

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BROOKSTOKE II, A COUNTRY CLUB COMMUNITY

COBB COUNTY, GA.  
PUBLIC OFFICE  
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*Steph. [Signature]*  
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DECLARATION OF COVENANTS. CONDITIONS. AND RESTRICTIONS  
FOR BROOKSTONE II, A COUNTRY CLUB COMMUNITY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BROOKSTONE II, A COUNTRY CLUB COMMUNITY is made this 7\*\* day of \*Jest-V 1987,, by WILLOUGHBY & SEWELL DEVELOPMENT, LTD., a Georgia limited partnership;

W I T N E S S E T H:

WHEREAS, Willoughby & Sewell Development, Ltd. is the owner of certain real property located in Cobb County, Georgia, and more particularly described in Exhibit A. attached hereto and incorporated herein by this reference, and Willoughby & Sewell Development, Ltd. desires to subject such property to the provisions of this Declaration and to have constructed on the property BROOKSTONE II, A COUNTRY CLUB COMMUNITY, a residential community, and to provide a flexible and reasonable method for the administration and maintenance of such property; and

WHEREAS, as hereinafter provided in this Declaration, Willoughby & Sewell Development, Ltd. has retained and reserved the right, privilege, and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the residential community described herein, all or any portion of the property described in Exhibit B. attached hereto and incorporated herein by this reference, and such other property as Willoughby & Sewell Development, Ltd. may acquire from time to time and wish to subject to the terms of this Declaration; and

NOW, THEREFORE, Willoughby & Sewell Development, Ltd. hereby declares that all of the property described in Exhibit A and any additional property described in Exhibit B as may by subsequent amendment hereto be subjected to this Declaration shall be held, transferred, sold, conveyed, leased, occupied and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the real property subjected to this Declaration, and which shall be binding on all parties having any right, title or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require/ the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Additional Property" shall mean and refer to the, real property described in Exhibit B and all improvements thereon, together with such other additional property and all improvements thereon as Declarant shall, acquire from time to time and by amendment to Exhibit B hereto recorded in the records of the Clerk of the Superior Court of Cobb County, Georgia, include within the property described in Exhibit B.

(b) "Architectural Control Committee" shall mean and refer to those Persons annually appointed by Declarant to serve on the Architectural Control Committee. The initial Architectural Control Committee shall consist of the following persons: Joseph I. Sewell, Jr. and James T. Willoughby. Declarant shall have the right to appoint the persons to serve on the Architectural Control Committee until such time as Declarant no longer has the right to appoint or remove any member or members of the Board of Directors (as hereinafter defined) or any officer or officers of the Association (as hereinafter defined) in accordance with the provisions of Section 8.01 hereