by Declarant, unless otherwise elected in writing by Declarant, shall be assessed at twenty-five percent (25%) of the rate of assessment applicable to units owned by Class A Members, provided however, that in the event that the actual operating expenses of the Master Association during the year for which the Declarant's assessment is 25% of the Class A Membership assessment exceed the actual income of the Master Association derived from all assessments imposed on all Members, Declarant shall reimburse the Master Association the difference between its actual operating expenses and its actual assessment income for such year, save and except any portion of such deficit attributable to delinquent assessments owed by Class A Members. Payment of such reimbursement shall be made by Declarant within 30 days after receipt of the Master Association's annual statement of accounts. Notwithstanding the foregoing, the Declarant shall have the right, but not the obligation, to reimburse the Master Association for deficits attributable to delinquent assessments owed by Class A Members, and, in that event, the Master Association shall promptly institute collection proceedings, including legal action if necessary, to recover such unpaid amount(s) from such Owner(s), and, upon receipt of such recovery, the Master Association shall reimburse Declarant the amount(s) so recovered up to the amount of any operating deficit funded by Declarant which arose from such non-payment.

6.4.2. In the alternative, Declarant may elect by written notice to the Board to pay the full Class A rate of assessment for each Unit owned by Declarant within the Master Association and subject to assessment without thereby waiving its

Class B status, and, in such event, shall not be liable for the operating deficit of the Master Association as provided in Subsection 6.4.1.

6.4.3. At such time as Class B status shall cease, all Lots and Units owned by Declarant shall be assessed at the full Class A rate and Declarant shall have no obligation to fund any operating deficit of the Master Association thereafter.

Section 6.5. Builder Assessments. Lots or Units owned by Class C Members shall be assessed at fifty percent (50%) of the Annual Assessment rate fixed for Class A Units during the period of Class B membership. Upon conversion of Class B membership to Class A, Class C shall also be converted to Class A, and full assessments shall apply.

Section 6.6. Initial Maximum Annual Assessment; Increases in Maximum Assessment; and Annual Assessment Rates.

6.6.1. Initial Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Unit by the Declarant or a Builder to a Class A Member, the Maximum Annual Assessment per Unit shall be \$165.00.

6.6.2. Increases in Maximum Annual Assessment - Without Consent of the Members. From and after such date, the Maximum Annual Assessment may be increased each year by the Board without a vote of the Membership of the Master Association by an amount not more than either (a) ten percent (10%) above the sum of (1) the Maximum Annual Assessment for the previous year, plus (2) increases mandated by governmental agencies and/or increased fixed costs incurred for insurance, taxes, recycling, waste disposal, or to obtain services from utility companies, or (b) the percentage increase, if any, in the current U.S. Government's Consumer Price Index (Urban Price Index - All Urban Consumers), herein referred to as the "CPI", over the CPI published for the preceding period, or other statistical index providing similar information if the CPI ceases to be published, whichever amount, (a) or (b), is greater.

6.6.3. Increases in Maximum Annual Assessment - Requiring Consent of the Members. The Maximum Annual Assessment may not be increased above the amount described in Subsection 6.6.2 above without the approval of a simple majority of each class of Members who are either voting in person or by proxy, at meetings of the Sub-Associations duly called for this purpose, or whose approval is evidenced by the written consent of the majority of such Members.

6.6.4. Establishing the Annual Assessment. The Board of Directors of the Master Association shall set the Annual Assessment for each fiscal year at an amount not in excess of the Maximum Annual Assessment then in effect as established pursuant to Subsections 6.6.1, 6.6.2 or 6.6.3 above. If the Board sets the Annual Assessment at an

amount which is less than the allowable Maximum Annual Assessment, the Board shall have the right to increase the Annual Assessment to any amount not greater than the allowable Maximum Annual Assessment then in effect without the consent of the Members upon thirty (30) days written notice. The election of the Board to set the Annual Assessment at an amount less than the Maximum Annual Assessment shall not affect the calculation of the Maximum Annual Assessment for ensuing years pursuant to this Section 6.

Section 6.7. Special Assessments. In addition to the Annual Assessments authorized herein, the Master Association may levy in any fiscal year a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Master Common Property, including fixtures and personal property related thereto; provided, such assessment shall have the affirmative vote or written consent, or combination thereof, at least a simple majority of the votes of each class of Members as evidenced by the results of votes taken by the Sub-Associations. The obligation to pay Special Assessments shall be computed on the same basis as for Annual Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

The Master Association (by simple majority vote of the Board) may also levy a Special Assessment against any Member to reimburse the Master Association for costs incurred pursuant to Article 4, Section 4.3.10, in removing pollutants, toxic materials or hazardous waste from the Areas of Common Responsibility or the Recreation Parcels in compliance with the provisions of the Master Declaration, any amendments thereto, the Articles, the Bylaws, and the Master Association rules and regulations, or for the recovery of expenses incurred pursuant to Section 6.13 of this Article 6, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing. The Master Association (by simple majority vote of the Board) may also levy a Special Assessment against the Units or Lots in any Sub-Association to reimburse the Master Association for costs incurred pursuant to Article 4, Section 4.3.10, in bringing the Sub-Association into compliance with the provisions of the Master Declaration, any amendments thereto, the Articles, the Bylaws, and the Master Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the Sub-Association Representatives of the Sub-Association and an opportunity for a hearing.

Section 6.8. Notice and Quorum Requirements. Written notice of any proposed action to be taken pursuant to Subsection 6.6.3 or Section 6.7 shall be delivered to each Member at least 30 days in advance of (1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of

the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a written description of the of the proposed assessment. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. If the Sub-Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Sub-Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Sub-Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

Section 6.9. Date of Commencement of Annual Assessments; Due Dates. The Annual Assessments provided for herein shall commence as to each Lot or Unit on the first day of the month next following the month in which the Lot or Unit is subjected to the terms and conditions of this Master Declaration by recordation of this Master Declaration or any Supplemental Master Declaration annexing Lots or Units into the Master Association, or on the date the Master Association Articles of Incorporation are filed with the Secretary of State of South Carolina, whichever occurs later. The dates when such Annual Assessments shall become due shall be established by duly adopted resolution of the Board. The Annual Assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit. The Master Association may delegate to a mortgage company, financial institution or management company responsibility for collection of assessments. The Annual Assessments shall be payable in advance in monthly installments, or in annual, semi-annual or quarter-annual installments if so determined by the Board of Directors of the Association (absent which determination they shall be payable monthly).

Section 6.10. Records of Payment. The Board shall prepare a roster of Owners and Annual Assessments and Special Assessments applicable thereto which shall be kept in the office of the Master Association and shall be open to inspection by any Owner at reasonable times with reasonable notice. Any Owner shall have the right to request the Master Association to issue a written statement signed by an officer of the Master Association, setting forth whether all Annual Assessments and/or Special Assessments owed by such Owner have been paid. The Master Association shall have the right to impose a fee for the issuance of such statements not to exceed \$50.00 per statement. Requests for such statements shall be in writing addressed to the address to which Annual Assessment payments are made. Each request shall contain the street address and legal description (by platted lot and block) of the property and the full name of the Owner. The Master Association shall issue the requested statement within

30 days after receipt of the written request, subject to the payment of any fee for such service imposed by the Master Association. Such written statement issued by the Master Association shall be *prima facie* evidence of payment of any assessment therein stated to have been paid.

Section 6.11. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien: Remedies of Master Association.

6.11.1. If any Annual Assessment or Special Assessment is not paid on the date due, then such assessment shall become delinquent and the entire assessment shall, together with interest thereon and cost of collection thereof as hereinafter provided, become due and payable and be a continuing lien on the property which shall bind such property in the hands of the then Owner, the Owner's heirs, devisees, personal representatives and assigns. The obligation of the Owner to pay such assessment is a personal obligation and any assessments that are due but remain unpaid at the time the Owner disposes of his or her ownership interest shall be enforceable by the Master Association against such person or against such person's successor in interest to the property subject to the assessment unless such successor in interest is a *bona fide* purchaser for value without notice of the assessment, or acquires title to the property by foreclosure of a lien securing a purchase money mortgage or home equity mortgage, or by deed or conveyance in lieu of foreclosure of such lien.

6.11.2. The Master Association may record a notice of lien for delinquent assessments in the public records and foreclose the lien in the same manner as a mortgage. The lien shall not be valid against subsequent *bona fide* purchasers or mortgagees for value unless so recorded. Upon recording, the lien shall secure the amount of delinquency stated therein and all unpaid assessments thereafter until satisfied of record, together with interest thereon, as provided herein, and the reasonable cost of (a) notices of delinquency, (b) demands for payment, (c) notices of liens, (d) assignment of liens, (e) releases of liens, (f) recording costs, (g) attorney's fees, and (h) management company fees.

6.11.3. If the assessment is not paid within thirty (30) days after the due date it shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Master Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

6.11.4. The Master Association shall have the right and authority to assign its lien to the Sub-Association of which the delinquent Owner is a Member by recording a notice of such assignment in the real property records when the notice of lien is filed, and the Sub-Association shall thereafter be charged with the responsibility for collecting such delinquent assessments, and other amounts secured by the lien. Any delinquent amounts that have been assigned to the Sub-Association remaining uncollected on the last day of the fiscal year of the Sub-Association shall be paid by the Sub-Association to the Master Association within ninety (90) days thereafter.

6.11.5. The Master Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Master Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Master Association as a result of foreclosure.

6.11.6. Suit to recover a money judgment for delinquent amounts owed to the Master Association and attorney's fees and costs shall be maintainable without foreclosing or waiving the lien securing the same.

Section 6.12. Subordination of the Lien to Mortgages; Mortgagees' Rights. The lien of the assessments provided for herein is subordinate to the lien of any purchase money or home equity Mortgage given to an Institutional Lender now or hereafter placed upon a Unit or Lot recorded prior to the recording of a notice of lien pursuant to Section 6.11 of this Article 6; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

An Institutional Lender, upon request, shall be entitled to written notification from the Master Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. The Master Association may provide such notice without receiving a request from the Institutional Lender. An Institutional Lender may pay taxes or other charges which are in default and which may or have become a charge against any Master Common Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Master Common Property and Institutional Lenders making such payments shall be owed immediate reimbursement therefor from the Master Association.

Section 6.13. Damage to Master Common Property by Owners. Any maintenance, repairs or replacements within the Master Common Property arising out of or caused by the willful or negligent act of the Owner, his family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefore shall be made against his Lot or Unit.

Section 6.14. Exempt Property. The following property subject to this Master Declaration shall be exempted from all assessments, charges and liens created herein: (a) all easements, rights-of-way or other interest dedicated and accepted by the local public authority and devoted to public use; and (b) all Master Common Property.

Section 6.15. Collection of Master Association Assessments by Sub-Associations. The Board of Directors of the Master Association shall have the right to require any Sub-Association to collect the Annual and Special Assessments imposed by the Master Association on Lots or Units within the Sub-Association on behalf of the Master Association, and to remit such assessment revenues to the Master Association. In the alternative, the Board of Directors of the Master Association shall have the right to collect all Master Association Assessments and Sub-Association Assessments on behalf of the Sub-Associations and remit to the Sub-Associations the Sub-Association Assessments so collected.

## ARTICLE 7

### SUB-ASSOCIATIONS

Each Unit within the Master Association shall be located within a Sub-Association as described in Subsections 3.3.1 and 3.3.2 of Article 3. The Units within a particular Sub-Association will be subject to additional covenants, conditions, restrictions, easements and/or assessments as set forth in the Sub-Association Declaration, Articles of Incorporation and Bylaws of the Sub-Association. Owners of such Units or Property will all be members of a Sub-Association in addition to being members of the Master Association.

The president of each Sub-Association shall serve as the Voting Representative for such Sub-Association and shall cast all votes attributable to Units in the Sub-Association on all Master Association matters requiring membership vote, unless otherwise specified in this Master Declaration or the Bylaws. The Voting Representative shall cast all such votes according to the outcome of any vote of the members of the Sub-Association. In the event that the Voting Representative is not bound by such vote, he/she may cast all votes as he/she deems appropriate.

## ARTICLE 8

## USE RESTRICTIONS

All Lots and Units in the Habersham community shall be subject to restrictive covenants that place reasonable limitations on use and occupancy and are intended to protect the health, safety and welfare of the residents of the Owned Properties and enhance and protect property values. Each Sub-Association Declaration (and each Supplemental Master Declaration annexing additional land into a Sub-Association) shall set forth use restrictions applicable to the Sub-Association. Because the Owned Properties will contain a mix of housing types whose residents will have differing needs and concerns, each Sub-Association may have restrictive covenants that are appropriate to that Sub-Association but may not be identical to the restrictive covenants applicable to other Sub-Associations. Each Sub-Association, and the residents of each Sub-Association, shall have the right to enforce the restrictive covenants contained in the Sub-Association Declaration (or in any other Supplemental Master Declaration applicable to the Sub-Association), and, in addition, the Declarant and the Master Association shall also have the right, but not the obligation, to enforce such restrictive covenants in the absence of action by the Sub-Association. Notwithstanding the foregoing, no restrictive covenant shall restrict or limit the right of the Declarant, Centex or any other Builder to use the Master Common Areas, Areas of Common Responsibility, Recreation Parcel and other properties owned by or dedicated to the Master Association in its marketing of Units provided that such use shall not unreasonably restrict the use of such properties by the Owners.

## ARTICLE 9

### ACCEPTANCE AND MAINTENANCE OF MASTER COMMON PROPERTIES

Section 9.1. Construction and Ownership of Master Common Property Improvements. It is anticipated that Declarant will designate certain portions of the Owned Property to be Master Common Property. Declarant may elect to construct or install certain improvements or facilities upon portions of the Master Common Properties, but is not obligated to do so. Declarant shall have the absolute right and power to determine what improvements or facilities, if any, it will install or construct on the Master Common Properties at all times prior to conveying such Master Common Properties to the Master Association, and within two (2) years thereafter. All lands designated by the Declarant as Master Common Properties shall be conveyed to, and title shall be held by, the Master Association, together with all improvements or facilities constructed or installed thereon, except improvements or facilities owned by or dedicated to any public or private utility supplier, including without limitation, electric, water, sewer and telecommunication lines, facilities, equipment or improvements.

Section 9.2. Acceptance of Master Common Properties. Within thirty (30) days after receipt of written notice from the Declarant informing the Master Association that Declarant has completed construction or installation of improvements upon any portion of Master Common Properties, the President of the Master Association, or in the absence of the President, any Vice President of such association, together with a duly authorized representative of the Declarant, shall conduct a thorough inspection of the improvements or facilities, and shall report in writing any incomplete or defective conditions. The Master Association shall have the right to engage the service of a professional engineer, or other qualified inspector, to assist with the inspection and preparation of the written report. Upon completion or correction of any incomplete or defective conditions by Declarant, and re-inspection and approval by the President (or Vice President, as the case may be), or, in the event that the Declarant and the representative of the Master Association disagree about the completion or correction of allegedly incomplete or defective conditions, upon written certification of completion by a licensed engineer or architect engaged by the Declarant, Declarant shall convey all of its right, title and interest in and to the Master Common Properties in question, including the improvements or facilities, to the Master Association, and the Master Association shall accept and acknowledge the deed of conveyance, and/or the certificate of completion, and shall thereafter own all right, title and interest in the Master Common Properties and improvements or facilities then conveyed.

Section 9.3. Maintenance of the Master Common Properties. The Master Association shall own, operate and maintain all Master Common Properties and the improvements or facilities constructed or installed thereon in first class condition, subject to normal wear and tear, depreciation, and the elements. Maintenance of the Master Common Properties shall include periodic inspection and preventive maintenance for the improvements and facilities thereon.

Section 9.4. Inspections of the Master Common Properties by Declarant. Declarant hereby reserves the right, at all times after conveyance of the Master Common Properties to the Master Association, to enter the Master Common Properties, without prior notice, and to inspect the condition of the improvements and facilities thereon. If Declarant determines, in its sole judgement, that the improvements or facilities are in need of repair or maintenance, it shall so notify the Master Association in writing, and it shall be the sole obligation of the Master Association owning such Master Common Properties to promptly complete such repairs or maintenance. Failure of the Master Association to properly maintain and repair the Master Common Properties shall relieve the Declarant of any liability to the Master Association or to any Member for any condition of the Master Common Properties. Declarant shall have the right to make a record of its inspections by photographing and/or videotaping the Master Common Properties, and shall have the right to perform tests or examinations to determine the condition of the Master Common Properties, provided that Declarant shall indemnify the Master Association from any claims for personal injury, death,

property damage or non-payment asserted by persons claiming by, through or under the Declarant for injury, death or damage occurring as a result of such examinations or tests. Notwithstanding the foregoing, Declarant shall have no obligation to perform inspections of the Master Common Properties owned by the Master Association. The deeds conveying the Master Common Properties to the Master Association may contain a recitation of this reservation, however failure to recite such reservation in such deeds shall not affect the rights of Declarant herein reserved.

Section 9.5. Maintenance and Repair Records. The Master Association shall keep records of maintenance and repairs performed on the Master Common Properties, and such records shall be made available to the Declarant and to any Member upon written request. Failure of the Master Association to maintain appropriate records of maintenance and repairs shall be conclusive evidence that such maintenance and repairs were not performed.

## ARTICLE 10

### MORTGAGEE PROVISIONS

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

Section 10.1. Rights of Eligible Holders. An institutional holder, insurer, or guarantor of a first Mortgage that provides a written request to the Master Association (such request to state (1) the name and address of such holder, insurer, or guarantor; (2) the name of the Owner; (3) the address of the Unit; and (4) the Lot and Block numbers and Sub-Association identification of the Unit, thereby becoming an "Eligible Holder"), will be entitled to:

- a. the right to inspect Association documents and records on the same terms as Members;
- b. copies of all written notices to the Unit Owner of material amendments to the Master Declaration, Articles of Incorporation or Bylaws of the Master Association when such notices are required to be given to Owners pursuant to such documents;
- c. copies of written notices to the Unit Owner of extraordinary actions to be taken by the Association when such notices are required to be given to Owners pursuant to this Master Declaration or the Bylaws;

d. copies of written notices to the Unit Owner of (i) any property loss, condemnation or eminent domain proceeding affecting the Master Common Property resulting in losses greater than ten percent (10%) of the current annual budget, or (ii) any Unit insured by the Association in which the Eligible Holder has an interest;

e. copies of written notices to the Unit Owner of any termination, lapse or material modification of an insurance policy held by the Association;

f. written notice of any default by an Owner of a Unit subject to a mortgage held by the Eligible Holder in paying assessments or charges to the Association which remains uncured for sixty (60) consecutive days;

g. written notice of any proposal to terminate the Declaration or dissolve the Association at least thirty (30) days before such action is taken;

h. the right of a majority of Eligible Holders (determined on the basis of one vote for each Unit standing as security for a mortgage held by the Eligible Holder) to demand that the Association retain a professional management company; and

i. the right of a majority of Eligible Holders (determined on the basis of one vote for each Unit standing as security for a mortgage held by the Eligible Holder) to demand an audit of the Association's financial records.

Section 10.2. Voting Rights of Eligible Holders. For purposes of this Section, an Eligible Holder of a Mortgage shall be entitled to one (1) vote for each first Mortgage owned.

10.2.1. Unless at least two-thirds (2/3) of the Eligible Holders consent, the Master Association shall not:

(a) by act or omission abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Master Common Property which the Master Association owns, directly or indirectly. (The granting of easements for public utilities or other similar purposes consistent with the intended use of the Master Common Property shall not be deemed a transfer within the meaning of this subsection.);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Owned Properties regarding assessments for Sub-Associations or other

similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any material aspect of the scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Master Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment withing the meaning of this provision.);

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

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

10.2.2. Any election to terminate the legal status of the Master Association shall require:

(a) the approval of at least fifty-one percent (51%) of the Eligible Holders if the election to terminate the legal status is the result of substantial destruction or a substantial taking in condemnation of the Master Common Property; or

(b) the approval of at least sixty-seven percent (67%) of the Eligible Holders if the termination is sought for any other reason.

10.2.3. In the event a portion of the Master Common Property is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Master Declaration and the original plans and specifications for the project unless fifty-one (51%) of the Eligible Holders approve the taking of other action by the Master Association.

10.2.4. The affirmative vote fifty-one percent (51%) of the Eligible Holders shall be sufficient to require the Master Association to engage a professional management company.

10.2.5. The affirmative vote fifty-one percent (51%) of the Eligible Holders shall be sufficient to require the Master Association to conduct an audit of its financial records.

Section 10.3. Voluntary Payments by Eligible Holders. Eligible Holders may, jointly or singly, pay taxes or other charges which are in default and which may or have

become a charge against the Master Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of a Master Association policy, and Eligible Holders making such payments shall be entitled to immediate reimbursement from the Master Association.

Section 10.4. No Priority. No provision of this Master Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the Eligible Holder of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Master Common Property.

Section 10.5. Notice to Master Association. Upon request, each Owner shall be obligated to furnish to the Master Association the name and address of the Eligible Holder of any Mortgage encumbering such Owner's Unit.

Section 10.6. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently modify any of their respective requirements which necessitate the provisions of this Article, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 10.7. Applicability of this Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Master Declaration, the Bylaws, or South Carolina corporate law for any of the acts set out in this Article.

Section 10.8. Failure of Eligible Holder to Respond. Any Eligible Holder who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Master Association does not receive a written response from the Eligible Holder within thirty (30) days of the date of the Master Association's request.

## ARTICLE 11

### INSURANCE AND CASUALTY LOSSES

Section 11.1. Master Common Areas. The Master Association shall keep all improvements, facilities and fixtures located within the Master Common Areas insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters, and may obtain insurance against such other hazards and casualties as the Master Association may deem desirable. The Master

Association may also insure any other property, whether real or personal, owned by the Master Association, against loss or damage by fire and such other hazards as the Master Association may deem desirable, with the Master Association as the owner and beneficiary of such insurance for and on behalf of itself and all Members. The insurance coverage with respect to the Master Common Areas shall be written in the name of, and the proceeds thereof shall be payable to, the Master Association. Insurance proceeds shall be used by the Master Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Master Association are Master Common Expenses and shall be included in the Master Association's annual budget and collected as part of the Annual Assessment.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Master Association shall contain provisions, or be accompanied by endorsements, for: agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction.

All insurance policies shall contain standard mortgagee clauses, if applicable.

The Master Association shall also maintain, to the extent any insurable improvements to Master Common Areas are within an "A" flood zone, flood insurance in an amount equal to the lesser of 100% of the replacement costs of all insurable improvements (if any) within the Master Common Areas or the maximum amount of coverage available under the National Flood Insurance Program, whichever is less.

Section 11.2. Waiver of Subrogation. As to each policy of insurance maintained by the Master Association which will not be voided or impaired thereby, the Master Association hereby waives and releases all claims against the Board, the Members, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 11.3. Liability and Other Insurance. The Master Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, with coverage of at least \$1,000,000.00 (if available at reasonable rates and upon reasonable terms) for any single occurrence, insuring against liability for bodily injury, death and property damage arising from the activities of the Master Association or with respect to property under its jurisdiction, including, if obtainable, a cross liability endorsement insuring each Member against liability to each other Member and to the Master Association and *vice versa*. The Master Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Member and the Master Association

and its Board of Directors and officers, from liability in connection with the Master Common Areas, the premiums for which shall be Master Common Expenses and included in the assessments made against the Members. The Master Association may also obtain such other insurance as the Board deems appropriate. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion.

The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board or any management company engaged by the Master Association against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof. At a minimum, however, there shall be blanket fidelity bonding of anyone (compensated or not) who handles or is responsible for funds held or administered by the Master Association, with the Master Association to be an obligee thereunder. Such bonding shall cover the maximum funds to be in the hands of the Master Association or management company during the time the bond is in force. In addition, the fidelity bond coverage must at least equal the sum of three (3) months' of regular assessments, plus all reserve funds.

#### Section 11.4. Damage and Destruction.

11.4.1. Immediately after damage or destruction by fire or other casualty to all or any part of the Master Common Property covered by insurance written in the name of the Master Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Master Common Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Master Common Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

11.4.2. In the event of damage or casualty loss to the improvements, if any, erected on the Master Common Properties, which in the opinion of the Board of Directors, should not be repaired or reconstructed, the Board shall deliver written notice thereof to each Member stating (1) the amount of the insurance proceeds to be paid to the Association by the insurer as a result of the loss; (2) the estimated cost of repair or reconstruction; and (3) a request that each Member deliver a written response voting for or against repair or reconstruction within 30 days after receiving the Board's notice. Such notice shall be sent to each Member within 60 days after the Board has received the settlement offer of the insurer and the estimated cost of repair or reconstruction from a qualified contractor. The Association shall make the repairs or reconstruct the improvements unless at least 75% of the Members of each class of

membership vote not to do so. No Eligible Holder shall have the right to participate in the determination of whether the damage or destruction to the Master Common Area shall be repaired or reconstructed; provided, however, this provision shall not apply to construction Mortgagees, if any, providing construction financing for such damaged Master Common Property.

11.4.3. In the event that it should be determined in the manner described above that the damage or destruction to the Master Common Area shall not be repaired or reconstructed and no alternative improvements are authorized by the Members, then and in that event the affected portion of the Master Common Property shall be restored to its natural state and maintained by the Master Association in a neat and attractive condition.

Section 11.5. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction. Any proceeds remaining after defraying such costs of repair or reconstruction to the Master Common Property shall be retained by and for the benefit of the Master Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Eligible Holders as their interests may appear, shall be retained by and for the benefit of the Master Association and placed in a capital improvements account. This is a covenant for the benefit of any Eligible Holder of a Unit and may be enforced by such Mortgagee.

Section 11.6. Repair and Reconstruction. If the damage or destruction to the Master Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for Annual Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## ARTICLE 12

### GENERAL PROVISIONS

Section 12.1. Duration. The covenants, conditions and restrictions of this Master Declaration shall run with and bind the Owned Properties, and shall inure to the benefit of and be enforceable by the Master Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30)

years from the date this Master Declaration is recorded. Upon the expiration of said thirty (30) year period, this Master Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Master Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Master Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes of the Members of the Master Association vote in favor of terminating this Master Declaration at the end of its then current term. Termination of this Master Declaration is deemed to be an "Extraordinary Action" subject to the provisions of Section 12.2.

Written notice of any meeting at which such proposal to terminate this Master Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least sixty (60) days in advance of said meeting. In the event that the Master Association votes to terminate this Master Declaration, the President and Secretary of the Master Association shall execute certificate which shall set forth the resolution of termination adopted by the Master Association, the date of the meeting of the Master Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Master Association, the total number of votes required to constitute a quorum at a meeting of the Master Association, the total number of votes necessary to adopt a resolution terminating this Master Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution.

Said certificate shall be recorded in the Public Records of Pickens County, South Carolina, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Master Declaration. Termination of the Master Association shall not have the effect of terminating easements herein provided or granted prior to such termination, or terminating contractual rights created prior to termination which from the context of the contract were meant to survive termination.

Section 12.2. Material Amendments and Extraordinary Actions. The Association may amend this Declaration in regard to the matters identified herein as "Material Amendments", or may undertake the actions herein listed as "Extraordinary Actions" only in the following manner.

12.2.1. Material Amendments. The matters listed below are deemed to be material to this Declaration, and any proposed amendment concerning such matters shall be deemed to be a "Material Amendment":

- a. the manner of determining the basis for assessments or the administration of assessment liens;
- b. any method of imposing or determining any charges to be levied against individual Unit Owners;
- c. reserves for maintenance, repair or replacement of Master Common Area improvements;
- d. maintenance obligations;
- e. allocation of rights to use Master Common Areas;
- f. any scheme of regulation or enforcement of standards for maintenance, architectural design or appearance of improvements on Units;
- g. reduction of insurance requirements;
- h. restoration or repair of Master Common Area improvements;
- i. the addition, annexation or withdrawal of land to or from the project;
- j. voting rights;
- k. restrictions affecting leasing or sale of a Unit; or
- l. any provision which is for the express benefit of Mortgagees, or Eligible Holders.

12.2.2. Extraordinary Actions. The matters listed below are deemed to be extraordinary under this Declaration, and any proposed action concerning such matters shall be deemed to be an "Extraordinary Action":

- a. merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association);
- b. determining not to require professional management, if that management has been required by the Association documents, a majority of Eligible Holders or a majority vote of the Members;

- c. expanding the Association to include land not previously described as Undeveloped Parcel which increases the overall land area of the project or number of Units by more than 10%;
- d. abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring or relocating the boundaries of the Master Common Areas (except for (1) granting easements which are not inconsistent with, or which do not interfere with the intended Master Common Area use; (2) dedicating Master Common Area as required by a public authority; (3) limited boundary line adjustments made in accordance with the provisions of this Declaration; or (4) transferring Master Common Area pursuant to a merger with a non-profit entity formed for purposes similar to the Association);
- e. using insurance proceeds for purposes other than reconstruction or repair of insured improvements;
- f. making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20% of the annual operating budget for that period;
- g. termination of the Declaration or other termination of the planned unit development;
- h. dissolution of the Association; or
- i. using Association funds to pay legal expenses, including without limitation, attorney's fees, expert witness fees, filing fees, court costs, investigation expenses or other expenses arising from the investigation, feasibility analysis, preliminary assessment, legal review or consultation, filing suit, gathering or giving evidence, appeals, motions or trials, concerning taking any legal action intended to compel the Declarant, Centex or any other Builder to perform any obligation set forth herein or to recover from the Declarant, Centex or any other Builder any monetary damages, payment or reimbursement of any kind.

12.2.3. Notice Required for Material Amendment or Extraordinary Action. Written notice of any proposed Material Amendment or Extraordinary Action shall be delivered to each Member at least 30 days in advance of (1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a summary of any Material Amendment or Extraordinary Action to be considered. The notice may also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. Meetings and/or voting for the purposes described in this Article shall be conducted by the Sub-

Associations within the time periods established by the Master Association. If the Sub-Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Sub-Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Sub-Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

12.2.4. Approval Required for Material Amendment or Extraordinary Action. Material Amendments and Extraordinary Actions may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 67% of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at the meeting called as described in the notice at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 67% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting.

12.2.5. Additional Approval Requirements. In addition to the approval of the Members and the Declarant set forth above, the following conditions shall apply:

a. Any Material Amendment or Extraordinary Action that changes the rights of any specific class of Members (i.e. Class A; Class B; or Class C) must also be approved either (1) by the affirmative vote of at least 51% of the Members of such Class who are present, in person or by proxy, and voting at a meeting called as described in the required notice at which a quorum of such Class of Members is present, or (2) by the written consent of at least 51% of all Members of such Class to any action taken in lieu of a meeting.

b. Any Material Amendment or Extraordinary Action proposed during the period in which the Declarant retains its Class B status must also be approved by the Federal Housing Administration ("FHA"), and the Department of Veterans Affairs ("VA") if any Unit within the Owned Properties has been financed by a mortgage insured by FHA or guaranteed by VA. The Association shall deliver written notice of the proposed Material Amendment or Extraordinary Action to the FHA and VA simultaneously with its notice to the Members. If the FHA or VA fail to deliver written notice to the Association of its objection to the proposed Material Amendment

or Extraordinary Action within 30 days after receipt of the notice, FHA and VA will be deemed to have approved the matters contained in the notice, and the Association shall be entitled to record an affidavit signed by an authorized officer averring that written notice was delivered to the FHA and VA and no objection was timely received from such agencies.

12.2.6. Notice of Material Amendment or Extraordinary Action.

Upon approval of a Material Amendment or Extraordinary Action, the Association shall record appropriate written notice thereof in the Public Records of Pickens County, South Carolina, and take all such further action as may be prudent or necessary to implement and carry out the Material Amendment or Extraordinary Action.

Section 12.3. Non-Material Amendments. The Association may amend this Declaration in regard to all matters, except those identified in Section 12.2 as "Material Amendments", in the following manner.

12.3.1. Amendments by Declarant. During the period in which the Declarant retains the status of the Class "B" Member, Declarant shall have the right to amend this Master Declaration, without the necessity of joinder by Owners or any other persons or entities, to make nonsubstantial changes that do not materially or adversely affect the interests of other Owners or other affected parties, and to clarify any ambiguities or conflicts, or correct any scrivener's errors in this Master Declaration.

12.3.2. Amendments by Members - Notice Required for Non-Material Amendment. Written notice of any proposed Non-Material Amendment shall be delivered to each Member at least 30 days in advance of (1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a summary of any Non-Material Amendment to be considered. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. Meetings and/or voting for the purposes described in this Article shall be conducted by the Sub-Associations within the time periods established by the Master Association. If the Sub-Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Sub-Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Sub-Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

12.3.2. Approval Required for Non-Material Amendment. Non-Material Amendments may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 51% of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at the meeting called as described in the notice at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 51% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting.

12.3.3. Notice of Non-Material Amendment. Upon approval of a Non-Material Amendment, the Association shall record appropriate written notice thereof in the Public Records of Pickens County, South Carolina, and take all such further action as may be prudent or necessary to implement and carry out the Non-Material Amendment.

Section 12.4. Assignment of Rights and Duties. Any and all of the rights, powers and reservations of the Master Association and Declarant may be assigned to any person, corporation or association (including the Sub-Associations) which will assume the duties of the Master Association or Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment and assume such duties, he or it shall to the extent of such assignment have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Master Association or Declarant. Further, the Master Association or Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate.

Section 12.5. Enforcement. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Master Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the Master Association or any Owner or Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. Further, the Master Association shall have the right of self help to cure any violations that remain uncured after any required notice is given.

Section 12.6. Severability. Should any covenant, condition or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase or term of this Master Declaration be declared to be void, invalid, illegal, or unenforceable, for any

reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 12.7. Interpretation. The Board shall have the right except as limited by any other provisions of this Master Declaration or the Bylaws to determine all questions arising in connection with this Master Declaration and to construe and interpret its provisions, and its good faith, determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Master Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the maintenance of Master Common Areas and the facilities located thereon.

Section 12.8. Disposition of Master Common Property on Termination of Master Declaration. Should the Members of the Master Association vote not to renew and extend this Master Declaration as provided for herein, all Master Common Property owned by the Master Association at such time shall be transferred to another association or appropriate public agency having similar purposes. If no other association or agency will accept such property then it will be conveyed to a Trustee appointed by the Circuit Court of Pickens County, South Carolina, which Trustee shall sell the Master Common Property free and clear of the limitations imposed hereby upon terms established by the Circuit Court of Pickens County, South Carolina. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Master Common Property, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of the Master Common Property. The excess of proceeds, if any, from Master Common Property shall be distributed among Owners in a proportion which is equal to the proportionate share of such Owners in Master Common Expenses.

Section 12.9. Execution of Documents. The plan for the development of the Owned Properties may require from time to time the execution of certain documents required by governmental authorities. To the extent that said documents require the joinder of Owners, Declarant by its duly authorized officers may, as the agent or the attorney-in-fact for the Owners, execute, acknowledge and deliver such documents and the Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Declarant, through its duly authorized officers, as their proper and legal attorneys-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section shall recite that it is made pursuant to this Section.

Section 12.10. Indemnification. The Master Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director or

committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Master Association (except to the extent that such officers or directors may also be Members of the Master Association), and the Master Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Master Association shall, as a Master Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 12.11. Prohibited Actions. Notwithstanding anything contained herein to the contrary, the Master Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

Section 12.12. Singular, Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

Section 12.13. Construction. The provisions of this Master Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Property.

IN WITNESS WHEREOF, the Declarant and Centex have caused this instrument to be executed on its behalf as of this 16<sup>th</sup> day of JUNE, 1999

WITNESS

J.C. Beakley, Jr.  
Name: J.C. Beakley, Jr.

Mary Catherine Martin  
Name: MARY CATHERINE MARTIN

DECLARANT

HABERSHAM, INC.  
a South Carolina corporation

By: [Signature]  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Joined herein by Centex Homes, as the Class C Member, to evidence its consent to the imposition of the foregoing Declaration on the Lots within the Property owned by Centex.

[Signature]  
Name: Chuck Hall

[Signature]  
Name: DAVID GLASS

CENTEX HOMES  
a Nevada general partnership


By: Centex Real Estate Corporation,  
a Nevada corporation, its managing  
general partner

By: [Signature]  
D. Keith Wood, Division Manager  
Date: 6-14-99

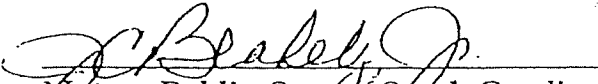
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

PROBATE

PERSONALLY appeared before me the undersigned witness, who being duly sworn, says that (s)he saw the within-named HABERSHAM, INC., a South Carolina corporation, by its duly authorized officer(s) as its act and deed, sign, seal and deliver the within Declaration and that (s)he with the other witnesses whose signature appears above witnessed the execution thereof.

  
\_\_\_\_\_  
Witness

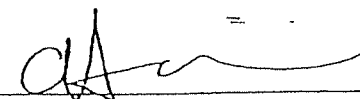
Sworn to and Subscribed before me this  
16<sup>th</sup> day of JUNE, 1999.

  
\_\_\_\_\_  
Notary Public, State of South Carolina  
My Commission Expires: 11/22/02

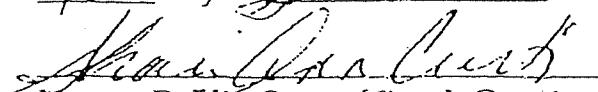
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

PROBATE

PERSONALLY appeared before me the undersigned witness, who being duly sworn, says that (s)he saw the within-named CENTEX HOMES, a Nevada general partnership, by its duly authorized officer(s) as its act and deed, sign, seal and deliver the within Declaration and that (s)he with the other witnesses whose signature appears above witnessed the execution thereof.

  
\_\_\_\_\_  
Witness

Sworn to and Subscribed before me this  
16 day of June, 1999.

  
\_\_\_\_\_  
Notary Public, State of South Carolina  
My Commission Expires: My Commission Expires  
August 29, 2007

## LIST OF EXHIBITS

- A - Legal Description of Owned Property
- B - Legal Description of Master Common Property
- C - Legal description of Undeveloped Parcel
- D - Bylaws

## EXHIBIT A

All those certain pieces, parcels or lots of land, located, lying and being in the County of Pickens, State of South Carolina, being shown and designated as Lot Nos. 1-43 on plat entitled "Habersham, Phase I" prepared by C.E. Shehan Surveying, dated February 25, 1997, recorded March 7, 1997 in the Pickens County RMC Office in Plat Book 259 at Page 9, reference to which plat is hereby craved for a more complete and accurate description by the metes and bounds thereof.

ALSO:

All those certain pieces, parcels or lots of land, located, lying and being in the County of Pickens, State of South Carolina, being shown and designated as Lot Nos. 44-51 on plat entitled "Survey for Habersham, Inc. of an addition to Phase I of Habersham Subdivision" prepared by C.E. Shehan Surveying, dated September 22, 1998, recorded in the Pickens County RMC Office in Plat Book 324 at Page 16-B, reference to which plat is hereby craved for a more complete and accurate description by the metes and bounds thereof.

ALSO:

All those certain pieces, parcels or lots of land, located, lying and being in the County of Pickens, State of South Carolina, being shown and designated as Lot Nos. 1-16 on plat entitled "Final Plat for Habersham, Inc. of a Portion of Phase 2 of Habersham Subdivision" prepared by C.E. Shehan Surveying, dated February 16, 1999, recorded in the Pickens County RMC Office in Plat Book 339 at Page 10, reference to which plat is hereby craved for a more complete and accurate description by the metes and bounds thereof.

ALSO:

All those certain pieces, parcels or lots of land, located, lying and being in the County of Pickens, State of South Carolina, being shown and designated as Lot Nos. 71-73 on plat entitled "Survey for Habersham, Inc. of a portion of Phase 2 of Habersham Subdivision" prepared by C.E. Shehan Surveying, dated September 23, 1998, recorded in the Pickens County RMC Office in Plat Book 324 at Page 16-A, reference to which plat is hereby craved for a more complete and accurate description by the metes and bounds thereof.

## EXHIBIT B

The real property which will compromise the Master Common Property has yet to be platted by Declarant. Declarant reserves the right to add the description of the Master Common Property when the engineering data is available by applicable amendment to the Declaration.

## EXHIBIT C

All that certain piece, parcel or tract of land, located, lying and being in the County of Pickens, State of South Carolina, being the major portion of a tract of land containing 65.52 acres, more or less, as shown on plat entitled "Survey for John Fred Parker, Jr. and Emma Nan N. Dillard" prepared by Robert R. Spearman recorded in the Pickens Register of Deeds Office in Plat Book 224 at page 7, and having, according to said plat, the following metes and bounds, to-wit:

Beginning at a point at the intersection of the northern edge of the right-of-way of Sheriff Mill Road and the western edge of the right-of-way of Brown Drive and running thence S 59-59-47 E 442.07 feet to a point; thence S 60-35-51 E 213.96 feet to a point; thence S 59-53-34 E 140.76 feet to a point; thence S 58-37-10 E 136.41 feet to a point; thence S 56-40-27 E 147.93 feet to a point; thence S 38-36-09 W 829.24 feet to a point; thence S 44-45-33 W 169.54 feet to a point; thence S 9-49-57 E 528.87 feet to a point; thence S 49-54-24 W 1420.05 feet to a point; thence N 7-35-03 E 108.71 feet to a point; thence N 51-05-14 E 152.29 feet to a point; thence N 37-12-35 W 17.67 feet to a point; thence N 8-17-38 E 172.05 feet to a point; thence N 27-14-35 E 33.94 feet to a point; thence N 50-39-17 E 16.36 feet to a point; thence N 28-09-18 E 149.31 feet to a point; thence N 50-56-22 E 13.11 feet to a point; thence N 28-39-04 W 30.01 feet to a point; thence N 21-56-57 E 220.751 feet to a point; thence N 16-47-12 W 118.91 feet to a point; thence N 30-46-43 E 379.79 feet to a point; thence N 27-14-14 W 439.60 feet to a point; thence N 8-09-29 W 124.65 feet to a point; thence N 14-56-28 W 579.676 feet to a point; thence N 80-39-18 E 35.00 feet to a point; thence N 76-04-20 E 109.95 feet to a point; thence N 69-38-27 E 106.69 feet to a point; thence N 55-20-16 E 109.65 feet to a point; thence N 63-17-30 E 154.92 feet to a point; thence N 51-23-24 E 363.01 feet to a point, the point and place of beginning.

BYLAWS OF  
HABERSHAM  
MASTER ASSOCIATION, INC.

ARTICLE I  
GENERAL PLAN OF OWNERSHIP

*Section 1. Name.* The name of the corporation is Habersham Master Association, Inc., a South Carolina corporation, and is hereafter referred to as the "Association" or "Master Association". The principal office of the corporation shall be located in the State of South Carolina.

*Section 2. Bylaws Applicability.* The provisions of these Bylaws are applicable to the Association created pursuant to the Master Declaration of Covenants, Conditions and Restrictions for Habersham recorded in the Public Records of Pickens County, South Carolina (herein referred to as the "Declaration"). All capitalized words or phrases used herein shall have the meanings herein ascribed, and if not defined in this instrument, such capitalized words or phrases shall have the meanings given in the Declaration or Articles of Incorporation of the Association.

*Section 3. Personal Application.* All present and future Owners of Lots or Units within the Association Properties (as defined in the Articles of Incorporation and Declaration of the Association) and their tenants, guests and invitees are subject to the regulations set forth in these Bylaws.

The recording of a declaration authorizing the creation of a homeowners' association and the mere acquisition of a Lot or acquisition or rental of any Unit or the mere act of occupancy of any Unit signify that these Bylaws are accepted, ratified, and will be complied with.

ARTICLE II  
MEMBERSHIP, VOTING RIGHTS, MAJORITY  
OF QUORUM, QUORUM, PROXIES

*Section 1. Membership.* Every Owner of a Unit or Lot, and every Builder owning any Unit or Lot, by virtue of the ownership of such Unit or Lot, and the Declarant and its

successors and assigns, shall be Members of the Association, and by acceptance of a deed or other instrument evidencing an ownership interest, each Owner, Builder and Declarant accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles of Incorporation, the Bylaws and other rules and regulations of the Association. The term "Member" shall include each person or entity owning any right, title or interest in any Unit or Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or entities also have the right of possession. Tenants or others occupying any Unit who do not have an ownership interest therein shall not be Members for the purposes of this Master Declaration. Membership in the Association is appurtenant to, and may not be severed from, the Unit or Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Master Declaration, the Articles of Incorporation or Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot or Unit. Members shall be responsible for compliance with the terms and conditions of this Master Declaration, the Articles of Incorporation and Bylaws, and rules and regulations of the Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Unit, Common Area or other portion of the Property.

*Section 2. Sub-Associations; and Voting Rights.*

2.1. The Property will be developed in stages or phases that will be designated as separate Sub-Association for the purposes of the Association. Each Lot or Unit subject to the Declaration will be situated within a Sub-Association. Each Sub-Association will contain Lots or Units sharing common facilities and having similar interests. Each Sub-Association will be subject to the Master Declaration, and will also be subject to a separate Sub-Association Declaration that will, among other things, create a separate Homeowners Association which will be governed by its own separate Articles of Incorporation and Bylaws. The Owner of each Lot or Unit will be a member of a Sub-Association as well as a Member of this Master Association. The Sub-Associations will be subordinate to this Master Association and will be responsible for performing the services and obligations imposed on them by this Master Association pursuant to the governing documents.

2.2. Each Sub-Association shall exercise the voting rights herein established on behalf of all Members whose Units or Lots are within the jurisdiction of such Sub-Association. On all matters requiring the votes of Members as may be described in the Declaration, or in the Articles of Incorporation or Bylaws, such votes shall be conducted by the Sub-Association. The result of the vote shall be reported to the Association by the Sub-Association Representative of the Sub-Association and the total number of votes of each class of membership attributed to the Sub-Association shall be cast accordingly.

Members shall not have the right to cast votes directly with the Master Association, and shall be bound by the outcome of the voting conducted by the Sub-Associations.

2.3. Members of the Master Association shall be allocated votes as follows:

Class A. Class A Member shall be all Owners with the exception of the Declarant and any Builders. Each Class "A" Member shall be entitled to one (1) vote for each Lot or Unit owned.

Class B. The Class B Member shall be the Declarant, or its specifically designated (in writing) successor. The Class "B" Member shall be allocated three (3) votes for each Lot or Unit owned by it subject to assessment by this Master Association; provided, that the Class B membership shall cease and become converted to Class A membership as set forth in Section 6.3. Upon conversion to Class A membership, the Declarant shall have one vote for each Unit or Lot owned by it subject to assessment by this Master Association.

Class C. Centex Homes and all other Builders, as defined in the Master Declaration, shall be Class "C" Members. Class "C" Members shall have one (1) vote for each Lot or Unit they own in the Owned Property.

2.4. During the period in which Declarant has the status of the Class B Member, all Lots and Units owned by Declarant, unless otherwise elected in writing by Declarant, shall be assessed at twenty-five percent (25%) of the rate of assessment applicable to units owned by Class A Members, provided however, that in the event that the actual operating expenses of the Master Association during the year for which the Declarant's assessment is 25% of the Class A Membership assessment exceed the actual income of the Master Association derived from all assessments imposed on all Members, Declarant shall reimburse the Master Association the difference between its actual operating expenses and its actual assessment income for such year, save and except any portion of such deficit attributable to delinquent assessments owed by Class A Members. Payment of such reimbursement shall be made by Declarant within 30 days after receipt of the Master Association's annual statement of accounts. Notwithstanding the foregoing, the Declarant shall have the right, but not the obligation, to reimburse the Master Association for deficits attributable to delinquent assessments owed by Class A Members, and, in that event, the Master Association shall promptly institute collection proceedings, including legal action if necessary, to recover such unpaid amount(s) from such Owner(s), and, upon receipt of such recovery, the Master Association shall reimburse Declarant the amount(s) so recovered up to the amount of any operating deficit funded by Declarant which arose from such non-payment.

2.5. In the alternative, Declarant may elect by written notice to the Board to pay the full Class A rate of assessment for each Unit owned by Declarant within the Master Association and subject to assessment without thereby waiving its Class B status, and, in such event, shall not be liable for the operating deficit of the Master Association as provided in Subsection 6.4.1.

2.6. At such time as Class B status shall cease, all Lots and Units owned by Declarant shall be assessed at the full Class A rate and Declarant shall have no obligation to fund any operating deficit of the Master Association thereafter.

2.7. Lots or Units owned by Class C Members shall be assessed at fifty percent (50%) of the Annual Assessment rate fixed for Class A Units during the period of Class B membership. Upon conversion of Class B membership to Class A, Class C shall also be converted to Class A, and full assessments shall apply.

2.8. When any Unit or Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Sub-Association, such Owner shall select one official representative to qualify for voting in the Sub-Association and shall notify in writing the Secretary of the Sub-Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant or a Builder) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot or Unit. If the Owners fail to designate their official representative, then the Sub-Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

### *Section 3. Change of Membership.*

3.1. Change of membership in the Association shall be established by recording in the Public Records of Pickens County, South Carolina, a deed or other instrument conveying record fee title to any Lot or Unit, and by the delivery to the Master Association, and to the Sub-Association, of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Master Association and of the Sub-Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said instrument is not delivered to the Master Association and to the Sub-Association, said Owner shall become

a Member, but shall not be entitled to voting privileges until delivery of a copy of the conveyance instrument to the Master Association and the Sub-Association. The foregoing shall not, however, limit the Master Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot or Unit acquired.

3.2. The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

#### *Section 4. Class B Membership Status.*

4.1. The Declarant's Class B membership status shall continue, and shall be in effect, during the period from the inception of the Declaration until either (1) seven (7) years from the date the Declaration is recorded; or (2) five (5) years after the date of recording of the last Supplemental Declaration annexing additional property into the Master Association, whichever event, (1) or (2) occurs later; or (3) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (4) in any event, one hundred twenty (120) days after the conveyance of the Unit to a Class A Member that causes the total number of votes held by all Class A Members of this Master Association to equal the number of votes in all Sub-Association held by the Class B Member, whichever event, (1), (2), (3) or (4), occurs first; provided however, that if Class B status is converted to Class A pursuant to clause (4) and, subsequent to such event, the Declarant annexes an additional Sub-Association to the Master Association or annexes additional Lots to an existing Sub-Association which annexation causes the number of Lots or Units owned by the Declarant in all Sub-Association to exceed twenty-five percent (25%) of the total number of Lots and Units within all Sub-Association, Declarant's Class B status shall be restored as to all Lots and Units then owned by Declarant, and shall continue until the next occurrence of an event of conversion described above. For the purposes of these Bylaws, all Lots and Units owned by the Declarant within the Association Properties shall be included in the determination of Class B status even if Declarant owns fewer than twenty-five percent (25%) of the Lots or Units within any particular Sub-Association as defined in the Declaration. The rights, privileges and obligations of Class B status shall prevail within all Sub-Associations, as defined in the Declaration, as long as Declarant shall be a Class B

Member of this Master Association, even if Declarant owns only one Lot or Unit within such Sub-Association.

4.2. The Declarant shall have the right to partially assign its status as Declarant and Class B Member by recorded instrument executed by the original Declarant and acknowledged and accepted by the assignee Declarant to any person or entity acquiring any portion of the Property, or the adjacent land eligible for annexation into the Property, for the purpose of development of a residential subdivision consistent with the Master Plan, and any such assignee shall thereafter be deemed to be the Declarant as to the Lots or Units owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots and Units, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots and Units owned by such original Declarant. If any action of the Master Association, or any Sub-Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

*Section 5. Majority of Quorum.* Unless otherwise expressly provided in these Bylaws or the Declaration any action which may be taken by the Master Association may be taken by a majority of a quorum of the Members of the Master Association as determined by attendance in person or by proxy at meetings conducted by the Sub-Associations pursuant to Subsection 2.2 of these Bylaws as required by this Master Association.

*Section 6. Quorum.* Each Sub-Association meeting required by the Master Association pursuant to Subsection 2.2 of these Bylaws shall require the presence, either in person or by proxy, of a quorum of the members of the Sub-Association. A quorum of the Members of this Master Association shall be achieved by determining the total attendance at the Sub-Association meetings conducted pursuant to Subsection 2.2 of these Bylaws as reported by the Voting Representative of the Sub-Association. If the Sub-Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Sub-Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Sub-Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. If the Master Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes in all Sub-Association based on the total attendance in person or by proxy of Members attending the Sub-Association meetings. If the Master Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total

number of votes in all Sub-Association based on the total attendance in person or by proxy of Members attending the Sub-Association meetings. If the Master Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes in all Sub-Association based on the total attendance in person or by proxy of Members attending the Sub-Association meetings. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in these Bylaws or in the Articles of Incorporation or in the Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section, and the Master Association shall be bound by such more restrictive requirements as if fully reproduced herein.

*Section 7. Proxies.* Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary of the Sub-Association at least twenty-four (24) hours before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease after completion of the meeting for which the proxy was filed, and upon conveyance by the Member of his Unit.

### ARTICLE III

#### ADMINISTRATION

*Section 1. Places of Meetings of Members.* Meetings of the Members shall be conducted by the Sub-Association Associations as set forth in Subsection 2.2 of these Bylaws, and shall be held within the Association Properties or such other suitable places as close thereto as practicable in Pickens County, convenient to the Owners as may be designated by the Sub-Association Associations and approved by the Board of Directors. Notwithstanding the foregoing, the Master Association shall have the right to require the Sub-Association Associations to conduct joint simultaneous meetings, if, in the judgement of the Board, attendance at such meetings will not result in overcrowding of facilities or unreasonably prolong the meetings.

*Section 2. Annual Meetings.* The first annual meeting of the Members shall be held on the date at the places and at that the time, as determined by the Board of Directors, provided, however, that said meeting shall be held, to the extent possible, within one (1) year from the date of incorporation of the Association. Thereafter, the annual meeting of the Association shall be held on the anniversary date of the first annual meeting; provided, however, that should the anniversary date fall on a legal holiday, then such annual meeting of the Members shall be held on the next day thereafter which is not a legal holiday. Subject to the provisions of Article IV, Section 1 herein, at each annual meeting there shall be elected by ballot of the Members, a Board of Directors, in accordance with the requirements of Section 5 of Article IV of these Bylaws. At the first annual meeting, the

Directors shall be elected to serve until the second annual meeting, and at the second annual meeting, Directors shall be elected for a term of one (1) year beginning with the second annual meeting. Unless a Director resigns before the expiration of his term of office, each Director shall hold his office until his successor has been elected and the first meeting involving such successor is held. The term of office of any Director elected to fill a vacancy created by the resignation of his predecessor shall be the balance of the unserved term of his predecessor. The Members may also transact such other business of the Association as may properly come before them. Each First Mortgagee of a Unit may designate a representative to attend all annual meetings of the Members.

*Section 3. Special Meetings of Members.* Special meetings of the Members may be called at any time by the President or by a majority of a quorum of the Board of Directors, or upon a petition signed by Class A Members holding at least ten percent (10%) of the voting power of the Class A Members having been presented to the Secretary. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof.

No business shall be transacted at a special meeting except as stated in the notice, unless by consent of those Members holding at least four-fifths (4/5) of the voting power of the Association, either in person or by proxy. Each First Mortgagee of a Unit may designate a representative to attend all special meetings of the Members.

*Section 4. Notice of Meetings of Members.* It shall be the duty of the Secretary to notify each Sub-Association of the time and date established by the Board for each Annual or Special Meeting, and it shall be the duty of each Sub-Association, at its expense, to mail a notice of each annual or special meeting of Members stating the purpose thereof as well as the day, hour, and place where it is to be held, to each Member of record of the Sub-Association and to each First Mortgagee of a Unit which has filed a written request for notice with the Secretary of the Sub-Association, at least fourteen (14) but not more than sixty (60) days prior to such meeting. The notice may set forth time limits for speakers and nominating procedures for the meeting. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, after said notice has been deposited in a regular depository of the United States mail. If no address has been furnished to the Secretary, notice shall be deemed to have been given to a Member if posted in a conspicuous place on the Common Property.

*Section 5. Adjourned Meetings.* If any proposed meeting cannot be organized because a quorum has not been attained as determined by the total attendance of Members in person or by proxy at all Sub-Association meetings conducted pursuant to Subsection 2.2 of Article 2 of these Bylaws, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a

meeting. Proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

*Section 6. Order of Business.* The order of business at all meetings of the Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election; (g) election of Directors; (h) unfinished business; and (i) new business. Meetings of Members shall be conducted by the officers of the Association in order of their priority.

*Section 7. Action Without Meeting.* Any action, which under the provisions of South Carolina law may be taken at a meeting of the Members, may be taken without a meeting if authorized by a writing signed by the required number of Members who would be entitled to vote at a meeting for such purpose, and such writing is filed with the Secretary.

*Section 8. Consent of Absentees.* The transaction of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the Members not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

*Section 9. Minutes, Presumption of Notice.* Minutes or similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

## ARTICLE IV

### BOARD OF DIRECTORS

*Section 1. Number, Term and Qualifications.* The affairs of this Master Association shall be governed by a Board of Directors composed of no fewer than three (3) nor more than seven (7) persons as is determined from time to time by the Members. The term of each Director's service shall extend until the next annual meeting of the Members, and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 3 below.

*Section 2. Powers and Duties.* The Board of Directors has the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done exclusively by the Members.

*Section 3. Special Powers and Duties.* Without prejudice to such foregoing general powers and duties and such powers and duties as are set forth in the Declaration and Articles of Incorporation, the Board of Directors is vested with, and responsible for, the following powers and duties:

- (a) To select, appoint, and remove all officers, agents and employees of the Association, to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Declaration and these Bylaws; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board.
- (b) To conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations therefor consistent with law, with the Articles of Incorporation, the Declaration, and these Bylaws, as the Board may deem necessary or advisable.
- (c) To change the principal office for the transaction of the business of the Association from one location to another with the State of South Carolina as provided in Article I hereof; to designate any place within said State for the holding of any annual or special meeting or meetings of Members consistent with the provisions of Article III, Section 2 hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment may deem best, provided that such seal shall at all times comply with the provisions of law.
- (d) To borrow money and to incur indebtedness for the purposes set forth in the Declaration, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges hypothecations or other evidences of debt and securities therefor.
- (e) To fix and levy from time to time, Assessments upon the Owners, as provided in the Declaration; to determine and fix the due date for the payment of such Assessments, and the date upon which the same shall become delinquent; provided, however, that such Assessments shall be fixed and levied only to provide for the general benefit and welfare of the Associ-

ation and its Members in accordance with the provisions of the Declaration. The Board of Directors is hereby authorized to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided, adequate reserves for replacements as it shall deem to be necessary or advisable in the interest of the Association or welfare of its Members. Disbursements from such trust reserve fund shall be made only in accordance with the provisions of the Declaration. Should any Owner fail to pay such Assessments before delinquency, the Board of Directors in its discretion is authorized to enforce the payment of such delinquent assessments as provided in the Declaration.

- (f) To enforce the provisions of the Declaration covering the Common Area, and areas on which the Association has an easement (the "Easement Areas"), these Bylaws or other agreements of the Association.
- (g) To contract for and pay fire, casualty, errors and omissions, blanket liability, malicious mischief, vandalism, and other insurance, insuring the Members, the Owners, the Association, the Declarant, the Board of Directors and other interested parties, in accordance with the provisions of the Declaration, covering and protecting against such damages or injuries as the Board deems advisable, which may include without limitation, medical expenses of persons injured on the Common Area and Easement Areas, and to bond the agents and employees of any management body, if deemed advisable by the Board. The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on behalf of the Association.
- (h) To contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, public areas, and Easement Areas and to employ personnel necessary for the operation of the Common Area, public areas and Easement Areas, including legal and accounting services, and to contract for and pay for improvements to the Common Area, public areas and Easement Areas.
- (i) To delegate its powers according to law, and subject to the approval of the Members, to adopt these Bylaws.
- (j) To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Association.

- (k) To fix, determine and name from time to time, if necessary or advisable, the public agency, fund, foundation or corporation which is then or there organized or operated for charitable purposes, to which the assets of this Association shall be distributed upon liquidation or dissolution, according to the Articles of Incorporation of the Association. The assets so distributed shall be those remaining after satisfaction of all just debts and obligations of the Association, and after distribution of all property held or acquired by the Association under the terms of a specific trust or trusts.
  
- (1) To adopt such uniform and reasonable rules and regulations as the Board may deem necessary for the management of the Common Area and Easement Areas which rules and regulations shall become effective and binding after (1) they are adopted by a majority of the Board at a meeting called for that purpose, or by the written consent of such number of Directors attached to a copy of the rules and regulations of the Association, and (2) they are posted in a conspicuous place in or near the Common Area. For so long as the Declarant enjoys Class B Membership status, such rules and regulations shall not materially adversely affect the rights, privileges or preferences of any Member or owner as established by the Association, the Articles of Incorporation of the Association and these Bylaws and such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation and these Bylaws.

*Section 4. Management Agent.* The Board shall have the option to employ a managing agent to manage the Common Area and Easement Areas and the affairs of the Association. The managing agent shall perform such duties and services as the Board shall authorize.

*Section 5. Election and Term of Office.* Subject to the provisions of Article IV, Section 1 herein, at the first annual meeting of the Association, and thereafter at each annual meeting of the Members, Directors shall be elected by secret written ballot by a plurality of Members as provided in these Bylaws, each Member voting being entitled to cast its votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. In the event that an annual meeting is not held, or the Board is not elected thereat, the Board may be elected at a special meeting of the Members held for that purpose. Each Director shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence. Any person serving as a Director may be reelected, and there shall be no limitation on the number of terms during which he may serve.

*Section 6. Books, Audit.* The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in manner consistent with generally accepted accounting principles, and at no greater than annual intervals shall obtain an independent audit of such books and records. A copy of each such audit shall be delivered to a Member within sixty (60) days after the completion of such audit upon written request from a Member.

*Section 7. Vacancies.* Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and such person so elected shall be a Director until a successor is elected at the next annual meeting of the Members of the Association, or a special meeting of the Members called for that purpose. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, or in case the Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place.

*Section 8. Removal of Directors.* At any regular or special meeting of the Members duly called, any one or more of the Directors may be removed with or without cause by a majority vote of the Members of the Association, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. If any or all of the Directors are so removed, new Directors may be elected at the same meetings.

*Section 9. Organization Meeting.* The first regular ("organization") meeting of a newly elected Board of Directors shall be held within ten (10) days of election of the Board, at such place as shall be fixed and announced by the Directors at the meeting at which such Directors were elected, for the purpose of organization, election of officers and the transaction of other business. No notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board shall be present.

*Section 10. Other Regular Meeting.* Other regular meetings of the Board of Directors may be held at such time and place in or near the Association Properties as shall be determined, from time to time by a resolution adopted by a majority of a quorum of the Directors; provided, however, that such meeting shall be held no less frequently than annually. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least seventy-two (72) hours prior to the date named for such meeting, and shall be posted at a prominent place or places within the Common Area.

*Section 11. Special Meeting.* Special meetings of the Board of Directors may be called by the President (or, if he is absent or refused to act, by the Vice President) or by any two (2) Directors. At least seventy-two (72) hours notice shall be given to each Director personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and the purpose of the meeting, and shall be posted at a prominent place or places in or near the Association Properties. If served by mail, each such notice shall be sent, postage prepaid, to the address reflected on the records of the Association, and shall be deemed given, if not actually received earlier, at 5:00 P.M. on the second day after it is deposited in a regular depository of the United States mail as provided herein. Whenever any Director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such Director, as required by law and as provided herein.

*Section 12. Waiver of Notice.* Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Board, however, called and notice or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Directors not present signs such a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

*Section 13. Quorum and Adjournment.* Except as otherwise expressly provided herein, at all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

*Section 14. Action Without Meeting.* The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the vote or written consent of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

*Section 15. Fidelity Bonds.* The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

*Section 16. Committees.* The Board of Directors by resolution may from time to time designate such committees as it shall desire, and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee shall provide for the appointment of its Members, as well as a chairman, shall state the purposes of the committee, and shall provide for reports, termination, and other administrative matters as deemed appropriate by the Board.

## ARTICLE V

### OFFICERS

*Section 1. Designation.* The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as in their judgment may be necessary. Officers other than the President and Vice President need not be Directors. The office of Secretary and Treasurer may be held by the same person, but the office of President and Secretary may not be held by the same person.

*Section 2. Election of Officers.* The officers of the Association shall be elected annually by the Board of Directors at the Organization Meeting of each new Board of Directors, and each officer shall hold his office until he shall resign or be removed or otherwise disqualified to serve, or his successor shall be elected and qualified to serve.

*Section 3. Removal of Officers.* Upon an affirmative vote of a majority of the entire Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary of the Association. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and unless otherwise specified in said notice, acceptance of such resignation by the Board shall not be necessary to make it effective.

*Section 4. Compensation.* Officers, agents, and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board. Appointment of any officer, agent or employee shall not of itself create contractual rights of compensation for services performed by such officer, agent, or employee, provided that

no officer, employee or Director of Declarant or any affiliate of Declarant may receive any compensation.

*Section 5. President.* The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power, subject to the provisions of Article IV, Section 16, to appoint committees from among the members from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business of the Association. The President shall be ex-officio a member of all standing committees, and he shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws of the Association.

*Section 6. Vice President.* The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, disabled, refuses or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or these Bylaws of the Association.

*Section 7. Secretary.* The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association at the principal office of the Association or at such other places as the Board of Directors may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board of Directors may direct; and the Secretary shall, in general perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notice of meetings of the Members of the Association and of the Board of Directors required by these Bylaws or by law to be given. The Secretary shall maintain a book of record Owners, listing the names and addresses of the Owners as furnished by the Association, and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Unit is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board of Directors.

*Section 8. Treasurer.* The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time

be designated by the Board of Directors. The Treasurer shall co-sign all checks and promissory notes on behalf of the Association. The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors, in accordance with the Declaration, shall render to the President and Directors, upon request, an account of all of his transactions as Treasurer and of the financial conditions of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

## ARTICLE VI

### OBLIGATIONS OF OWNERS FOR ASSESSMENTS

*Section 1. Payment.* The Association shall obtain funds with which to operate by assessment of the members of each Member in accordance with the provisions of the Declaration as supplemented by the provisions of the Articles of the Association relating thereto. Said assessments shall be payable monthly, in advance, without notice, and shall be due on the first day of each month. Unless otherwise required by the Board, assessments may not be made payable less frequently than monthly.

*Section 2. Special Assessments.* Special Assessments for charges by the Association against Members for other than Common Expenses or for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be levied in the same manner as herein provided for regular Assessments, except that notice thereof shall be given and they shall be payable in the manner determined by the Board.

*Section 3. Past Due Assessments.* Assessments and installments thereon not paid when due shall bear interest from the date when due until paid at the rate set forth in the Declaration and shall result in the filing of a claim of lien as set forth in the Declaration.

*Section 4. Default.* As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessment, if not paid within thirty (30) days after the due date, shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

## ARTICLE VII

### AMENDMENTS TO BYLAWS

Amendments to these Bylaws shall be proposed and adopted in the following manner:

*Section 1. Proposal.* Amendments to these Bylaws may be proposed by the Board of Directors (the "Board") of the Association by resolutions adopted by a majority vote of the Directors present at any regular or special meeting of the Board at which a quorum is present or, in the alternative, by a written instrument signed by a majority of the Board, or by the vote of a majority of a quorum of Members present in person or by proxy at a special or regular meeting of the Members or by written instrument signed by them. Such proposed amendment or amendments shall be transmitted to the President of the Association, or the acting chief executive officer in the absence of the President, who shall thereupon call a Special Meeting of the Members of the Association not later than sixty (60) days from the receipt by him of the proposed amendment or amendments.

*Section 2. Notice.* It shall be the duty of the Secretary to give each Member written notice of such meeting, stating the proposed amendment or amendments in reasonably detailed form, which notice shall be prepared by and at the expense of the Master Association and mailed by the Master Association or presented personally to each Member not less than thirty (30) days nor more than sixty (60) days before the date set for the meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association, with postage thereupon prepaid. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the records of the Association, whether before, during or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting.

*Section 3. Resolution.* At the meeting at which the amendment is to be proposed and considered, a resolution for the adoption of the proposed amendment may be made by any member of the Board of Directors of the Association, or by any Member of the Association, present in person or by proxy. The approval of a resolution for the adoption of a proposed amendment to these Bylaws shall require the affirmative vote of a majority of the members of the Board of Directors of the Association.

*Section 4. Approval.* Amendments may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 67% of the Class A

Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at meetings called as described in the notice and conducted by the Sub-Associations at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 67% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting. In addition to the approval of the Members and the Declarant set forth above, the following conditions shall apply:

a. Any Material Amendment or Extraordinary Action (as defined in the Declaration) that changes the rights of any specific class of Members (i.e. Class A; Class B; or Class C) must also be approved either (1) by the affirmative vote of at least 51% of the Members of such Class who are present, in person or by proxy, and voting at meetings called as described in the required notice at which a quorum of such Class of Members is present, or (2) by the written consent of at least 51% of all Members of such Class to any action taken in lieu of a meeting.

b. Any Material Amendment or Extraordinary Action proposed during the period in which the Declarant retains its Class B status must also be approved by the Federal Housing Administration ("FHA"), and the Department of Veterans Affairs ("VA") if any Unit within the Properties has been financed by a mortgage insured by FHA or guaranteed by VA. The Association shall deliver written notice of the proposed Material Amendment or Extraordinary Action to the FHA and VA simultaneously with its notice to the Members. If the FHA or VA fails to deliver written notice to the Association of its objection to the proposed Material Amendment or Extraordinary Action within 30 days after receipt of the notice, FHA and VA will be deemed to have approved the matters contained in the notice, and the Association shall be entitled to record an affidavit signed by an authorized officer averring that written notice was delivered to the FHA and VA and no objection was timely received from such agencies.

Notwithstanding the foregoing, during the period in which the Declarant retains the status of the Class "B" Member, the Declarant shall have the right to amend these Bylaws, without the necessity of joinder by the Members or any other persons or entities, to make nonsubstantial changes that do not materially or adversely affect the interests of other Members or other affected parties, and to clarify any ambiguities or conflicts, or correct any scrivener's errors in these Articles of Incorporation.

*Section 5. Limitation.* No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of Members without approval of sixty-seven percent (67%) of the votes of each class of Members and the joinder of all Eligible Holders (as defined in the Declaration) of mortgages upon Units. No amendment

shall be made that is in conflict with the Declaration, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Declarant, or the designated successor of the Declarant, unless the Declarant or such successor shall join in the execution of the amendment.

*Section 6. Recording.* Such amendment or amendments of these Bylaws shall be transcribed and certified in such form as may be necessary to file the same in the office of the Association and shall be recorded in the Public Records of Pickens County, South Carolina within thirty (30) days from the date on which the same is approved.

## ARTICLE VIII

### MORTGAGES

*Section 1. Notice to Association.* An Owner who mortgages his Unit shall notify the Association through the managing agent or the Secretary of the Board of Directors in the event there is no managing agent, of the name and address of his Mortgagee and the Association shall maintain such information in a book entitled "Mortgagees of Units". Any such Owner shall likewise notify the Association as to the release or discharge of any such mortgage.

*Section 2. Notice of Unpaid Assessments.* The Board of Directors of the Association shall at the request of a Mortgagee of a Unit report any unpaid assessments due from the Owner of such Unit, in accordance with the provisions of the Declaration.

## ARTICLE IX

### MEANING OF TERMS

All terms appearing herein initially capitalized shall have the same meanings as are applied to such terms in the Declaration, which terms include without limitation: "Owner", "Board", "Unit", "Articles", "Member", "Mortgage", "Mortgagee", and "Common Assessments".

## ARTICLE X

### CONFLICTING PROVISIONS

In case any of these Bylaws conflict with any provisions of the laws of the State of South Carolina, such conflicting Bylaws shall be null and void upon final Court determination to such effect, but all other Bylaws shall remain in full force and effect. In a case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE XI

### MISCELLANEOUS

*Section 1. Execution of Documents.* The Board of Directors, except as in these Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent, committee member, or employee shall have any power or authority to bind the Association by any contract or engagement or to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

*Section 2. Inspection of Bylaws.* The Association shall keep in its office for the transaction of business the original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members and all First Mortgagees at all reasonable times during office hours.

*Section 3. Fiscal Year.* The fiscal year of the Association shall be determined by the Board of Directors and having been so determined is subject to change from time to time as the Board of Directors shall determine.

*Section 4. Membership Book.* The Association shall keep and maintain in its office for the transaction of business a book containing the name and address of each Member. Termination or transfer of ownership of any Unit by an Owner shall be recorded in the book together with the date on which such ownership was transferred, in accordance with the provisions of the Declaration.

WE HEREBY CERTIFY that the foregoing Bylaws of the Association were duly adopted by the Board of Directors of the Association in a meeting held for such purpose on the \_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
\_\_\_\_\_, President

\_\_\_\_\_  
\_\_\_\_\_, Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY  
AS TAKEN FROM AND COMPARED WITH THE  
ORIGINAL ON FILE IN THIS OFFICE.

JUN 15 1999

ARTICLES OF INCORPORATION

OF

*[Signature]*  
SECRETARY OF STATE OF SOUTH CAROLINA

HABERSHAM MASTER ASSOCIATION, INC.

FILED  
JUN 15 1999  
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In compliance with the requirements of Title 33, Chapter 31, South Carolina Code of Laws, the undersigned persons do hereby make, subscribe and acknowledge that they have voluntarily associated themselves together for the purpose of forming a nonprofit corporation, the amended and restated articles of incorporation of which read as follows. All capitalized words or phrases used herein shall have the meanings herein ascribed, and if not defined in this instrument, such capitalized words or phrases shall have the meanings given in the Master Declaration of Covenants, Conditions and Restrictions for Habersham Master Association, hereinafter identified.

ARTICLE I

NAME

The name of the corporation is HABERSHAM MASTER ASSOCIATION, INC., hereinafter referred to as the "Association".

ARTICLE II

PRINCIPAL OFFICE

The principal office of the Association is located at 6610 Calhoun Memorial Highway, Easley, South Carolina 29640.

ARTICLE III

REGISTERED OFFICE AND REGISTERED AGENT

The initial registered office of the Association shall be at 6610 Calhoun Memorial Highway, Easley, South Carolina 29640, with the privilege of having its office and branch offices at other places within or without the State of South Carolina. The initial registered agent at that address shall be HABERSHAM, INC. (herein referred to as "Declarant").

## ARTICLE IV

### PURPOSE AND POWERS OF THE ASSOCIATION

This Association is a mutual benefit corporation, as defined in Title 33, Chapter 31 of the South Carolina Code of Laws. This Association does not contemplate pecuniary gain or profit to the members thereof, will make no distribution of income to its members, directors or officers and the specific purposes for which it is formed are to provide for the ownership, operation, maintenance and preservation of the real and personal property identified as Common Property, if any, the Areas of Common Responsibility, if any, and for the maintenance and improvement of any easements granted to the Association within the lands identified as Habersham (the "Association Properties") pursuant to that certain Master Declaration of Covenants, Conditions and Restrictions for Habersham Master Association recorded in the Public Records of Pickens County, South Carolina, (hereinafter called the "Declaration"), and such additional properties as may be added thereto from time to time by annexation or otherwise as provided in the Declaration and in these Articles. The Association is formed to promote the health, safety and welfare of its members and the residents within the Association Property and any additions thereto as may hereafter be brought within the jurisdiction of this Association, including, but not limited to the following matters.

(a) The Association shall exercise all of the powers and privileges and perform all of the duties and obligations of the Association set forth in the Declaration which is hereby incorporated into this instrument as is fully reproduced herein.

(b) The Association may fix, levy, collect and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration, and shall pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.

(c) The Association may acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

(d) The Association may borrow money, and with the assent of two-thirds (2/3) of the votes of each class of Members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(e) The Association may dedicate, sell or transfer all or any part of the Common Property to any Public Agency or authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. Such dedication or transfer shall only be effective with the assent of two-thirds (2/3) of the votes of each class of Members, agreeing to such dedication, sale or transfer.

(f) The Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Property, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of the votes of each class of Members, except as otherwise permitted in the Declaration.

(g) The Association may purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of interests in, real or personal property, except to the extent restricted hereby; to contract for the management and maintenance of the Common Property and Areas of Common Responsibility and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules, repair and replacement of the Common Property and Areas of Common Responsibility with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, including but not limited to the making of assessments, promulgation of rules and execution of contracts on behalf of the Association.

(h) The Association shall have and exercise any and all powers, rights and privileges which a corporation organized under the nonprofit corporation law of the State of South Carolina, by law may now or hereafter have or exercise.

## ARTICLE V

### MEMBERSHIP

*Section 5.1* Every Owner of a Lot or Unit within the lands subjected to the Declaration (as defined in the Declaration), including Declarant, shall be a Member of the Association. Memberships in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Unit.

*Section 5.2* There shall be three (3) classes of Members as follows:

- (a) *Class A Members.* Class A Members shall be all Owners with the exception of Centex Homes, a Nevada general partnership ("Centex Homes").
- (b) *Class B Members.* The Class B Member shall be Declarant or its specifically designated (in writing) successor who shall remain a member so long as it owns a Lot or Unit subject to the Declaration; provided that the Class B membership shall cease and be converted to Class A membership as set forth in Section 6.3 hereof.
- (c) *Class C Members.* The Class C Members shall be Centex Homes, and all other Builders owning Units or Lots subject to the Declaration; provided that the Class C membership shall cease and be converted to Class A membership as set forth in Section 6.3 hereof.

## ARTICLE VI

### VOTING RIGHTS

*Section 6.1.* Members of the Association shall be allocated votes as follows:

Class A. Each Class A Member shall be entitled to one vote for each Lot or Unit owned. For the purposes of determining voting rights, each Lot or Unit owned by a Class A Member shall be deemed entitled to one (1) vote regardless of the number of persons sharing common ownership interests.

Class B. The Class B Member (i.e., the Declarant) shall be allocated three (3) votes for each Lot or Unit owned by it within the Association Properties; provided, that at such time as the Class B membership shall cease and become converted to Class A membership as set forth in Section 6.3, the Declarant shall have one vote for each Unit or Lot owned by it within the Association Properties.

Class C. Class C Members shall have one (1) vote for each Lot or Unit they own in the Association Properties; provided, that at such time as the Class C membership shall cease and become converted to Class A membership as set forth in Section 6.3, the Builders shall have one vote for each Unit or Lot owned by it within the Association Properties.

*Section 6.2.* When any Unit or Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more

persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it, or a copy thereof, is filed with the secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant or a Builder) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot or Unit. If the Owners fail to designate their official representative, then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

*Section 6.3.* The Declarant's Class B membership status shall continue, and shall be in effect, during the period from the inception of the Declaration until either (1) seven (7) years from the date the Declaration is recorded; or (2) five (5) years after the date of recording of the last Supplemental Declaration annexing additional property into this Association, whichever event, (1) or (2) occurs later; or (3) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (4) in any event, ninety (90) days after the conveyance of the Unit to a Class A Member that causes the total number of votes held by all Class A Members of this Association to equal the number of votes in all Sub-Associations held by the Class B Member, whichever event, (1), (2), (3) or (4), occurs first; provided however, that if Class B status is converted to Class A pursuant to clause (4) and, subsequent to such event, the Declarant annexes an additional Sub-Association to the Association or annexes additional Lots to an existing Sub-Association which annexation causes the number of Lots or Units owned by the Declarant in all Sub-Associations to exceed twenty-five percent (25%) of the total number of Lots and Units within all Sub-Associations, Declarant's Class B status shall be restored as to all Lots and Units then owned by Declarant, and shall continue until the next occurrence of an event of conversion described above. For the purposes of these Articles of Incorporation, all Lots and Units owned by the Declarant within the Association Properties shall be included in the determination of Class B status even if Declarant owns fewer than twenty-five percent (25%) of the Lots or Units within any particular Sub-Association as defined in the Declaration. The rights, privileges and obligations of Class B status shall prevail within all Sub-Associations, as defined in the Declaration, as long as Declarant shall be a Class B Member of this Association, even if Declarant owns only one Lot or Unit within such Sub-Association.

*Section 6.4.* The Declarant shall have the right to partially assign its status as Declarant and Class B Member by recorded instrument executed by the original Declarant

and acknowledged and accepted by the assignee Declarant to any person or entity acquiring any portion of the Property, or the Undeveloped Parcel eligible for annexation into the Property, for the purpose of development of a residential subdivision, and any such assignee shall thereafter be deemed to be the Declarant as to the Lots or Units owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots and Units, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots and Units owned by such original Declarant. If any action of the Association, requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

## ARTICLE VII

### BOARD OF DIRECTORS

*Section 7.1* The names and addresses of the members of the first Board of Directors who shall hold office until the annual meeting of the members and until their successors are elected or appointed and have qualified, are as follows:

NAME	ADDRESS
Danny A. Youngblood	6610 Calhoun Memorial Highway, Easley, South Carolina 29640
Paul Proffitt	6610 Calhoun Memorial Highway, Easley, South Carolina 29640
Kathy Niebauer	6610 Calhoun Memorial Highway, Easley, South Carolina 29640

*Section 7.2* The affairs of the Association shall be managed by a Board of Directors as provided in and subject to the requirements of Article IV the Bylaws. Such Board of Directors shall consist of an odd number of directors with a minimum of at least three (3) directors and a maximum of no more than seven (7) directors. Directors need not be Members of the Association and need not be residents of the Association Properties. Each Director shall serve for a term from the date of the meeting at which he is elected until the next annual meeting subject to the provisions governing resignation, death, disability, removal and replacement set forth in the Declaration, Bylaws and this instrument.

## ARTICLE VIII

### AMENDMENTS

*Section 8.1 Proposal.* An amendment or amendments to these Articles of Incorporation may be proposed by the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by a majority of the Members of the Association, whether meeting as Members or by instrument in writing signed by them. Upon any amendment or amendments to these Articles of Incorporation being proposed by the Board of Directors or Members, such proposed amendment or amendments shall be transmitted to the President of the Association, or the acting chief executive officer in his absence, and a Meeting of the Members of the Association shall be called not later than sixty (60) days from the receipt by him of the proposed amendment or amendments.

*Section 8.2 Notice.* It shall be the duty of the Secretary to give each Member written notice of such meeting, stating the proposed amendment or amendments in reasonably detailed form, which notice shall be prepared by and at the expense of the Master Association and mailed by the Master Association or presented personally to each Member not less than thirty (30) days nor more than sixty (60) days before the date set for the meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association, with postage thereupon prepaid. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the records of the Master Association, whether before, during or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. If the Master Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Master Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Master Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in these Articles of Incorporation or in the Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

*Section 8.3 Resolution.* At the meeting at which the amendment is to be proposed and considered, a resolution for the adoption of the proposed amendment may be made

by any member of the Board of Directors of the Association, or by any Member of the Association, present in person or by proxy. The approval of a resolution for the adoption of a proposed amendment to these Articles of Incorporation shall require the affirmative vote of a majority of the members of the Board of Directors of the Association.

*Section 8.4 Approval.* Amendments may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 67% of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at meetings called as described in the notice and conducted by the Sub-Associations at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 67% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting. In addition to the approval of the Members and the Declarant set forth above, the following conditions shall apply:

a. Any Material Amendment or Extraordinary Action (as defined in the Declaration) that changes the rights of any specific class of Members (i.e. Class A; Class B; or Class C) must also be approved either (1) by the affirmative vote of at least 51% of the Members of such Class who are present, in person or by proxy, and voting at meetings called as described in the required notice at which a quorum of such Class of Members is present, or (2) by the written consent of at least 51% of all Members of such Class to any action taken in lieu of a meeting.

b. Any Material Amendment or Extraordinary Action proposed during the period in which the Declarant retains its Class B status must also be approved by the Federal Housing Administration ("FHA"), and the Department of Veterans Affairs ("VA") if any Unit within the Property has been financed by a mortgage insured by FHA or guaranteed by VA. The Association shall deliver written notice of the proposed Material Amendment or Extraordinary Action to the FHA and VA simultaneously with its notice to the Members. If the FHA or VA fails to deliver written notice to the Association of its objection to the proposed Material Amendment or Extraordinary Action within 30 days after receipt of the notice, FHA and VA will be deemed to have approved the matters contained in the notice, and the Association shall be entitled to record an affidavit signed by an authorized officer averring that written notice was delivered to the FHA and VA and no objection was timely received from such agencies.

Notwithstanding the foregoing, during the period in which the Declarant retains the status of the Class "B" Member, the Declarant shall have the right to amend these Articles of Incorporation, without the necessity of joinder by the Members or any other persons or

entities, to make nonsubstantial changes that do not materially or adversely affect the interests of other Members or other affected parties, and to clarify any ambiguities or conflicts, or correct any scrivener's errors in these Articles of Incorporation.

*Section 8.5 Limitation.* No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of Members, nor any changes in the provisions of Article IV hereof, without approval of sixty-seven percent (67%) of the votes of each class of Members and the joinder of all Eligible Holders (as defined in the Declaration) of mortgages upon Units. No amendment shall be made that is in conflict with the Declaration, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Declarant, or the designated successor of the Declarant, unless the Declarant or such successor shall join in the execution of the amendment.

*Section 8.6 Filing.* Any amendment or amendments of these Articles of Incorporation shall be transcribed and certified in such form as may be necessary to file the same in the office of the Secretary of State of the State of South Carolina.

## ARTICLE IX

### OFFICERS

The affairs of the Association will be administered by the officers designated in the Bylaws of the Association. Said officers will be elected by the Board of Directors at its first meeting following the annual meeting of Members of the Association and will serve at the pleasure of the Board of Directors. The names and addresses of the Officers who are to manage the affairs of the Association until the annual meeting of the Board of Directors and until their successors are duly elected and qualified are:

PRESIDENT - Danny A. Youngblood

VICE PRESIDENT - Paul Proffitt

SECRETARY/TREASURER - Kathy Niebauer

## ARTICLE X

### INDEMNIFICATION

*Section 10.1 Indemnity.* The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a Director, employee, officer or agent of the Association, against

expenses (including attorneys fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceedings, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceedings, has no reasonable cause to believe his conduct was unlawful, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or misfeasance or malfeasance in the performance of his duty to the Association, unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

*Section 10.2 Expenses.* To the extent that a Director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

*Section 10.3 Approval.* Any indemnification under Section 10.1 above (unless ordered by a Court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Directors, officers, employees or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 10.1 above. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or by a majority of the Members.

*Section 10.4 Advances.* Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition or such action, suit or proceeding as authorized by the Board of Directors in any specific case upon receipt of an undertaking by or on behalf of the affected Director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article X.

*Section 10.5 Miscellaneous.* The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members or otherwise, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

*Section 10.6 Insurance.* The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Association, as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

## ARTICLE XI

### BYLAWS

The first Bylaws of the Association will be adopted by the Directors named herein, and may be altered, amended, or rescinded in the manner provided by said Bylaws. Any Bylaws adopted by the Board of Directors shall be consistent with these Articles.

## ARTICLE XII

### TRANSACTION IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED

*Section 12.1* No contract or transaction between the Association and one or more of its Directors or officers, or between the Association and any other corporation, partnership, or Association, or other organization in which one or more of its Directors or officers are Directors or officers have a financial interest, shall be invalid, void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or committee thereof which authorized the contract or transaction, or solely because his or their votes are counted for such purpose. No Director or officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction.

*Section 12.2* Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract or transaction.

ARTICLE XIII

INCORPORATOR

The name and address of the incorporator of these Articles of Incorporation is:

Danny A. Youngblood, 6610 Calhoun Memorial Highway, Easley, SC 29640

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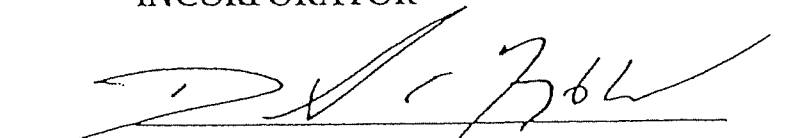
ARTICLE XIV

DISSOLUTION

The Association may be dissolved with the assent given by not less than two-thirds (2/3) of the votes of each Class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be disposed of or transferred to another association or appropriate public agency having similar purposes. Dissolution of the Association shall be deemed an Extraordinary Action and shall be subject to the provisions of these Articles of Incorporation and the Declaration governing Extraordinary Actions.

IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles of Incorporation this 15<sup>th</sup> day of JUNE, 1999

INCORPORATOR

  
Name: DANNY A. YOUNGBLOOD



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

HABERSHAM, PHASE TWO

PICKENS COUNTY, SOUTH CAROLINA

THIS DECLARATION is made on the date hereinafter set forth by Habersham, Inc., a South Carolina corporation, hereinafter referred to as the "Declarant", joined herein by Centex Homes, a Nevada general partnership, hereinafter referred to as "Centex".

WITNESSETH

WHEREAS, Declarant and Centex, collectively, are the owners of certain real property in Pickens County, South Carolina, described on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Declarant and Centex desire to create an exclusive planned residential community known as Habersham, Phase Two on the land described on Exhibit "A" and such other land as may be added thereto pursuant to the terms and provisions of this Declaration; and

WHEREAS, Declarant desires to establish a nonprofit corporation to be known as the Habersham Phase Two Owners Association, Inc., to own, operate and maintain the Common Property, and to operate and maintain the Common Maintenance Areas herein described for the use and benefit of the Owners of Lots within the Property as herein described;

NOW THEREFORE, Declarant and Centex declare that the real property described on attached Exhibit "A" shall be held, sold and conveyed subject to the restrictions, covenants and conditions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a

planned community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE 1

### DEFINITIONS

Section 1.1. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation for Habersham, Phase Two Owners Association, Inc., a South Carolina nonprofit corporation.

Section 1.2. "Association" shall mean and refer to Habersham, Phase Two Owners Association, Inc., a South Carolina nonprofit corporation established for the purposes set forth herein.

Section 1.3. "Builder" shall mean and refer to Centex Homes, a Nevada general partnership, and any other residential building company acquiring Lots from the Declarant for the purpose of construction and sale of homes.

Section 1.4. "Bylaws" shall mean and refer to the Bylaws of the Habersham, Phase Two Owners Association, Inc. in the form attached hereto as Exhibit "C" and incorporated herein by reference.

Section 1.5. "Common Property" shall mean and refer to any real or personal property, if any, acquired by or conveyed to the Association for the use and benefit of the Owners. The initial Common Property to be dedicated and conveyed to the Association is described in Exhibit "B", attached hereto and incorporated herein by reference. Apart from the lands described in Exhibit "B", neither the Declarant nor Centex is obligated to establish or convey any Common Property to the Association.

Section 1.6. "Common Maintenance Areas" shall mean and refer to the Entry Landscape Easement, and drainage facilities and detention ponds and any areas within public rights-of-way or easements that the Board of Directors of the Association deems it necessary or appropriate to maintain for the common benefit of the members.

Section 1.7. "Declarant" shall mean and refer to Habersham, Inc., a South Carolina corporation, its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign.

Section 1.8. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Habersham, Phase Two, and any amendments, annexations and supplements thereto made in accordance with its terms.

Section 1.9. "Lot" shall mean and refer to any of the plots of land indicated on the recorded subdivision map of the Property or any part thereof creating single-family homesites, with the exception of areas deeded to a governmental authority or utility, together with all improvements thereon.

Section 1.10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation. Declarant and Centex and any other Builder shall have the status of Owner as to any Lots they own.

Section 1.11. "Plat" shall mean and refer to the recorded map or plat of the Lots identified as the Plat of Habersham, Phase Two recorded in the Official Records of Pickens County, South Carolina .

Section 1.12. "Property" shall mean and refer to the real property described on the attached Exhibit "A", and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section 1.13. "Subdivision Drainage Facilities" shall mean and refer to a system of swales, inlets, culverts, retention ponds, detention ponds, lakes, outfalls, storm drains and the like, and all connecting pipes and easements, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect a quantity and quality of discharges from the system.

Section 1.14. "Unit" shall mean a portion of the Property, whether developed or undeveloped, intended for development, use and occupancy as a detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) single-family detached houses on separately platted Lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or part of the Property. The term shall include all portions of the Lot owned including any structure thereon. In the case of a parcel of vacant land or land in which improvements are under construction, the parcels shall be deemed to contain the numbers of Units designated for such parcel on the site plan approved by

Declarant, until such time as a certificate of occupancy is issued on all or a portion thereof by a local government entity having jurisdiction, after which the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above, and the number of Units in the remaining land, if any, shall continue to be determined in accordance with this paragraph.

## ARTICLE 2

### PROPERTY SUBJECT TO DECLARATION

Section 2.1. Property Subject to this Declaration. From and after the time that this Declaration is recorded in the Public Records of Pickens County, South Carolina, the Property shall be subject to the terms and conditions of this Declaration. The Property shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions contained in this Declaration, which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors or assigns and shall inure to the benefit of each owner thereof.

#### Section 2.2. Annexation.

2.2.1. Within the period beginning with the date this Declaration is recorded in the Public Records of Pickens County, South Carolina and ending either (a) seven (7) years thereafter, or (b) five (5) years from the date of recording of the last recorded Supplemental Declaration annexing additional land to this Declaration, whichever event, (a) or (b), occurs later, the Declarant may, without the consent or joinder of the Owners or any other person or entity, annex additional real property (including Common Property) adjacent to the boundaries of the Property. Annexations under this Subsection 2.2.1 shall be accomplished by filing a Supplemental Declaration describing the real property to be annexed (or withdrawn pursuant to Section 2.3 of this Article 2, as the case may be), and shall become effective when such Supplemental Declaration is filed among the Public Records of Pickens County, South Carolina, unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other person or entity the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the Property and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

2.2.2. Subject to the consent of the owner thereof, the Association may annex real property, to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of two-thirds (2/3) of the votes of each class of Members of the Association. The annexation of land under

this Subsection 2.2.2 shall be accomplished by the recordation in the Public Records of Pickens County, South Carolina, of a Supplemental Declaration describing the property being annexed and signed by the President and Secretary of the Association and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

2.2.3. No provision of this Declaration shall be construed to require Declarant or Centex or any other person or entity to annex any real property to this Declaration.

2.2.4. Covenants and restrictions applicable to annexations to the Property shall be compatible with, but need not be identical to, the covenants and restrictions set forth in this Declaration.

2.2.5. In the event that either the Federal Housing Administration (the "FHA") or the Department of Veterans Affairs (the "VA") insures or guarantees any mortgage encumbering a Lot, and the regulations or procedures of such agency require under such circumstances approval of annexations by such agency or determination by such agency that such annexation is consistent with the general plan of development for Habersham, Phase Two, then such approval or determination as described in Article 16, Subsection 16.2.5 shall be a prerequisite to such annexation.

### ARTICLE 3

#### CREATION OF ASSOCIATION; MEMBERSHIP; VOTING RIGHTS

Section 3.1. Creation of Association. Upon execution of this Declaration, Declarant shall cause the Association to be created by filing the Articles of Incorporation with the Secretary of State of South Carolina, and causing the Bylaws to be adopted in the form attached hereto as Exhibit "C", and incorporated herein by reference.

Section 3.2. Membership. Every Owner of a Unit or Lot, and every Builder owning any Unit or Lot, by virtue of the ownership of such Unit or Lot, and the Declarant and its successors and assigns, shall be Members of the Association, and by acceptance of a deed or other instrument evidencing an ownership interest, each Owner, Builder and Declarant accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles of Incorporation, the Bylaws and other rules and regulations of the Association. The term "Member" shall include each person or entity owning any right, title or interest in any Unit or Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or entities

also have the right of possession. Tenants or others occupying any Unit who do not have an ownership interest therein shall not be Members for the purposes of this Declaration. Membership in the Association is appurtenant to, and may not be severed from, the Unit or Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot or Unit. Members shall be responsible for compliance with the terms and conditions of this Declaration, the Articles of Incorporation and Bylaws, and rules and regulations of the Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Unit or other portion of the Property.

Section 3.3. Voting Rights. Members of the Association shall be allocated votes as follows:

3.3.1. Classes.

Class A. Class A Members shall be all Owners with the exception of the Declarant and any Builders. Each Class "A" Member shall be entitled to one vote for each Lot or Unit owned.

Class B. The Class B Member shall be the Declarant, or its specifically designated (in writing) successor. The Class B Member shall be allocated three (3) votes for each Lot or Unit owned by it within the Property which is subject to assessment by this Association; provided, that the Class B membership shall cease and become converted to Class A membership as set forth in Section 3.5 of this Article 3. Upon conversion to Class A membership, the Declarant shall have one vote for each Unit or Lot owned by it within the Property so long as said Unit or Lot is subject to assessment by this Association.

Class C. All Builders, as defined herein, except the Declarant, shall be Class C Members. Class C Members shall have the same number of votes per Lot as are then allocated to the Declarant under its Class B membership status. Therefore, if, at the time of the exercise of the vote, the Class B Member has an allocation of three (3) votes per Lot, the Class C Member shall also be allocated three (3) votes for each Lot or Unit then owned in the Property.

3.3.2. Joint Ownership. When any Unit or Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the

tenancy otherwise directs, and a copy thereof is filed with the secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant or a Builder) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot or Unit. If the Owners fail to designate their official representative, then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owners appoint their official representative pursuant to this paragraph.

### Section 3.4. Change of Membership.

3.4.1. Ownership. Change of membership in the Association shall be established by recording in the Public Records of Pickens County, South Carolina, a deed or other instrument conveying record fee title to any Lot or Unit, and by the delivery to the Association, of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said instrument is not delivered to the Association, said Owner shall become a Member, but shall not be entitled to voting privileges until delivery of a copy of the conveyance instrument to the Association. The foregoing shall not, however, limit the Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot or Unit acquired. Notwithstanding the foregoing, the Declarant, or any Builder, shall have the right to notify the Association in writing of conveyance of a Unit to an Owner without the requirement of providing a copy of the deed, and the Association shall recognize the Owner identified in such written notice as a Member of the Association and Owner of the Unit.

3.4.2. Interest in Association. The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

### Section 3.5. Class B Membership Status.

3.5.1. Duration. The Declarant's Class B membership status shall continue, and shall be in effect, during the period from the inception of this Declaration until either (1) seven (7) years from the date this Declaration is recorded; or (2) five (5) years after the date of recording of the last Supplemental Declaration annexing additional property into this Association, whichever event, (1) or (2) occurs later; or (3) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (4) in any event, ninety (90) days after the conveyance of the Unit to a Class A Member that causes the total number of votes held by all Class A Members of this Association to equal the number of votes held by the Class B Member, whichever event, (1), (2), (3) or (4), occurs first; provided however, that if Class B status is converted to Class A pursuant to clause (4) and, subsequent to such event, the Declarant annexes additional property adjacent to the boundaries of the Property to the Association or annexes additional Lots developed adjacent to the boundaries of the Property to the Association, and such annexation causes the number of Lots or Units owned by the Declarant within the Property, as increased by the annexation, to exceed twenty-five percent (25%) of the total number of Lots and Units within the Property, Declarant's Class B status shall be restored as to all Lots and Units then owned by Declarant, and shall continue until the next occurrence of an event of conversion described above. For the sole purpose of making the calculations described in this Subsection 3.5.1, the votes held by the Class C Members, if any, shall be deemed to be held by the Class B Member.

3.5.2. Assignment. The Declarant shall have the right to partially assign its status as Declarant and Class B Member, by recorded instrument executed by the original Declarant and acknowledged and accepted by the assignee Declarant, to any person or entity acquiring any portion of the Property for the purpose of development of a residential subdivision, and any such assignee shall thereafter be deemed to be the Declarant as to the Lots or Units owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots and Units, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots and Units owned by such original Declarant. If any action of the Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

#### ARTICLE 4

#### FUNCTIONS OF ASSOCIATION

Section 4.1. Common Maintenance Areas. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Maintenance Areas and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep the Common Maintenance Areas in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and any agreement with another association or governmental agency.

Section 4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant.

Section 4.3. Services. The Association shall have the power to perform the following services, however, the Board of Directors shall determine in its sole authority, the actual services and functions to be performed by the Association, and the description of the following powers is for informational purposes only, and shall not be deemed to impose on the Association the obligation to perform such services or functions:

4.3.1. Maintenance of Common Maintenance Areas, Subdivision Drainage Facilities, and all city, county, district or municipal property and rights-of-way (to the extent permitted by any governmental authority) which are located within or in a reasonable proximity to the Property where deterioration of any of the described items would adversely affect the appearance of the Property or the operation of systems appurtenant to Habersham, Phase Two.

4.3.2. Maintenance of any real property located within Habersham, Phase Two upon which the Association has accepted an easement for said maintenance.

4.3.3. Maintenance of all Subdivision Drainage Facilities owned by or dedicated for the use of the Association within the Property, as well as maintenance of bodies of water if and to the extent permitted or required by any contract or by any governmental authority having jurisdiction thereof.

4.3.4. Insect, pest and aquatic control where necessary or desirable in the judgment of the Board to supplement the service provided by the state and local governments. The provisions of this paragraph shall not be construed as an obligation on the part of Association to provide such services.

4.3.5. Taking any and all actions necessary to enforce all covenants, conditions and restrictions affecting the Property and to perform any of the functions or services delegated to the Association in any covenants, conditions or restrictions applicable to the Property or in the Articles or Bylaws.

4.3.6. Conducting business of the Association, including but not limited to administrative services such as legal, accounting and financial, and communication services informing Members of activities, Notice of Meetings, and other important events. The Association shall have the right to enter into management agreements with companies affiliated with the Declarant in order to provide its services, and perform its functions.

4.3.7. Establishing and operating the Architectural Control Committee, pursuant to Article 8.

4.3.8. Adopting, publishing and enforcing such Rules and Regulations as the Board deems necessary.

4.3.9. At the sole option and discretion of the Board, conducting recreation, sport, craft, and cultural programs of interest to Members, their families, tenants and guests and charging admission fees for the operation thereof.

4.3.10. Constructing improvements on Common Property and easements as may be required to provide the services as authorized in this Article.

4.3.11. The Association may also provide exterior maintenance upon any Unit or upon any structure containing Units which, in the reasonable opinion of the Board of Directors of the Association, requires such maintenance because said Unit or structure is being maintained in a manner inconsistent with the overall appearance and standards prevailing within the Association. The Association shall notify the Owner of said Unit or structure in writing, specifying the nature of the condition to be corrected, and if the Owner has not corrected the condition within thirty (30) days after date of said notice, the Association (after approval of a majority of the Board) may correct such condition. Said maintenance shall include but not be limited to painting, repairs, replacement and maintenance of roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Unit or exterior of any Unit or other structures or improvements located in the Habersham, Phase Two at reasonable hours on any day, except Saturday and Sunday; provided, however, the Association shall have the right of entry without notice if necessary to correct an emergency situation.

The cost of such maintenance shall be assessed against the Unit upon which such maintenance is performed as a Special Assessment as provided in Article 6, Section 6.7.

4.3.12. Establish use fees and promulgate rules and regulations respecting the use of Common Property, if any, and Association facilities by Members and persons other than Members.

4.3.13. Engage in any activities reasonably necessary and legally required to remove from the Common Maintenance Areas, Common Property, Subdivision Drainage Facilities and other open space any pollutants, hazardous waste or toxic materials, and by Special Assessment, recover costs incurred from the Owner(s) causing such condition or upon whose property such materials were located or generated.

4.3.14. Accept conveyance of all Common Property, if any, from the Declarant, including all improvements, structures, equipment, apparatus or personal property thereon, and cooperate with and assist Declarant, its agents, employees and contractors in periodic inspection and maintenance thereof pursuant to Article 7.

The functions and services allowed in this Section to be carried out or offered by the Association at any particular time shall be determined by the Board taking into consideration proceeds of assessments and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or to provide, may be added to or reduced at any time upon the affirmative vote of a majority of the Board; provided, however, the Board may not vote to reduce or abrogate the Association's responsibility to maintain Common Maintenance Areas. The Association may provide the permitted services by contract with third parties, including agreements with applicable governmental agencies.

Section 4.4. Conveyance to Association. The Association shall be obligated to accept any and all conveyances to it by Declarant of fee simple title, easements or leases to open space, parks, lakes, recreation parcels, Subdivision Drainage Facilities or Common Property as set forth in Article 7.

Section 4.5. Conveyance by Association. The Association may convey or dedicate lands or easements that are part of the Common Property owned by the Association to Pickens County, the State of South Carolina, or other governmental authority or agency. The Association may also convey lands or easements that are part of the Common Property owned by the Association to the Declarant in connection with any replatting of any portion of the Property.

Section 4.6. Contracts with Other Associations. The Association is authorized to enter into any contracts or easement arrangements with other associations that may subsequently be formed for portions of the Habersham, Phase Two property, and/or the Habersham, Phase One property, that are not annexed hereto and made subject to this Declaration provided that such contracts or easements are necessary or beneficial for the operation of the Association or the maintenance of the Property; provided that the costs or expenses of operating, performing, or maintaining such contracts or easements shall be allocated between this Association and such other associations in accordance with the cost incurred or benefit received by each association. Any such contracts or easements shall be approved by the vote or written consent of a majority of the Board of the Association.

## ARTICLE 5

### GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

Section 5.1. Purpose of Maintenance Fund. The Board, for the benefit of the Owners, shall provide and shall pay for out of the maintenance fund provided for in Article 6 above the following:

- a. Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Property rather than against the individual Owners, if any.
- b. Care and preservation of the Common Maintenance Area, including without limitation, the drainage facilities.
- c. The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board, (provided that any contract for management of the Association shall be terminable by the Association, with no penalty upon no more than ninety (90) days prior written notice to the managing party) and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.
- d. Legal and accounting services.
- e. A policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by

the Board of Directors, including a policy or policies of insurance as provided herein in Article 15.

f. Workers compensation insurance to the extent necessary to comply with any applicable laws.

g. Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

h. Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

**Section 5.2. Powers and Duties of Board.** The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association:

a. To execute all declarations of ownership for tax assessment purposes with regard to the Common Property, if any, on behalf of all Owners.

b. To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

c. To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

d. To protect or defend the Common Property, if any, from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

e. To make reasonable rules and regulations for the operation of the Common Maintenance Areas and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Common Property, by the Owners in the portions affected.

f. To make available for inspection by Owners after the end of each fiscal year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

g. To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost Common Property, and if proceeds are insufficient to repair damage or replace lost Common Property, to assess the Owners in proportionate amounts to cover the deficiency.

h. To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

i. To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

Section 5.3. Board Powers Exclusive. The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

Section 5.4. Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

## ARTICLE 6

### ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Obligations of Assessments. Declarant covenants, and each Owner of any Lot or Unit shall by acceptance of a deed therefor, regardless of whether it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay the Association: (1) Annual Assessments, and (2) Special Assessments, all fixed, established and collected from time to time as hereinafter provided. The Annual Assessments and Special Assessments, together with such interest thereon and costs of collection provided herein shall be a charge and continuing lien as provided herein on the real property and improvements of the Owner against whom each such assessment is made. Each such assessment, together with such interest thereon and cost of collection, shall also be the personal obligation of the person who is the Owner of such real property at the time when the assessment first becomes due and payable. In the case of co-ownership of a Unit or Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Property or by the abandonment of the property against which the assessment was made. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

**Section 6.2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association may be used for the improvement, maintenance, enhancement and operation of the Common Maintenance Area, Subdivision Drainage Facilities, Common Property and public areas located in, on or about the Property to the extent that deterioration of the public areas would adversely affect the appearance of the Property or the operation of systems appurtenant to the Property, and further to provide services which the Association is authorized or required to provide by contract or otherwise, including, but not limited to, the payment of taxes and insurance thereon, construction, repair or replacement of improvements, payment of the costs to acquire labor, equipment, materials, management and supervision necessary to carry out its authorized functions, and for the payment of principal, interest and any other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized or required functions.

**Section 6.3. Duty of the Board.** It shall be the duty of the Board, at least thirty (30) days in advance of each fiscal year of the Association, to establish the annual budget and to fix the amount of the Annual Assessment against each Lot or Unit for the coming fiscal year, and to prepare a roster of the Lots and Units and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owner. Failure to fix the amount of the Annual Assessment within the time period set forth above will not preclude the Board from fixing the Annual Assessment at a later date. In the event the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year, and the Annual Assessment for the immediately preceding year shall continue for the current year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereof.

Section 6.4. Rate of Assessment. Annual Assessments shall be established by dividing the total expenses of the Association by the total number of Lots or Units subject to assessment to derive a uniform base assessment amount applicable to all Lots. Special Assessments for capital improvements or expenses applicable to all Lots within the Property shall be established in the same manner; however, Special Assessments applicable to a particular Lot for expenses attributable exclusively to such Lot shall be determined by dividing the applicable expense by the number of Lots to which it applies. After such amounts have been determined, the amounts due from the Class "B" and Class "C" Members shall be adjusted according to the following provisions. Declarant will have the following option for each assessment year:

6.4.1. During the period in which Declarant has the status of the Class B Member, all Lots and Units owned by Declarant, unless otherwise elected in writing by Declarant, shall be assessed at twenty-five percent (25%) of the rate of assessment applicable to units owned by Class A Members, provided however, that in the event that the actual operating expenses of the Association during the year for which the Declarant's assessment is 25% of the Class A Membership assessment exceed the actual income of the Association derived from all assessments imposed on all Members, Declarant shall reimburse the Association the difference between its actual operating expenses and its actual assessment income for such year, save and except any portion of such deficit attributable to delinquent assessments owed by Class A Members. Payment of such reimbursement shall be made by Declarant within 30 days after receipt of the Association's annual statement of accounts. Notwithstanding the foregoing, the Declarant shall have the right, but not the obligation, to reimburse the Association for deficits attributable to delinquent assessments owed by Class A Members, and, in that event, the Association shall promptly institute collection proceedings, including legal action if necessary, to recover such unpaid amount(s) from such Owner(s), and, upon receipt of such recovery, the Association shall reimburse Declarant the amount(s) so recovered up to the amount of any operating deficit funded by Declarant which arose from such non-payment.

6.4.2. In the alternative, Declarant may elect by written notice to the Board to pay the full Class A rate of assessment for each Unit owned by Declarant within the Association and subject to assessment for any assessment year without thereby waiving its Class B status or its right to elect to pay assessments pursuant to Subsection 6.4.1 for any ensuing assessment years, and, in such event, shall not be liable for the operating deficit of the Association as provided in Subsection 6.4.1.

6.4.3. At such time as Class B status shall cease, all Lots and Units owned by Declarant shall be assessed at the full Class A rate and Declarant shall have no obligation to fund any operating deficit of the Association thereafter.

**Section 6.5. Builder Assessments.** Lots or Units owned by Class C Members shall be assessed at fifty percent (50%) of the Annual Assessment rate fixed for Class A Units during the period of Class B membership. Upon conversion of Class B membership to Class A, Class C shall also be converted to Class A, and full assessments shall apply.

**Section 6.6. Initial Maximum Annual Assessment; Increases in Maximum Assessment; and Annual Assessment Rates.**

**6.6.1. Initial Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Unit by the Declarant or a Builder to a Class A Member, the Maximum Annual Assessment per Unit shall be \$ 165.00.

**6.6.2. Increases in Maximum Annual Assessment - Without Consent of the Members.** From and after such date, the Maximum Annual Assessment shall be increased each year by the Board without a vote of the Membership of the Association by an amount not more than either (a) ten percent (10%) above the sum of (1) the Maximum Annual Assessment for the previous year, plus (2) increases mandated by governmental agencies and/or increased fixed costs incurred for insurance, taxes, recycling, waste disposal, or to obtain services from utility companies, or (b) the percentage increase, if any, in the current U.S. Government's Consumer Price Index (Urban Price Index - All Urban Consumers), herein referred to as the "CPI", over the CPI published for the preceding period, or other statistical index providing similar information if the CPI ceases to be published, whichever amount, (a) or (b), is greater.

**6.6.3. Increases in Maximum Annual Assessment - Requiring Consent of the Members.** The Maximum Annual Assessment may not be increased above the amount described in Subsection 6.6.2 above without the approval of a simple majority of each class of Members who are either voting in person or by proxy, at a meeting of the Association duly called for this purpose, or whose approval is evidenced by the written consent of the majority of such Members.

**6.6.4. Establishing the Annual Assessment.** The Board of Directors of the Association shall set the Annual Assessment for each fiscal year at an amount not in excess of the Maximum Annual Assessment then in effect as established pursuant to Subsections 6.6.1, 6.6.2 or 6.6.3 above. If the Board sets the Annual Assessment at an amount which is less than the allowable Maximum Annual Assessment, the Board shall have the right to increase the Annual Assessment to any amount not greater than the allowable Maximum Annual Assessment then in effect without the consent of the Members upon thirty (30) days written notice. The election of the Board to set the Annual Assessment at an amount less than the Maximum Annual Assessment shall not

affect the calculation of the Maximum Annual Assessment for ensuing years pursuant to this Section 6.6.

**Section 6.7. Special Assessments.** In addition to the Annual Assessments authorized herein, the Association may levy in any fiscal year a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto; provided, such assessment shall have the affirmative vote or written consent, or combination thereof, at least a simple majority of the votes of each class of Members. The obligation to pay Special Assessments shall be computed on the same basis as for Annual Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

The Association (by simple majority vote of the Board) may also levy a Special Assessment against any Member to reimburse the Association for costs incurred pursuant to Article 4, Section 4.3.11 and 4.3.13, in bringing a Member and his Unit or Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Association rules and regulations, or for the recovery of expenses incurred pursuant to Section 6.13 of this Article 6, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

**Section 6.8. Notice and Quorum Requirements.** Written notice of any proposed action to be taken pursuant to Subsection 6.6.3 or Section 6.7 shall be delivered to each Member at least 30 days in advance of (1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a written description of the of the proposed assessment. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. If the Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained

in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

**Section 6.9. Date of Commencement of Annual Assessments; Due Dates.** The Annual Assessments provided for herein shall commence as to each Lot or Unit on the first day of the month next following the month in which the Lot or Unit is subjected to the terms and conditions of this Declaration by recordation of this Declaration or any Supplemental Declaration annexing Lots or Units into the Association, or on the date the Association Articles of Incorporation are filed with the Secretary of State of South Carolina, whichever occurs later. The dates when such Annual Assessments shall become due shall be established by duly adopted resolution of the Board. The Annual Assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit. The Association may delegate to a mortgage company, financial institution or management company responsibility for collection of assessments with the express written consent and agreement of such financial institution or management company. The Annual Assessments shall be payable in advance in monthly installments, or in annual, semi-annual or quarter-annual installments if so determined by the Board of Directors of the Association (absent which determination they shall be payable monthly).

**Section 6.10. Records of Payment.** The Board shall prepare a roster of Owners and Annual Assessments and Special Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner at reasonable times with reasonable notice. Any Owner shall have the right to request the Association to issue a written statement signed by an officer of the Association, setting forth whether all Annual Assessments and/or Special Assessments owed by such Owner have been paid. The Association shall have the right to impose a fee for the issuance of such statements not to exceed \$50.00 per statement. Requests for such statements shall be in writing addressed to the address to which Annual Assessment payments are made. Each request shall contain the street address and legal description (by platted lot and block) of the property and the full name of the Owner. The Association shall issue the requested statement within 30 days after receipt of the written request, subject to the payment of any fee for such service imposed by the Association. Such written statement issued by the Association shall be *prima facie* evidence of payment of any assessment therein stated to have been paid.

**Section 6.11. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien: Remedies of Association.**

6.11.1. If any assessment (e.g. any Annual Assessment or Special Assessment) is not paid on the date due, then such assessment shall become delinquent and the entire assessment shall, together with interest thereon and cost of collection

thereof as hereinafter provided, become due and payable and be a continuing lien on the property which shall bind such property in the hands of the then Owner, the Owner's heirs, devisees, personal representatives and assigns. The obligation of the Owner to pay such assessment is a personal obligation and any assessments that are due but remain unpaid at the time the Owner disposes of his or her ownership interest shall be enforceable by the Association against such person or against such person's successor in interest to the property subject to the assessment unless such successor in interest is a *bona fide* purchaser for value without notice of the assessment, or acquires title to the property by foreclosure of a lien securing a purchase money mortgage or home equity mortgage, or by deed or conveyance in lieu of foreclosure of such lien.

6.11.2. The Association may record a notice of lien for delinquent assessments in the public records and foreclose the lien in the same manner as a mortgage. The lien shall not be valid against subsequent *bona fide* purchasers or mortgagees for value unless so recorded. Upon recording, the lien shall secure the amount of delinquency stated therein and all unpaid assessments due thereafter until satisfied of record, together with interest thereon, as provided herein, and the reasonable cost of (a) notices of delinquency, (b) demands for payment, (c) notices of liens, (d) assignment of liens, (e) releases of liens, (f) recording costs, (g) attorney's fees, and (h) management company fees.

6.11.3. If the assessment is not paid within thirty (30) days after the due date it shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same for collection of the amounts due, or an action to foreclose the lien against the property. Suit to recover a money judgment for delinquent amounts owed to the Association and attorney's fees and costs shall be maintainable without foreclosing or waiving the lien securing the same. In the event that the Association turns the account over to an attorney for collection, there shall be added to the amount due the reasonable fees and charges of such attorney, including, but not limited to, charges for issuing notice of legal action or demands for payment, negotiation and preparation of settlement agreements and/or releases, costs of preparation of legal action, court costs, filing fees and all other expenses incurred by the Association for enforcement of its lien and/or collection of amounts owed.

6.11.4. In the event that the Association elects to foreclose its lien against any Unit, the Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have

been charged such Unit had it not been acquired by the Association as a result of foreclosure.

**Section 6.12. Subordination of the Lien to Mortgages; Mortgagees' Rights.** The lien of the assessments provided for herein is subordinate to the lien of any purchase money or home equity Mortgage given to an Institutional Lender now or hereafter placed upon a Unit or Lot recorded prior to the recording of a notice of lien pursuant to Section 6.11 of this Article 6; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Each Owner hereby authorizes and instructs the Association that an Institutional Lender holding a secured mortgage lien on a Unit, upon delivery of written request from the Institutional Lender to the Association, shall be entitled to written notification from the Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. The Association may provide such notice without receiving a request from the Institutional Lender without further notice to the Unit Owner. An Institutional Lender holding a mortgage on a Unit may pay any past due assessment or other obligation of the Unit Owner to the Association on behalf of such Owner, and, upon request from the Institutional Lender, the Association shall assign its lien rights herein established to such Institutional Lender.

An Institutional Lender may pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Property and Institutional Lenders making such payments shall be owed immediate reimbursement therefor from the Association.

**Section 6.13. Damage to Common Property or Common Maintenance Areas by Owners.** Any maintenance, repairs or replacements within the Common Property or Common Maintenance Areas arising out of or caused by the willful or negligent act of an Owner, his family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefore shall be made against his Lot or Unit.

**Section 6.14. Exempt Property.** The following property subject to this Declaration shall be exempted from all assessments, charges and liens created herein: (a) all easements, rights-of-way or other interest dedicated and accepted by the local public authority and devoted to public use; and (b) all Common Property, if any.

## ARTICLE 7

### TITLE TO COMMON PROPERTY; ACCEPTANCE AND MAINTENANCE OF COMMON PROPERTY

Section 7.1. Construction and Ownership of Common Property Improvements. It is anticipated that Declarant will designate certain portions of the Property described in Exhibit "B" to be Common Property that may be improved or developed in phases in association with the development of the Property. Declarant may elect to construct or install certain improvements or facilities upon portions of the Common Property, but is not obligated to do so. Declarant shall have the absolute right and power to determine what improvements or facilities, if any, it will install or construct on the Common Property at all times prior to conveying such Common Property to the Association, and within two (2) years thereafter. All lands designated by the Declarant as Common Property shall be conveyed to, and title shall be held by, the Association, together with all improvements or facilities constructed or installed thereon.

Section 7.2. Acceptance of Common Property. Within thirty (30) days after receipt of written notice from the Declarant informing the Association that Declarant has established Common Property for the benefit of the Association, the President of the Association, or in the absence of the President, any Vice President of the Association, together with a duly authorized representative of the Declarant, shall conduct a thorough inspection of the improvements or facilities, and shall report in writing any incomplete or defective conditions. The Association shall have the right to engage the service of a professional engineer, or other qualified inspector, to assist with the inspection and preparation of the written report. Upon completion or correction of any incomplete or defective conditions by Declarant, and re-inspection and approval by the President (or Vice President, as the case may be), or, in the event that the Declarant and the representative of the Association disagree about the completion or correction of allegedly incomplete or defective conditions, upon written certification of completion by a licensed engineer or architect engaged by the Declarant, Declarant shall convey all of its right, title and interest in and to the Common Property in question, including the improvements or facilities, to the Association free and clear of all liens, claims or expenses arising from the construction or installation of improvements on the Common Property by Declarant, and the Association shall accept and acknowledge the deed of conveyance, and/or the certificate of completion, and shall thereafter own all right, title and interest in the Common Property and improvements or facilities then conveyed.

Section 7.3. Maintenance of the Common Property. The Association shall own, operate and maintain all Common Property and the improvements or facilities

constructed or installed thereon in first class condition, subject to normal wear and tear, depreciation, and the elements. Maintenance of the Common Property shall include periodic inspection and preventive maintenance for the improvements and facilities thereon.

**Section 7.4. Inspections of the Common Property by Declarant.** Declarant hereby reserves the right, at all times after conveyance of the Common Property to the Association, to enter the Common Property, without prior notice, and to inspect the condition of the improvements and facilities thereon. If Declarant determines, in its sole judgement, that the improvements or facilities are in need of repair or maintenance, it may so notify the Association in writing, and it shall be the sole obligation of the Association owning such Common Property to promptly complete such repairs or maintenance. Failure of the Association to properly maintain and repair the Common Property shall relieve the Declarant of any liability to the Association or to any Member for any condition of the Common Property. Declarant shall have the right to make a record of its inspections by photographing and/or videotaping the Common Property, and shall have the right to perform tests or examinations to determine the condition of the Common Property, provided that Declarant shall indemnify the Association from any claims for personal injury, death, property damage or non-payment asserted by persons claiming by, through or under the Declarant for injury, death or damage occurring as a result of such examinations or tests. Notwithstanding the foregoing, Declarant shall have no obligation to perform inspections of the Common Property owned by the Association. The deeds conveying the Common Property to the Association may contain a recitation of this reservation, however failure to recite such reservation in such deeds shall not affect the rights of Declarant herein reserved.

**Section 7.5. Maintenance and Repair Records.** The Association shall keep records of maintenance and repairs performed on the Common Property, and such records shall be made available to the Declarant and to any Member upon written request. Failure of the Association to maintain appropriate records of maintenance and repairs shall be conclusive evidence that such maintenance and repairs were not performed.

**Section 7.6. Operation and Maintenance of Drainage Facilities.** The Association shall have the right, but not the obligation, to maintain drainage structures for the Property and to comply with conditions of any permits issued by the governmental authorities for the Subdivision Drainage Facilities. The Association, shall, when requested by Declarant, accept the assignment or transfer of such permits, if any, for the Habersham, Phase Two Property and shall be designated as the "permittee" thereof. The conditions of the permits may include monitoring and record keeping schedules, and maintenance. The drainage facilities and improvements, including without limitation, the retention/detention ponds, underground pipes, inlets and

outfall structures, if any, shall be collectively referred to herein as the "Subdivision Drainage Facilities". The following additional conditions shall apply:

- a. The Association shall hold and save the Declarant harmless from any and all damages, claims, or liabilities which may arise by reason of the operation, maintenance or use of any facility authorized by the permit.
- b. The Association shall have the right, but not the obligation, to properly operate and maintain the systems of treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the permit, as required by the governmental authorities.
- c. It shall be the responsibility of each Lot Owner within the subdivision at the time of construction of a building, residence, or structure, to comply with the construction plans for the Subdivision Drainage Facilities.
- d. It is the responsibility of the Owner of each Lot encumbered by any portion of the Storm Water and Surface Water Management System to maintain the portion of such system within such Owner's Lot, including, but not limited to, control of erosion and siltation, removal of vegetation and other obstacles to the flow of water through such system, and compliance with the conditions of the permits, if any.
- e. No Owner of a Lot within the subdivision may construct or maintain any building, residence, or structure, or undertake or perform any activity in the Storm Water and Surface Water Management System without the prior written approval of the Association's Board of Directors.

Section 7.7. Effect of Dissolution. In the event of the termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Subdivision Drainage Facilities shall continue to reside with the Owners of the Lots.

Section 7.8. Special Amendments Relating to Subdivision Drainage Facilities. Any amendment to this Declaration which alters the Subdivision Drainage Facilities, beyond maintenance in its original condition, including the water management portions of the Common Property, must have the prior written approval of the governmental authorities that have responsibility for issuing such permits.

Section 7.9. Shared Facilities. It is expected that certain portions of the Subdivision Drainage Facilities will serve the drainage needs of adjacent lands not owned by Declarant and not within the Property subject to this Declaration. Declarant

reserves the right to grant such drainage and/or use easements and rights as Declarant may deem necessary or appropriate for accomplishing the drainage needs of the Property and/or lands owned by others provided that such agreements shall not unreasonably interfere with the use of the system by the Owners.

**Section 7.10. Water Levels and Flooding.** The Subdivision Drainage Facilities is designed to provide drainage for the Property. Neither the Association nor the Declarant nor Centex shall have any liability whatsoever to any Owner for claims or damages alleged by an Owner due to water levels in the retention/detention ponds, if any, being above normal or otherwise unacceptable to the Owner. Recreational use and aesthetic appearance of the retention/detention ponds is secondary to their intended drainage function, and during periods of prolonged drought or other unusual weather events water levels in the retention/detention ponds may recede, and neither the Association nor the Declarant nor Centex shall have any liability for such conditions. Provided that the Subdivision Drainage Facilities is constructed in substantial compliance with the plans and specifications therefor approved by the appropriate governmental authorities, neither the Declarant, nor Centex, nor the Association nor any governmental authority shall be liable to the Association or any Owner for damage caused by flooding, and each Owner acknowledges and agrees that as long as the Declarant, Centex and the Association have acted in good faith in reliance on reasonable engineering criteria approved by the governmental authorities in the design and construction of the Subdivision Drainage Facilities, they shall not be liable for damages sustained by any Owner caused by weather events not taken into consideration in the design or construction of such system and facilities.

## ARTICLE 8

### ARCHITECTURAL REVIEW

**Section 8.1. Architectural Control Committee.** A committee to be known as the Architectural Control Committee (the "ACC") shall be established consisting of three (3) persons who need not be members of the Association.

a. The committee members of the ACC shall be appointed, terminated and/or replaced by the Declarant so long as there is Class B membership. Thereafter the committee members of the ACC shall be appointed, terminated and/or replaced by the Board of Directors. The persons appointed to the ACC are Danny Youngblood, D. Keith Wood, and Chuck Hall.

b. The purpose of the ACC is to enforce the architectural standards of the community and to approve or disapprove plans for improvements proposed for the Lots.

c. The ACC shall act by simple majority vote, and shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties.

Section 8.2. Scope of Review. No building, fence, wall, outbuilding, landscaping, pool, athletic facility or other structure or improvement shall be erected, altered, added onto or repaired upon any portion of the Property without the prior written consent of the ACC, provided however, that improvements erected, altered, added onto or repaired by Declarant or Centex shall be exempt from the provisions of this Article 8. Neither Declarant nor Centex shall be required to submit plans to, or seek the approval of, the ACC for any improvement constructed or installed by Declarant or Centex, and the ACC shall have no right to exercise the authority herein established as to any such improvement.

Section 8.3. Submission of Plans. Prior to the initiation of construction upon any Lot, the Owner thereof shall first submit to the ACC a complete set of plans and specifications for the proposed improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACC for the performance of its function. In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates.

Section 8.4. Plan Review. Upon receipt by the ACC of all of the information required by this Article 8, it shall have twenty-one (21) days in which to review said plans. The proposed improvements will be approved if, in the sole opinion of the ACC: (1) the improvements will be of an architectural style and material that are compatible with the other structures in the Property; (2) the improvements will not violate any restrictive covenant or encroach upon any easement or cross platted building set back lines; (3) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property; (4) the individual or company intended to perform the work is acceptable to the ACC in the exercise of its reasonable discretion, provided however, that the right of the ACC to consent to the individual or company selected to perform the work shall not be used to require any Owner to retain the Declarant or its employees, agents, contractors or affiliated companies or any Builder, nor shall such consent be deemed approval or indorsement of the quality of work or performance of the company or individual performing such work; and (5) the improvements will be substantially completed, including all cleanup, within three (3) months of the date of commencement [6 months for the construction of a complete house]. In the event that the ACC fails to issue its written approval within twenty-one (21) days of its receipt of

the last of the materials or documents required to complete the Owner's submission, the ACC's approval shall be deemed to have been granted without further action.

Section 8.5. Non-conforming Structures. If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article 8 to the same extent as if erected without prior approval of the ACC. The ACC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

Section 8.6. Immunity of ACC Members. No individual committee member of the ACC shall have any personal liability to any Owner or any other person for the acts or omissions of the ACC if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ACC or any committee member thereof arising from acts or omissions of the ACC committed in good faith and without malice.

Section 8.7. Address for Notice. Requests for ACC approval or correspondence with the ACC shall be addressed to the Habersham, Phase Two Architectural Control Committee and mailed or delivered to, Habersham, Inc., 6610 Calhoun Memorial Highway, Easley, South Carolina 29640, Attn: Daniel E. Youngblood, President, or such other address as may be designated from time to time by the ACC. No correspondence or request for approval shall be deemed to have been received until actually received by the ACC in form satisfactory to the ACC.

## ARTICLE 9

### EASEMENTS

Section 9.1. Utility Easements. As long as Class B membership shall be in effect, the Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Property, if any, for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. Upon cessation of Class B membership, the Association shall have the right to grant the easements described herein.

Section 9.2. Declarant's Easement to Correct Drainage. Declarant hereby reserves for the benefit of Declarant and any Builder a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage for any Lot. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage improvements within the Property.

Section 9.3. Entry Easement. In the event that the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association shall have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

Section 9.4. Drainage Easements. Easements for installation and maintenance of utilities, storm water retention/detention ponds, and/or conservation areas are reserved as may be shown on any recorded Plat. Within these easement areas, no structure, landscaping or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

Section 9.5. Temporary Completion Easement. All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, Centex and their employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon adjacent Lots, provided that such easement shall terminate 24 months after the date such Lot is conveyed to the Owner by the Declarant or Centex.

Section 9.6. Declarant's Utility Easements. Declarant hereby reserves a perpetual, alienable and releasable easement for the installation of utilities (including water, electricity, telephone, gas, cable TV and sewer lines) over, in and under a five foot (5') wide strip of land parallel to, and tangent with all side Lot boundary lines of all Lots, and over, in and under a ten foot (10') wide strip of land parallel to and tangent with all rear Lot boundary lines of all Lots, as well as in and to all easements for water,

gas, drainage, electricity and sewage, all as depicted on the Plat. The Declarant reserves the unrestricted right and power of alienating, conveying and releasing the easements herein reserved. All easements reserved or established by this Section 9.8 are and shall remain private easements except as otherwise designated on the Plat or by dedication approved in writing by the Declarant. If any Lots shown on the Plat are replatted, the easements herein reserved shall apply to the replatted Lots, provided that, if utility lines or improvements have been previously installed in any easement affected by the replat, the cost of relocating such utility lines and improvements shall be borne exclusively by the Owners of the Lots that are replatted.

## ARTICLE 10

### USE AND OCCUPANCY

All Lots and dwellings shall be used and occupied for single family residence purposes in accordance with this Declaration and applicable zoning ordinances, if any, and no Lot or dwelling may be used for commercial, institutional or other non-residential purpose if such use involves the attendance or entry of non-residents upon the Lot or otherwise diminishes the residential character of the Lot or neighborhood. This prohibition shall not apply to (1) "garage sales" conducted with the prior written consent of the Association provided that no Owner shall conduct more than one (1) garage sale of no more than two (2) days duration during any six (6) month period or, (2) the use of any Unit by Declarant or any Builder as a model home or sales office, or the use of any Lot as a site for a construction office trailer or sales office trailer by Declarant or any Builder.

## ARTICLE 11

### PROPERTY RIGHTS

Section 11.1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement in and to the Common Property, if any, and a right and easement of ingress and egress to, from and through said Common Property, if any, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a. The right of the Association to establish and publish rules and regulations governing the use of the Common Property affecting the welfare of Association members.

b. The right of the Association to suspend the right of use of the Common Property of an Owner for any period during which any assessment against his Lot

remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

c. The right of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Property, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded agreeing to such dedication or transfer.

d. All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

Section 11.2. Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

Section 11.3. Rezoning Prohibited. No Lot shall be rezoned to any classification allowing commercial, institutional or other non-residential use without the express consent of the Association and Declarant, which may be withheld in Declarant's sole discretion. Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the enjoined party.

## ARTICLE 12

### USE RESTRICTIONS

Section 12.1. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 12.2. Development Activity. Notwithstanding any other provision herein, Declarant and its successors and assigns, including Builders, shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of dwelling units on the Property.

Section 12.3. Temporary Structures. No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, construction offices or material storage facilities.

Section 12.4. Signs. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the Property or carried by any person or by any other means displayed within the Property except the following:

a. Address Signs. An Owner may display an address sign or marker in the form and style first installed by the Declarant or Builder of the Unit, or in such other form or style approved by the ACC pursuant to Article 8.

b. For Sale Signs. An Owner may erect one (1) sign not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the property for sale.

c. Declarant and/or Builder Signs. Signs or billboards may be erected by the Declarant or any Builder.

d. Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

Section 12.5. Campers, Boats and Recreational Vehicles. No campers, boats, boat trailers, recreational vehicles and other types of non-passenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within the garage located on such Lot and/or said vehicles and accessories are screened from view by a screening structure or fencing approved by the ACC, and said vehicles and accessories are in an operable condition. The ACC, as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by said ACC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery

or equipment shall be permitted in any driveway or yard adjacent to a street. No commercial vehicle bearing commercial insignia or names shall be parked on any Lot except within an enclosed structure or a screened area which prevents such view thereof from adjacent lots and streets, unless such vehicle is temporarily parked for the purpose of serving such Lot.

Section 12.6. Pets, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except for cats, dogs or other generally recognized household pets of a reasonable number, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further, than no more than four (4) adult animals may be kept on a single Lot. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Habersham Phase Two Owners Association.

Section 12.7. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment and containers for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris shall be stored, kept, placed or maintained on any Lot where visible from the front setback line except solely on a day designated for removal of garbage and rubbish and on which days only, such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but shall be removed from view before the following day.

Section 12.8. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) and ten (10) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and in a line connecting them at points thirty-five (35) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 12.9. Parking. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Maintenance Areas or on any easement (except areas intended for vehicular access) unless in use for maintaining such Common Maintenance Areas.

**Section 12.10. Commercial or Institutional Use.** No Lot, and no building erected or maintained on any Lot shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes, except for construction offices, model homes and sales offices as set forth in this Declaration or in the Articles of Incorporation or Bylaws of the Association.

**Section 12.11. Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior consent of the ACC. Every outbuilding, inclusive of such structures as a storage building, greenhouse or children's playhouse shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. In no instance shall an outbuilding exceed one (1) story in height or have total floor area in excess of ten percent (10%) of the floor area of the main dwelling.

**Section 12.12. Fences.** No fence, wall or hedge shall be erected or maintained on any Lot nearer to the street than the building setback lines for the front yard, except for fences erected in conjunction with model homes or sales offices. Except as may be necessary to maintain the sight distances required by Section 12.8, side yard fences on corner Lots must be erected inside the side street setback line of the Lot. All fences shall be constructed of wood or masonry except for retaining walls installed by Declarant or any Builder or retaining walls or decorative walls approved by the ACC. All fences shall be of uniform height except sales office or model home fences. No metal cloth or agricultural fences may be built or maintained on any Lot. Unless otherwise agreed between Owners, side and rear yard fences that separate adjacent lots shall be owned and maintained by the Owner on whose Lot the fence exists, or if the location is indefinite, such fence will be maintained by the Owners whose Lots are involved jointly with expenses being shared equally.

**Section 12.13. Landscaping.** Decorative ground cover rock in the front and side yard may not exceed thirty percent (30%) of the total area of the front and side yard. Lawns must be properly maintained (not to exceed six (6) inches in height).

**Section 12.14. Television and Radio Receiving Devices.** No exterior radio or television antenna, satellite dish, microwave antenna or other antenna or device for sending or receiving television or radio signals may be erected or maintained on the exterior of any Unit in the Property in such a manner as to be visible to an observer from the street in front of the Unit. Television and/or radio receiving devices may be erected on the exterior of a Unit in a location that does not allow them to be visible to an observer from the street in front of the Unit if such devices are approved for installation by the ACC, provided however, that satellite receiving dishes in excess of 39 inches in diameter shall be prohibited on all Lots. Notwithstanding the foregoing, the Board of

Directors of the Association shall have the authority to establish size limitations for television and radio receiving devices that do not have a material effect upon the appearance of the Unit which devices may be approved for use in areas that are visible to an observer from the street if advances in technology create devices that are unobtrusive and do not materially affect the appearance of the Unit. By acceptance of a deed to a Unit within the Property, each Owner agrees that this restrictive covenant is a reasonable limitation on the Owners' ability to receive television and/or radio transmissions, and (1) does not unreasonably delay or prevent installation, maintenance or use of television or radio receiving devices, (2) does not unreasonably increase the cost of installation, maintenance or use of television or radio receiving devices, (3) does not preclude reception of an acceptable quality television or radio signal, and (4) does not impose an unnecessary burden, expense or delay on any Owner. Each Owner covenants with Declarant and every other Owner that the rights of the Association and all other Owners of Units in the Property in the protection of property values and the architectural character and aesthetics of the Property supersedes and takes precedence over the interests of each individual Owner in the placement of television and radio receiving devices, and that the limitations established in this Declaration provide each Owner reasonable alternatives for receiving quality television and radio signals without the necessity of erecting receiving devices in locations that are visible to observers from the street in front of the Unit or otherwise materially affect the appearance of the Unit. Therefore, each Owner agrees to be bound by this limitation and waives the benefits of any contrary rule or regulation promulgated by the Federal Communications Commission or other governmental body or agency.

Section 12.15. Exterior Finish. All exterior walls of all dwellings, garages and approved accessory buildings shall be completely finished with wood, stucco, brick, stone, paneling, masonry or masonry veneer, or other material acceptable to the ACC. Masonry or masonry veneer includes stucco, ceramic tile, clay, brick, rock and all other materials commonly referred to in the Pickens County, South Carolina area as masonry, provided however, any concrete block walls shall be completely covered with stucco, brick, stone or other veneer approved by the ACC. Notwithstanding the foregoing, the ACC is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and the resulting structure will not detract from the general appearance of the neighborhood.

Section 12.16. Chimneys. All fireplace flues shall be completely enclosed and concealed from public view in finished chimneys of materials architecturally compatible with the principal finish material of the exterior walls of the dwelling or otherwise approved by the ACC.

Section 12.17. Clothes Hanging Devices. No clothes lines or clothes hanging devices shall be erected or allowed to remain on any Lot exterior to the dwelling Unit on such Lot.

Section 12.18. Window Treatment. No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

Section 12.19. Oil and Mining Operations; Hazardous Materials. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground. No hazardous, flammable or explosive materials shall be kept, stored or disposed of on any Lot except household chemicals, cleansers, lubricants and the like, which may be kept and used in conventional domestic applications and amounts in accordance with applicable environmental laws and regulations.

Section 12.20. Mail Boxes. Each Lot upon which a Unit has been erected shall have a mail box installed thereon of a type and size approved by the ACC. Such mail box shall be properly maintained by the Owner and shall not be altered or replaced except by a new mail box identical to the one originally installed or otherwise approved by the ACC.

Section 12.21. Garages. Units may be erected on the Lots either with, or without garages. Garages may be used as the Declarant's or Builder's sales offices prior to permanent occupancy of the main structure, however, sales offices must be converted to garages prior to permanent occupancy unless otherwise approved by the ACC. Detached garages may not exceed a height of eighteen feet (18') at the highest ridge point of the roof measured from the existing ground unless prior written approval is obtained from the Architectural Control Committee. With the exception of periods when garages are used by the Builder as sales offices, all garages shall be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation without the prior approval of the ACC in accordance with Article 8.

Section 12.22. Setback Lines. All buildings or other structures (except fences), permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with setback lines imposed herein. In no event shall any such building or other structure be constructed, placed or maintained within 5 feet of the side boundary of a Lot (except for Lots bordering a side street, in which case the side street setback line shall be 20 feet) or within 10 feet of the rear boundary of a Lot. Front

setback lines for one story homes are hereby established at 20 feet, and for two story homes at 20 feet. Detached garages and temporary structures shall be located entirely in the rear yard area and not less than 10 feet from any side or rear Lot line and in the case of corner Lots, not less than the distance required for dwellings from side streets. The eaves, steps and uncovered porches of buildings shall not be deemed to be a part of a building or structure for the purpose of this covenant. Notwithstanding the foregoing, the ACC shall have the right and authority to approve variances from the setback requirements for reasonable cause or to alleviate a hardship.

**Section 12.23. Water and Sewage Systems.** No individual water supply system or sewage disposal system shall be permitted on any Lot, including but not limited to water wells, cesspools or septic tanks, without the prior written consent of the ACC.

**Section 12.24. Solar Energy Devices.** No Owner may erect or maintain solar collector panels or other solar energy devices or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view at a point in the center of the public street right-of-way directly in front of the house erected on such Lot; and no such apparatus shall be erected without the prior written consent of the ACC.

**Section 12.25. Square Footage Minimums and Height Restrictions.** No Unit constructed on any Lot shall contain less than 900 square feet of floor space, exclusive of porches, screened or unscreened, garages, basements and breezeways. In computing the square footage of any one story Unit, one-half credit shall be given for the square footage of the basement or below ground level portion of such Unit which is finished and heated. No story and one-half Unit, two story Unit or split level Unit shall be constructed on any Lot containing less than 1200 square feet of floor space exclusive of porches, screened or unscreened, garages and breezeways. The square footage minimum herein refers to heated, finished area. Variances from the strict requirements of the minimum square footage provisions of this paragraph may be made upon the unanimous written consent of the ACC due to special circumstances of specific Lots.

**Section 12.26. Used Structures.** No used structures shall be placed or permitted to remain on any Lot without the written approval of the ACC.

**Section 12.27. Construction Delays.** The construction of a Unit, once commenced, shall be substantially completed within one (1) year unless rendered impossible as a result of strikes, fires, national emergencies or natural calamities. Any Unit not so completed, or upon which construction has ceased for a period of 90 days, or any Unit which has been totally or partially destroyed by fire or other casualty and not rebuilt within one year is hereby declared a nuisance.

Section 12.28. Paved Driveways. Prior to completing construction of a Unit on any Lot, the Owner of such Lot shall install a driveway from the paved portion of the abutting street of a design and location approved by the ACC. All such driveways shall be constructed of concrete unless otherwise approved by the ACC.

Section 12.29. Window Air Conditioning Units. No window air conditioning unit shall be installed on any side of any Unit that faces a street.

Section 12.30. Unloading of Heavy Equipment; Damage to Streets and Curbs. No Builder or Owner will unload heavy equipment on paved streets, and any Builder or Owner damaging any street or curb will be responsible for the cost of repairing such damage.

Section 12.31. Soil Erosion. No Builder or Owner shall allow disturbed soil to erode and be deposited in or on any street and/or storm drain in the subdivision. Construction of silt screens shall be required and approved by the ACC and installed prior to soil disturbance. Any expense incurred by the Association in cleaning up any such erosion deposits shall be recovered from the Owner from whose Lot the erosion arose.

Section 12.32. Street Lights. All Owners agree to permit street lights, to be provided by the Declarant, to be erected on Lots at the discretion of the Declarant. The Declarant shall be responsible for the initial erection of such street lights. Thereafter, maintenance and operation of the street lights shall be the sole obligation of the Association, provided however, that the Owners of Lots on which the street lights are sited shall maintain the areas surrounding and adjacent to such street lights.

Section 12.33. Mobile or Modular Homes. No mobile homes or modular homes will be permitted on any Lot, provided however, that the Declarant and any Builder shall have the right to use mobile homes, modular homes, and other types of temporary buildings or structures approved by Declarant in its sole discretion, as sales offices, construction offices and storage facilities until Units have been erected on all Lots.

## ARTICLE 13

### PICKETING AND DEMONSTRATIONS

By acceptance of the deed to any Lot covered by this Declaration, the Owner covenants and agrees with the Owners of all other Lots within the subdivision, that no Owner or resident of any Lot shall engage in picketing, protest marches, sit-in demonstrations, protest speeches or other forms of public protest, including without limitation, displaying signs or placards within public view, upon any Lot or within any

Common Property, easement or street adjacent to any Lot, or affixed to any vehicle or apparatus upon or adjacent to any Lot, street, easement or Common Property. This prohibition shall not affect the right of any person to participate in any other form of public protest conducted outside the area depicted on any recorded subdivision Plat. No Owner or resident of any Lot shall engage in conduct that tends to vilify, ridicule, denigrate, or impugn the character of any other Owner or resident if such conduct occurs on any Lot, Common Property, easement or street depicted on the subdivision Plat. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on his or her constitutional right of free speech and to recognize and agree that all Owners have the right to the peaceful enjoyment of their property; the right of privacy; the right to practice their own religion; the freedom of association; the right to engage in a profession, business or life-style of their own choosing provided that the conduct of such profession, business or life-style is not illegal and does not otherwise violate any provision of this Declaration.

#### ARTICLE 14

#### MORTGAGEE PROVISIONS

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

Section 14.1. Rights of Eligible Holders. An institutional holder, insurer, or guarantor of a first Mortgage (herein referred to as an "Institutional Lender") that provides a written request to the Association (such request to state (1) the name and address of such holder, insurer, or guarantor; (2) the name of the Owner; (3) the address of the Unit; and (4) the Lot and Block numbers and identification of the Unit, thereby becoming an "Eligible Holder"), will be entitled to:

- a. the right to inspect Association documents and records on the same terms as Members;
- b. copies of all written notices to the Unit Owner of material amendments to the Declaration, Articles of Incorporation or Bylaws of the Association when such notices are required to be given to Owners pursuant to such documents;
- c. copies of written notices to the Unit Owner of extraordinary actions to be taken by the Association when such notices are required to be given to Owners pursuant to this Declaration or the Bylaws;

d. copies of written notices to the Unit Owner of (i) any property loss, condemnation or eminent domain proceeding affecting the Common Property resulting in losses greater than ten percent (10%) of the current annual budget, or (ii) any Unit insured by the Association in which the Eligible Holder has an interest;

e. copies of written notices to the Unit Owner of any termination, lapse or material modification of an insurance policy held by the Association;

f. written notice of any default by an Owner of a Unit subject to a mortgage held by the Eligible Holder in paying assessments or charges to the Association which remains uncured for sixty (60) consecutive days;

g. written notice of any proposal to terminate the Declaration or dissolve the Association at least thirty (30) days before such action is taken;

h. the right of a majority of Eligible Holders (determined on the basis of one vote for each Unit standing as security for a mortgage held by the Eligible Holder) to demand that the Association retain a professional management company; and

i. the right of a majority of Eligible Holders (determined on the basis of one vote for each Unit standing as security for a mortgage held by the Eligible Holder) to demand an audit of the Association's financial records.

**Section 14.2. Voting Rights of Eligible Holders.** For purposes of this Section, an Eligible Holder of a Mortgage shall be entitled to one (1) vote for each first Mortgage owned.

**14.2.1.** Unless at least two-thirds (2/3) of the Eligible Holders consent, the Association shall not:

a. by act or omission abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Property which the Association owns, directly or indirectly (The granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection.);

b. change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner (A decision, including contracts, by the Board or provisions of any supplemental declaration subsequently recorded on any portion of the Property regarding assessments for Lots to be annexed

or other similar areas shall not be subject to this provision where such decision or subsequent supplemental declaration is otherwise authorized by this Declaration.);

c. by act or omission change, waive, or abandon any material aspect of the scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment withing the meaning of this provision.);

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

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

14.2.2. Any election to terminate the legal status of the Association shall require:

a. the approval of at least fifty-one percent (51%) of the Eligible Holders if the election to terminate the legal status is the result of substantial destruction or a substantial taking in condemnation of the Common Property; or

b. the approval of at least sixty-seven percent (67%) of the Eligible Holders if the termination is sought for any other reason.

14.2.3. In the event a portion of the Common Property is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the project unless fifty-one (51%) of the Eligible Holders approve the taking of other action by the Association.

14.2.4. The affirmative vote fifty-one percent (51%) of the Eligible Holders shall be sufficient to require the Association to engage a professional management company.

14.2.5. The affirmative vote fifty-one percent (51%) of the Eligible Holders shall be sufficient to require the Association to conduct an audit of its financial records.

**Section 14.3. Voluntary Payments by Eligible Holders.** Eligible Holders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on

casualty insurance policies or secure new casualty insurance coverage upon the lapse of a Association policy, and Eligible Holders making such payments shall be entitled to immediate reimbursement from the Association.

**Section 14.4. No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the Eligible Holder of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 14.5. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the Eligible Holder of any Mortgage encumbering such Owner's Unit.

**Section 14.6. Amendment by Board.** Should the Federal Housing Administration, Department of Veterans Affairs, Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently modify any of their respective requirements which necessitate the provisions of this Article, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 14.7. Applicability of this Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, the Bylaws, or South Carolina corporate law for any of the acts set out in this Article.

**Section 14.8. Failure of Eligible Holder to Respond.** Any Eligible Holder who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Eligible Holder within thirty (30) days of the date of the Association's request.

## **ARTICLE 15**

### **INSURANCE AND CASUALTY LOSSES**

**Section 15.1. Common Properties.** The Association shall keep all improvements, facilities and fixtures located within the Common Properties, if any, insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the

Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance for and on behalf of itself and all Members. The insurance coverage with respect to the Common Properties shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses and shall be included in the Association's annual budget and collected as part of the Annual Assessment.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Association shall contain provisions, or be accompanied by endorsements, for: agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction.

All insurance policies shall contain standard mortgagee clauses, if applicable.

The Association shall also maintain, to the extent any insurable improvements to Common Properties are within an "A" flood zone, flood insurance in an amount equal to the lesser of 100% of the replacement costs of all insurable improvements (if any) within the Common Properties or the maximum amount of coverage available under the National Flood Insurance Program, whichever is less.

Section 15.2. Waiver of Subrogation. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Members, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 15.3. Liability and Other Insurance. The Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, with coverage of at least \$1,000,000.00 (if available at reasonable rates and upon reasonable terms) for any single occurrence, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross liability endorsement insuring each Member against liability to each other Member and to the Association and *vice versa*. The Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Member and the Association and its Board of Directors and

officers, from liability in connection with the Common Properties, the premiums for which shall be Common Expenses and included in the assessments made against the Members. The Association may also obtain such other insurance as the Board deems appropriate. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion.

The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board or any management company engaged by the Association against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof. At a minimum, however, there shall be blanket fidelity bonding of anyone (compensated or not) who handles or is responsible for funds held or administered by the Association, with the Association to be an obligee thereunder. Such bonding shall cover the maximum funds to be in the hands of the Association or management company during the time the bond is in force. In addition, the fidelity bond coverage must at least equal the sum of three (3) months' of regular assessments, plus all reserve funds.

#### Section 15.4. Damage and Destruction.

15.4.1. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

15.4.2. In the event of damage or casualty loss to the improvements, if any, erected on the Common Property, which in the opinion of the Board of Directors, should not be repaired or reconstructed, the Board shall deliver written notice thereof to each Member stating (1) the amount of the insurance proceeds to be paid to the Association by the insurer as a result of the loss; (2) the estimated cost of repair or reconstruction; and (3) a request that each Member deliver a written response voting for or against repair or reconstruction within 30 days after receiving the Board's notice. Such notice shall be sent to each Member within 60 days after the Board has received the settlement offer of the insurer and the estimated cost of repair or reconstruction from a qualified contractor. The Association shall make the repairs or reconstruct the improvements unless at least 75% of the Members of each class of membership vote not to do so. No Eligible Holder shall have the right to participate in the determination of

whether the damage or destruction to the Common Property shall be repaired or reconstructed; provided, however, this provision shall not apply to construction Mortgagees, if any, providing construction financing for such damaged Common Property.

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

Section 15.5. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Property shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Eligible Holders as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Eligible Holder of a Unit and may be enforced by such Mortgagee.

Section 15.6. Repair and Reconstruction. If the damage or destruction to the Common Property for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for Annual Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## ARTICLE 16

### GENERAL PROVISIONS

Section 16.1. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period,

this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, Voting Members representing three-fourths (3/4) of the votes of the Association vote in favor of terminating this Declaration at the end of its then current term. Termination of this Declaration is deemed to be an "Extraordinary Action" subject to the provisions of Section 16.2.

Written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least sixty (60) days in advance of said meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution.

Said certificate shall be recorded in the Public Records of Pickens County, South Carolina, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. Termination of the Association shall not have the effect of terminating easements herein provided or granted prior to such termination, or terminating contractual rights created prior to termination which from the context of the contract were meant to survive termination.

Section 16.2. Material Amendments and Extraordinary Actions. The Association may amend this Declaration in regard to the matters identified herein as "Material Amendments", or may undertake the actions herein listed as "Extraordinary Actions" only in the following manner.

16.2.1. Material Amendments. The matters listed below are deemed to be material to this Declaration, and any proposed amendment concerning such matters shall be deemed to be a "Material Amendment":

a. the manner of determining the basis for assessments or the administration of assessment liens;

- b. any method of imposing or determining any charges to be levied against individual Unit Owners;
- c. reserves for maintenance, repair or replacement of Common Property improvements;
- d. maintenance obligations;
- e. allocation of rights to use Common Property;
- f. any scheme of regulation or enforcement of standards for maintenance, architectural design or appearance of improvements on Units;
- g. reduction of insurance requirements;
- h. restoration or repair of Common Property improvements;
- i. the addition, annexation or withdrawal of land to or from the project;
- j. voting rights;
- k. restrictions affecting leasing or sale of a Unit; or
- l. any provision which is for the express benefit of Mortgagees, or Eligible Holders.

16.2.2. Extraordinary Actions. The matters listed below are deemed to be extraordinary under this Declaration, and any proposed action concerning such matters shall be deemed to be an "Extraordinary Action":

- a. merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association);
- b. determining not to require professional management, if that management has been required by the Association documents, a majority of Eligible Holders or a majority vote of the Members;
- c. expanding the Association to include land not previously described as land adjacent to the boundaries of the Property which increases the overall land area of the project or number of Units by more than 10%;

d. abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring or relocating the boundaries of the Common Properties (except for (1) granting easements which are not inconsistent with, or which do not interfere with the intended Common Property use; (2) dedicating Common Property as required by a public authority; (3) limited boundary line adjustments made in accordance with the provisions of this Declaration; or (4) transferring Common Property pursuant to a merger with a non-profit entity formed for purposes similar to the Association);

e. using insurance proceeds for purposes other than reconstruction or repair of insured improvements;

f. making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20% of the annual operating budget for that period;

g. termination of the Declaration or other termination of the planned unit development; or

h. dissolution of the Association.

**16.2.3. Notice Required for Material Amendment or Extraordinary Action.** Written notice of any proposed Material Amendment or Extraordinary Action shall be delivered to each Member at least 30 days in advance of (1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a summary of any Material Amendment or Extraordinary Action to be considered. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. If the Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

**16.2.4. Approval Required for Material Amendment or Extraordinary Action.** Material Amendments and Extraordinary Actions may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 67% of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at the meeting called as described in the notice at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 67% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting.

**16.2.5. Additional Approval Requirements.** In addition to the approval of the Members and the Declarant set forth above, the following conditions shall apply:

a. Any Material Amendment or Extraordinary Action that changes the rights of any specific class of Members (i.e. Class A; Class B; or Class C) must also be approved either (1) by the affirmative vote of at least 51% of the Members of such Class who are present, in person or by proxy, and voting at a meeting called as described in the required notice at which a quorum of such Class of Members is present, or (2) by the written consent of at least 51% of all Members of such Class to any action taken in lieu of a meeting.

b. Any Material Amendment or Extraordinary Action proposed during the period in which the Declarant retains its Class B status must also be approved by the Federal Housing Administration ("FHA"), and the Department of Veterans Affairs ("VA") if any Unit within the Property has been financed by a mortgage insured by FHA or guaranteed by VA. The Association shall deliver written notice of the proposed Material Amendment or Extraordinary Action to the FHA and VA simultaneously with its notice to the Members. If the FHA or VA fails to deliver written notice to the Association of its objection to the proposed Material Amendment or Extraordinary Action within 30 days after receipt of the notice, FHA and VA will be deemed to have approved the matters contained in the notice, and the Association shall be entitled to record an affidavit signed by an authorized officer averring that written notice was delivered to the FHA and VA and no objection was timely received from such agencies.

**16.2.6. Notice of Material Amendment or Extraordinary Action.** Upon approval of a Material Amendment or Extraordinary Action, the Association shall record appropriate written notice thereof in the Public Records of Pickens County, South Carolina, and take all such further action as may be prudent or necessary to implement and carry out the Material Amendment or Extraordinary Action.

**Section 16.3. Non-Material Amendments.** The Association may amend this Declaration in regard to all matters, except those identified in Section 16.2 as "Material Amendments", in the following manner.

**16.3.1. Amendments by Members - Notice Required for Non-Material Amendment.** Written notice of any Non-Material Amendment proposed by the Board of Directors of the Association shall be delivered to each Member at least 30 days in advance of (1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a summary of any Non-Material Amendment to be considered. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. If the Neighborhood Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

**16.3.2. Approval Required for Non-Material Amendment by Members.** Non-Material Amendments proposed by the Board of Directors pursuant to Subsection 16.3.1 may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 51% of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at the meeting called as described in the notice at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 51% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting.

**16.3.3. Amendments by Declarant Without Consent by Members.** During the period in which the Declarant retains the status of the Class "B" Member, Declarant shall have the right to amend this Declaration, without the necessity of consent or joinder by Owners or any other persons or entities, to make nonsubstantial changes that do not materially or adversely affect the interests of other Owners or other affected parties, and to clarify any ambiguities or conflicts, or correct any scrivener's errors in this Declaration. No approval by the Association or by any Member shall be required for Declarant to amend this Declaration pursuant to this Subsection 16.3.3.

16.3.4. Notice of Non-Material Amendment. Upon approval of a Non-Material Amendment by the Members pursuant to Subsection 16.3.2, or delivery of notice of amendment by Declarant pursuant to Subsection 16.3.3, the Association shall record appropriate written notice thereof in the Public Records of Pickens County, South Carolina, and take all such further action as may be prudent or necessary to implement and carry out the Non-Material Amendment.

Section 16.4. Assignment of Rights and Duties. Any and all of the rights, powers and reservations of the Association and Declarant may be assigned to any person, corporation or association which will assume the duties of the Association or Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment and assume such duties, he or it shall to the extent of such assignment have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Association or Declarant. Further, the Association or Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate.

Section 16.5. Enforcement. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and to enforce any lien created by these covenants; and failure by the Association or any Owner or Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. Further, the Association shall have the right of self help to cure any violations that remain uncured after any required notice is given. If the Association elects to commence enforcement proceedings after delivery of notice thereof to any Owner in violation hereof, and incurs any expenses in the commencement of such proceedings, the Association shall prosecute such enforcement proceedings to conclusion notwithstanding subsequent voluntary compliance by the Owner until the Association shall have recovered its expenses from such Owner.

Section 16.6. Severability. Should any covenant, condition or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other

provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

**Section 16.7. Interpretation.** The Board shall have the right except as limited by any other provisions of this Declaration or the Bylaws to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its good faith, determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the maintenance of Common Properties and the facilities located thereon.

**Section 16.8. Disposition of Common Property on Termination of Declaration.** Should the Members of the Association vote not to renew and extend this Declaration as provided for herein, all Common Property owned by the Association at such time shall be transferred to another association or appropriate public agency having similar purposes. If no other association or agency will accept such property then it will be conveyed to a Trustee appointed by a court of competent jurisdiction in Pickens County, South Carolina, which Trustee shall sell the Common Property free and clear of the limitations imposed hereby upon terms established by said court. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Property, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of the Common Property. The excess of proceeds, if any, from Common Property shall be distributed among Owners in a proportion which is equal to the proportionate share of such Owners in Common Expenses.

**Section 16.9. Execution of Documents.** The approved plan for the development of the Property may require from time to time the execution of certain documents required by governmental authorities. To the extent that said documents require the joinder of Owners, Declarant by its duly authorized officers may, as the agent or the attorney-in-fact for the Class A Owners, execute, acknowledge and deliver such documents and the Class A Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Declarant, through its duly authorized officers, as their proper and legal attorneys-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section shall recite that it is made pursuant to this Section. Notwithstanding the foregoing, Declarant shall not be deemed the attorney-in-fact for Centex for any purpose, and shall not have the right to execute any instrument on behalf of Centex.

**Section 16.10. Indemnification.** The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director or committee member in

connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 16.11. Prohibited Actions. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

Section 16.12. Singular, Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

Section 16.13. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Property.

Section 16.14. Conflicts. In the event of conflict between the terms of this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

Section 16.15. Partial Invalidity. The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant and Centex have caused this instrument to be executed on its behalf as of this 16th day of June, 1999

WITNESS

DECLARANT





My Commission Expires: **My Commission Expires**  
August 29, 2007

EXHIBIT "A"

[LEGAL DESCRIPTION - ENTIRE PROPERTY]

EXHIBIT "B"

[LEGAL DESCRIPTION - COMMON PROPERTY]

EXHIBIT "C"

[BYLAWS]

## EXHIBIT A

All those certain pieces, parcels or lots of land, located, lying and being in the County of Pickens, State of South Carolina, being shown and designated as Lot Nos. 1-16 on plat entitled "Final Plat for Habersham, Inc. of a Portion of Phase 2 of Habersham Subdivision" prepared by C.E. Shehan Surveying, dated February 16, 1999, recorded in the Pickens County RMC Office in Plat Book 339 at Page 10, reference to which plat is hereby craved for a more complete and accurate description by the metes and bounds thereof.

ALSO:

All those certain pieces, parcels or lots of land, located, lying and being in the County of Pickens, State of South Carolina, being shown and designated as Lot Nos. 71-73 on plat entitled "Survey for Habersham, Inc. of a portion of Phase 2 of Habersham Subdivision" prepared by C.E. Shehan Surveying, dated September 23, 1998, recorded in the Pickens County RMC Office in Plat Book 324 at Page 16-A, reference to which plat is hereby craved for a more complete and accurate description by the metes and bounds thereof.

## EXHIBIT B

The real property which will comprise the Common Property has yet to be platted by Declarant. Declarant reserves the right to add the description of the Common Property when the engineering data is available by applicable amendment to the Declaration.

BYLAWS OF  
HABERSHAM, PHASE TWO OWNERS ASSOCIATION, Inc.,  
a South Carolina corporation, Not-for-Profit

ARTICLE I

GENERAL PLAN OF OWNERSHIP

*Section 1. Name.* The name of the corporation is Habersham, Phase Two Owners Association, Inc., a South Carolina corporation, and is hereafter referred to as the "Association" or "Homeowners Association". The principal office of the corporation shall be located in the State of South Carolina.

*Section 2. Bylaws Applicability.* The provisions of these Bylaws are applicable to the Association created pursuant to the Declaration of Covenants, Conditions and Restrictions for Habersham, Phase Two recorded in the Public Records of Pickens County, South Carolina (herein referred to as the "Declaration"). All capitalized words or phrases used herein shall have the meanings herein ascribed, and if not defined in this instrument, such capitalized words or phrases shall have the meanings given in the Declaration or Articles of Incorporation of the Association.

*Section 3. Personal Application.* All present and future Owners of Lots or Units within the Association Property (as defined in the Articles of Incorporation and Declaration of the Association) and their tenants, guests and invitees are subject to the regulations set forth in these Bylaws.

The recording of a declaration authorizing the creation of a homeowners association and the mere acquisition of a Lot or acquisition or rental of any Unit or the mere act of occupancy of any Unit signify that these Bylaws are accepted, ratified, and will be complied with.

ARTICLE II

## MEMBERSHIP, VOTING RIGHTS, MAJORITY OF QUORUM, QUORUM, PROXIES

*Section 1. Membership.* Every Owner of a Unit or Lot, and every Builder owning any Unit or Lot, by virtue of the ownership of such Unit or Lot, and the Declarant and its successors and assigns, shall be Members of the Association, and by acceptance of a deed or other instrument evidencing an ownership interest, each Owner, Builder and Declarant accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of the Declaration, the Articles of Incorporation, these Bylaws and other rules and regulations of the Association. The term "Member" shall include each person or entity owning any right, title or interest in any Unit or Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or entities also have the right of possession. Tenants or others occupying any Unit who do not have an ownership interest therein shall not be Members for the purposes of these Bylaws. Membership in the Association is appurtenant to, and may not be severed from, the Unit or Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in the Declaration, the Articles of Incorporation or these Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot or Unit. Members shall be responsible for compliance with the terms and conditions of the Declaration, the Articles of Incorporation and these Bylaws, and rules and regulations of the Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Unit, Common Area or other portion of the Property.

### *Section 2. Sub-Association; and Voting Rights.*

2.1. The Property is part of a larger development known as Habersham that will be developed in stages or phases that may be designated as separate Sub-Associations. This Association is a Sub-Association of the Habersham Master Association, Inc., and each Lot or Unit subject to this Declaration by virtue of being included within the legal description of Habersham, Phase Two, or by annexation of a future phase pursuant to the Declaration, is situated within this Sub-Association. The Habersham Master Association, Inc. will be governed by its own separate Articles of Incorporation and Bylaws. The Owner of each Lot or Unit within this Association will be a member of this Sub-Association as well as a Member of the Habersham Master Association, Inc. There will be one other Sub-Association of the Habersham Master Association known as the Habersham Homeowners' Association, Inc., made up of the Lots and Units within Habersham, Phase One and any other Lots annexed thereto pursuant to the Declaration of Covenants, Conditions and Restrictions for Habersham,

Phase One. The Sub-Associations will be subordinate to this Master Association and will be responsible for performing the services and obligations imposed on them by this Master Association pursuant to the governing documents.

2.2. The Sub-Association shall exercise the voting rights established in the Habersham Master Association Master Declaration, Articles of Incorporation and Bylaws on behalf of all Members of this Sub-Association.

2.3. Members of the Association shall be allocated votes as follows:

Class A. Class A Members shall be all Owners with the exception of the Declarant and any Builders. Each Class "A" Member shall be entitled to one vote for each Lot or Unit owned.

Class B. The Class B Member shall be the Declarant, or its specifically designated (in writing) successor. The Class B Member shall be allocated three (3) votes for each Lot or Unit owned by it within the Property which is subject to assessment by this Association; provided, that the Class B membership shall cease and become converted to Class A membership as set forth in Section 4. Upon conversion to Class A membership, the Declarant shall have one vote for each Unit or Lot owned by it within the Property so long as said Unit or Lot is subject to assessment by the Association.

Class C. All Builders, as defined herein, except the Declarant, shall be Class C members. Class "C" Members shall have one (1) vote for each Lot or Unit they own in the Property.

2.4. When any Unit or Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Homeowners Association, such Owner shall select one official representative to qualify for voting in the Homeowners Association and shall notify in writing the Secretary of the Homeowners Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant or a Builder) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot or Unit. If the Owners fail to designate their official representative, then the Homeowners Association may accept

the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

*Section 3. Change of Membership.*

3.1. Change of membership in the Association shall be established by recording in the Public Records of Pickens County, South Carolina, a deed or other instrument conveying record fee title to any Lot or Unit, and by the delivery to the Homeowners Association, of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Homeowners Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said instrument is not delivered to the Homeowners Association, said Owner shall become a Member, but shall not be entitled to voting privileges until delivery of a copy of the conveyance instrument to the Homeowners Association. The foregoing shall not, however, limit the Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot or Unit acquired.

3.2. The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

*Section 4. Class B Membership Status.*

4.1. The Declarant's Class B membership status shall continue, and shall be in effect, during the period from the inception of the Declaration until either (1) seven (7) years from the date the Declaration is recorded; or (2) five (5) years after the date of recording of the last Supplemental Declaration annexing additional property into the Homeowners Association, whichever event, (1) or (2) occurs later; or (3) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (4) in any event, ninety (90) days after the conveyance of the Unit to a Class A Member that causes the total number of votes held by all Class A Members of this Homeowners Association to

equal the number of votes in the Homeowners Association held by the Class B Member, whichever event, (1), (2), (3) or (4), occurs first; provided however, that if Class B status is converted to Class A pursuant to clause (4) and, subsequent to such event, the Declarant annexes additional Lots to the Property which annexation causes the number of Lots or Units owned by the Declarant in the Property to exceed twenty-five percent (25%) of the total number of Lots and Units within the Property, Declarant's Class B status shall be restored as to all Lots and Units then owned by Declarant, and shall continue until the next occurrence of an event of conversion described above. For the sole purpose of making the calculations described in this Subsection 4.1, the votes held by the Class C members, if any, shall be deemed to be held by the Class B Member.

4.2. The Declarant shall have the right to partially assign its status as Declarant and Class B Member by recorded instrument executed by the original Declarant and acknowledged and accepted by the assignee Declarant to any person or entity acquiring any portion of the Property, or the adjacent land eligible for annexation into the Property, for the purpose of development of a residential subdivision consistent with the Master Plan, and any such assignee shall thereafter be deemed to be the Declarant as to the Lots or Units owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots and Units, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots and Units owned by such original Declarant. If any action of the Homeowners Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

*Section 5. Majority of Quorum.* Unless otherwise expressly provided in these Bylaws or the Declaration any action which may be taken by the Association may be taken by a majority of a quorum of the Members of the Association.

*Section 6. Quorum.* Each Homeowners Association meeting required by the Association pursuant to the Declaration shall require the presence, either in person or by proxy, of a quorum of the members of the Homeowners Association. If the Homeowners Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Homeowners Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Homeowners Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements,

however, more stringent requirements imposed elsewhere in these Bylaws or in the Articles of Incorporation or in the Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section, and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

*Section 7. Proxies.* Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary at least twenty-four (24) hours before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease after completion of the meeting for which the proxy was filed, and upon conveyance by the Member of his Unit.

### ARTICLE III

#### ADMINISTRATION

*Section 1. Place of Meetings of Members.* Meetings of the Members shall be held within the Association Property or such other suitable place as close thereto as practicable in Pickens County, convenient to the Owners as may be designated by the Board of Directors.

*Section 2. Annual Meetings.* The first annual meeting of the Members shall be held on the date at the place and at that the time, as determined by the Board of Directors, provided, however, that said meeting shall be held, to the extent possible, within one (1) year from the date of incorporation of the Association. Thereafter, the annual meeting of the Association shall be held on the anniversary date of the first annual meeting; provided, however, that should the anniversary date fall on a legal holiday, then such annual meeting of the Members shall be held on the next day thereafter which is not a legal holiday. Subject to the provisions of Article IV, Section 1 herein, at each annual meeting there shall be elected by ballot of the Members a Board of Directors, in accordance with the requirements of Section 5 of Article IV of these Bylaws. At the first annual meeting, the Directors shall be elected to serve until the second annual meeting, and at the second annual meeting, Directors shall be elected for a term of one (1) year beginning with the second annual meeting. Unless a Director resigns before the expiration of his term of office, each Director shall hold his office until his successor has been elected and the first meeting involving such successor is held. The term of office of any Director elected to fill a vacancy created by the resignation of his predecessor shall be the balance of the unserved term of his predecessor. The Members may also transact such other business of the Association as may properly

come before them. Each First Mortgagee of a Unit may designate a representative to attend all annual meetings of the Members.

*Section 3. Special Meetings of Members.* Special meetings of the Members may be called at any time by the President or by a majority of a quorum of the Board of Directors, or upon a petition signed by Class A Members holding at least ten percent (10%) of the voting power of the Class A Members having been presented to the Secretary. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof.

No business shall be transacted at a special meeting except as stated in the notice, unless by consent of those Members holding at least four-fifths (4/5) of the voting power of the Association, either in person or by proxy. Each First Mortgagee of a Unit may designate a representative to attend all special meetings of the Members.

*Section 4. Notice of Meetings of Members.* It shall be the duty of the Secretary to mail a notice of each annual or special meeting of Members stating the purpose thereof as well as the day, hour, and place where it is to be held, to each Member of record and to each First Mortgagee of a Unit which has filed a written request for notice with the Secretary, at least fourteen (14) but not more than sixty (60) days prior to such meeting. The notice may set forth time limits for speakers and nominating procedures for the meeting. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, after said notice has been deposited in a regular depository of the United States mail. If no address has been furnished to the Secretary, notice shall be deemed to have been given to a Member if posted in a conspicuous place on the Common Property.

*Section 5. Adjourned Meetings.* If any proposed meeting cannot be organized because a quorum has not been attained, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

*Section 6. Order of Business.* The order of business at all meetings of the Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election; (g) election of Directors; (h) unfinished business; and (i) new

business. Meetings of Members shall be conducted by the officers of the Association in order of their priority.

*Section 7. Action Without Meeting.* Any action, which under the provisions of South Carolina law may be taken at a meeting of the Members, may be taken without a meeting if authorized by a writing signed by the required number of Members who would be entitled to vote at a meeting for such purpose, and such writing is filed with the Secretary.

*Section 8. Consent of Absentees.* The transaction of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the Members not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

*Section 9. Minutes, Presumption of Notice.* Minutes or similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

## ARTICLE IV

### BOARD OF DIRECTORS

*Section 1. Number, Term and Qualifications.* The affairs of this Association shall be governed by a Board of Directors composed of no fewer than three (3) nor more than seven (7) persons as is determined from time to time by the Members. The term of each Director's service shall extend until the next annual meeting of the Members, and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 3 below.

*Section 2. Powers and Duties.* The Board of Directors has the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done exclusively by the Members.

*Section 3. Special Powers and Duties.* Without prejudice to such foregoing general powers and duties and such powers and duties as are set forth in the Declaration and Articles of Incorporation, the Board of Directors is vested with, and responsible for, the following powers and duties:

- (a) To select, appoint, and remove all officers, agents and employees of the Association, to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Declaration and these Bylaws; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board.
- (b) To conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations therefor consistent with law, with the Articles of Incorporation, the Declaration, and these Bylaws, as the Board may deem necessary or advisable.
- (c) To change the principal office for the transaction of the business of the Association from one location to another within the State of South Carolina as provided in Article I hereof; to designate any place within said State for the holding of any annual or special meeting or meetings of Members consistent with the provisions of Article III, Section 2 hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment may deem best, provided that such seal shall at all times comply with the provisions of law.
- (d) To borrow money and to incur indebtedness for the purposes set forth in the Declaration, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges hypothecations or other evidences of debt and securities therefor.
- (e) To fix and levy from time to time, Assessments upon the Owners, as provided in the Declaration; to determine and fix the due date for the payment of such Assessments, and the date upon which the same shall become delinquent; provided, however, that such Assessments shall be fixed and levied only to provide for the general benefit and welfare of the Association and its Members in accordance with the provisions of the Declaration. The Board of Directors is hereby authorized to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided, adequate reserves for replacements as it shall deem

to be necessary or advisable in the interest of the Association or welfare of its Members. Disbursements from such trust reserve fund shall be made only in accordance with the provisions of the Declaration. Should any Owner fail to pay such Assessments before delinquency, the Board of Directors in its discretion is authorized to enforce the payment of such delinquent assessments as provided in the Declaration.

(f) To enforce the provisions of the Declaration covering the Common Area, and areas on which the Association has an easement (the "Easement Areas"), these Bylaws or other agreements of the Association.

(g) To contract for and pay fire, casualty, errors and omissions, blanket liability, malicious mischief, vandalism, and other insurance, insuring the Members, the Owners, the Association, the Declarant, the Board of Directors and other interested parties, in accordance with the provisions of the Declaration, covering and protecting against such damages or injuries as the Board deems advisable, which may include without limitation, medical expenses of persons injured on the Common Area and Easement Areas, and to bond the agents and employees of any management body, if deemed advisable by the Board. The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on behalf of the Association.

(h) To contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, public areas, and Easement Areas and to employ personnel necessary for the operation of the Common Area, public areas and Easement Areas, including legal and accounting services, and to contract for and pay for improvements to the Common Area, public areas and Easement Areas.

(I) To delegate its powers according to law, and subject to the approval of the Members, to adopt these Bylaws.

(j) To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Association.

(k) To fix, determine and name from time to time, if necessary or advisable, the public agency, fund, foundation or corporation which is then or there organized or operated for charitable purposes, to which the assets of this Association shall be distributed upon liquidation or dissolution, according to the Articles of Incorporation of the Association.

The assets so distributed shall be those remaining after satisfaction of all just debts and obligations of the Association, and after distribution of all property held or acquired by the Association under the terms of a specific trust or trusts.

(1) To adopt such uniform and reasonable rules and regulations as the Board may deem necessary for the management of the Common Area and Easement Areas which rules and regulations shall become effective and binding after (1) they are adopted by a majority of the Board at a meeting called for that purpose, or by the written consent of such number of Directors attached to a copy of the rules and regulations of the Association, and (2) they are posted in a conspicuous place in or near the Common Area. For so long as the Declarant enjoys Class B Membership status, such rules and regulations shall not materially adversely affect the rights, privileges or preferences of any Member or owner as established by the Association, the Articles of Incorporation of the Association and these Bylaws and such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation and these Bylaws.

(m) To perform all duties of the Association as a Sub-Association of the Habersham Master Association, Inc., as set forth in the Master Declaration, Master Association Articles of Incorporation or Master Association Bylaws.

*Section 4. Management Agent.* The Board shall have the option to employ a managing agent to manage the Common Area and Easement Areas and the affairs of the Association. The managing agent shall perform such duties and services as the Board shall authorize.

*Section 5. Election and Term of Office.* Subject to the provisions of Article IV, Section 1 herein, at the first annual meeting of the Association, and thereafter at each annual meeting of the Members, Directors shall be elected by secret written ballot by a plurality of Members as provided in these Bylaws, each Member voting being entitled to cast its votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. In the event that an annual meeting is not held, or the Board is not elected thereat, the Board may be elected at a special meeting of the Members held for that purpose. Each Director shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence. Any person serving as a Director may be reelected, and there shall be no limitation on the number of terms during which he may serve.

*Section 6. Books, Audit.* The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in manner consistent with generally accepted accounting principles, and at no greater than annual intervals shall obtain an independent audit of such books and records. A copy of each such audit shall be delivered to a Member within sixty (60) days after the completion of such audit upon written request from a Member.

*Section 7. Vacancies.* Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and such person so elected shall be a Director until a successor is elected at the next annual meeting of the Members of the Association, or a special meeting of the Members called for that purpose. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, or in case the Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place.

*Section 8. Removal of Directors.* At any regular or special meeting of the Members duly called, any one or more of the Directors may be removed with or without cause by a majority vote of the Members of the Association, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. If any or all of the Directors are so removed, new Directors may be elected at the same meetings.

*Section 9. Organization Meeting.* The first regular ("organization") meeting of a newly elected Board of Directors shall be held within ten (10) days of election of the Board, at such place as shall be fixed and announced by the Directors at the meeting at which such Directors were elected, for the purpose of organization, election of officers and the transaction of other business. No notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board shall be present.

*Section 10. Other Regular Meeting.* Other regular meetings of the Board of Directors may be held at such time and place in or near the Association Property as shall be determined, from time to time by a resolution adopted by a majority of a quorum of the Directors; provided, however, that such meeting shall be held no less frequently than annually. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least seventy-

two (72) hours prior to the date named for such meeting, and shall be posted at a prominent place or places within the Common Area.

*Section 11. Special Meeting.* Special meetings of the Board of Directors may be called by the President (or, if he is absent or refused to act, by the Vice President) or by any two (2) Directors. At least seventy-two (72) hours notice shall be given to each Director personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and the purpose of the meeting, and shall be posted at a prominent place or places in or near the Association Property. If served by mail, each such notice shall be sent, postage prepaid, to the address reflected on the records of the Association, and shall be deemed given, if not actually received earlier, at 5:00 P.M. on the second day after it is deposited in a regular depository of the United States mail as provided herein. Whenever any Director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such Director, as required by law and as provided herein.

*Section 12. Waiver of Notice.* Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Board, however, called and notice or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Directors not present signs such a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

*Section 13. Quorum and Adjournment.* Except as otherwise expressly provided herein, at all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

*Section 14. Action Without Meeting.* The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the vote or written consent of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

*Section 15. Fidelity Bonds.* The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

*Section 16. Committees.* The Board of Directors by resolution may from time to time designate such committees as it shall desire, and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee shall provide for the appointment of its Members, as well as a chairman, shall state the purposes of the committee, and shall provide for reports, termination, and other administrative matters as deemed appropriate by the Board.

## ARTICLE V

### OFFICERS

*Section 1. Designation.* The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as in their judgment may be necessary. Officers other than the President and Vice President need not be Directors. The office of Secretary and Treasurer may be held by the same person, but the office of President and Secretary may not be held by the same person.

*Section 2. Election of Officers.* The officers of the Association shall be elected annually by the Board of Directors at the Organization Meeting of each new Board of Directors, and each officer shall hold his office until he shall resign or be removed or otherwise disqualified to serve, or his successor shall be elected and qualified to serve.

*Section 3. Removal of Officers.* Upon an affirmative vote of a majority of the entire Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary of the Association. Any such resignation shall take effect at the date of receipt of such notice

or at any later time specified therein; and unless otherwise specified in said notice, acceptance of such resignation by the Board shall not be necessary to make it effective.

*Section 4. Compensation.* Officers, agents, and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board. Appointment of any officer, agent or employee shall not of itself create contractual rights of compensation for services performed by such officer, agent, or employee, provided that no officer, employee or Director of Declarant or any affiliate of Declarant may receive any compensation.

*Section 5. President.* The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power, subject to the provisions of Article IV, Section 16, to appoint committees from among the members from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business of the Association. The President shall be ex-officio a member of all standing committees, and he shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws of the Association. The President shall be the Voting Representative of the Association as a Sub-Association of the Master Association, and shall cast the votes of the Members in all Master Association elections as set forth in the Master Association Declaration, Master Association Articles of Incorporation and Master Association Bylaws.

*Section 6. Vice President.* The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, disabled, refuses or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or these Bylaws of the Association.

*Section 7. Secretary.* The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association at the principal office of the Association or at such other places as the Board of Directors may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board of Directors may direct; and the Secretary shall, in general perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notice of meetings of the Members of the Association and of the Board of Directors required by these Bylaws or by law to be

given. The Secretary shall maintain a book of record Owners, listing the names and addresses of the Owners as furnished by the Association, and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Unit is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board of Directors.

*Section 8. Treasurer.* The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall co-sign all promissory notes on behalf of the Association. The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors, in accordance with the Declaration, shall render to the President and Directors, upon request, an account of all of his transactions as Treasurer and of the financial conditions of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

## ARTICLE VI

### OBLIGATIONS OF OWNERS FOR ASSESSMENTS

*Section 1. Payment.* The Association shall obtain funds with which to operate by assessment of the members of each Member in accordance with the provisions of the Declaration as supplemented by the provisions of the Articles of the Association relating thereto. Said assessments shall be payable monthly, in advance, without notice, and shall be due on the first day of each month. Unless otherwise required by the Board, assessments may not be made payable less frequently than monthly.

*Section 2. Special Assessments.* Special Assessments for charges by the Association against Members for other than Common Expenses or for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be levied in the same manner as herein provided for regular Assessments, except that notice thereof shall be given and they shall be payable in the manner determined by the Board.

*Section 3. Past Due Assessments.* Assessments and installments thereon not paid when due shall bear interest from the date when due until paid at the rate set forth in

the Declaration and shall result in the filing of a claim of lien as set forth in the Declaration.

*Section 4. Default.* As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessment, if not paid within thirty (30) days after the due date, shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

## ARTICLE VII

### AMENDMENTS TO BYLAWS

*Section 1. Proposal.* Amendments to these Bylaws may be proposed by the Board of Directors (the "Board") of the Association by resolutions adopted by a majority vote of the Directors present at any regular or special meeting of the Board at which a quorum is present or, in the alternative, by a written instrument signed by a majority of the Board, or by the vote of a majority of a quorum of Members present in person or by proxy at a special or regular meeting of the Members or by written instrument signed by them. Such proposed amendment or amendments shall be transmitted to the President of the Association, or the acting chief executive officer in the absence of the President, who shall thereupon call a Special Meeting of the Members of the Association not later than sixty (60) days from the receipt by him of the proposed amendment or amendments.

*Section 2. Notice.* It shall be the duty of the Secretary to give each Member written notice of such meeting, stating the proposed amendment or amendments in reasonably detailed form, which notice shall be prepared by and at the expense of the Homeowners Association and mailed by the Homeowners Association or presented personally to each Member not less than thirty (30) days nor more than sixty (60) days before the date set for the meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association, with postage thereupon prepaid. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the records of the

Homeowners Association, whether before, during or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting.

*Section 3. Resolution.* At the meeting at which the amendment is to be proposed and considered, a resolution for the adoption of the proposed amendment may be made by any member of the Board of Directors of the Association, or by any Member of the Association, present in person or by proxy. The approval of a resolution for the adoption of a proposed amendment to these Bylaws shall require the affirmative vote of a majority of the members of the Board of Directors of the Association.

*Section 4. Approval.* Amendments may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 67% of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at a meeting called as described in the notice and conducted by the Homeowners Associations at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 67% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting. In addition to the approval of the Members and the Declarant set forth above, the following conditions shall apply:

a. Any Material Amendment or Extraordinary Action (as defined in the Declaration) that changes the rights of any specific class of Members (i.e. Class A; Class B; or Class C) must also be approved either (1) by the affirmative vote of at least 51% of the Members of such Class who are present, in person or by proxy, and voting at meetings called as described in the required notice at which a quorum of such Class of Members is present, or (2) by the written consent of at least 51% of all Members of such Class to any action taken in lieu of a meeting.

b. Any Material Amendment or Extraordinary Action proposed during the period in which the Declarant retains its Class B status must also be approved by the Federal Housing Administration ("FHA"), and the Department of Veterans Affairs ("VA") if any Unit within the Property has been financed by a mortgage insured by FHA or guaranteed by VA. The Association shall deliver written notice of the proposed Material Amendment or Extraordinary Action to the FHA and VA simultaneously with its notice to the Members. If the FHA or VA fails to deliver written notice to the Association of its objection to the proposed Material Amendment or Extraordinary Action within 30 days after receipt of the notice, FHA and VA will be deemed to have approved the matters contained in the notice, and the Association shall

be entitled to record an affidavit signed by an authorized officer averring that written notice was delivered to the FHA and VA and no objection was timely received from such agencies.

Notwithstanding the foregoing, during the period in which the Declarant retains the status of the Class "B" Member, the Declarant shall have the right to amend these Bylaws, without the necessity of joinder by the Members or any other persons or entities, to make nonsubstantial changes that do not materially or adversely affect the interests of other Members or other affected parties, and to clarify any ambiguities or conflicts, or correct any scriveners' errors in these Articles of Incorporation.

*Section 5. Limitation.* No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of Members without approval of sixty-seven percent (67%) of the votes of each class of Members and the joinder of all Eligible Holders (as defined in the Declaration) of mortgages upon Units. No amendment shall be made that is in conflict with the Declaration, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Declarant, or the designated successor of the Declarant, unless the Declarant or such successor shall join in the execution of the amendment.

*Section 6. Recording.* Such amendment or amendments of these Bylaws shall be transcribed and certified in such form as may be necessary to file the same in the office of the Association and shall be recorded in the Public Records of Pickens County, South Carolina within thirty (30) days from the date on which the same is approved.

## ARTICLE VIII

### MORTGAGES

*Section 1. Notice to Association.* An Owner who mortgages his Unit shall notify the Association through the managing agent or the Secretary of the Board of Directors in the event there is no managing agent, of the name and address of his Mortgagee and the Association shall maintain such information in a book entitled "Mortgagees of Units". Any such Owner shall likewise notify the Association as to the release or discharge of any such mortgage.

*Section 2. Notice of Unpaid Assessments.* The Board of Directors of the Association shall at the request of a Mortgagee of a Unit report any unpaid assessments due from the Owner of such Unit, in accordance with the provisions of the Declaration.

## ARTICLE IX

### MEANING OF TERMS

All terms appearing herein initially capitalized shall have the same meanings as are applied to such terms in the Declaration, which terms include without limitation: "Owner", "Board", "Unit", "Articles", "Member", "Mortgage", "Mortgagee", and "Common Assessments".

## ARTICLE X

### CONFLICTING PROVISIONS

In case any of these Bylaws conflict with any provisions of the laws of the State of South Carolina, such conflicting Bylaws shall be null and void upon final Court determination to such effect, but all other Bylaws shall remain in full force and effect. In a case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE XI

### MISCELLANEOUS

*Section 1. Execution of Documents.* The Board of Directors, except as in these Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent, committee member, or employee shall have any power or authority to bind the Association by any contract or engagement or to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

*Section 2. Inspection of Bylaws.* The Association shall keep in its office for the transaction of business the original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members and all First Mortgagees at all reasonable times during office hours.

*Section 3. Fiscal Year.* The fiscal year of the Association shall be determined by the Board of Directors and having been so determined is subject to change from time to time as the Board of Directors shall determine.

*Section 4. Membership Book.* The Association shall keep and maintain in its office for the transaction of business a book containing the name and address of each Member. Termination or transfer of ownership of any Unit by an Owner shall be recorded in the book together with the date on which such ownership was transferred, in accordance with the provisions of the Declaration.

WE HEREBY CERTIFY that the foregoing Bylaws of the Association were duly adopted by the Board of Directors of the Association in a meeting held for such purpose on the \_\_\_\_\_ day of \_\_\_\_\_, 1999.

President

Secretary

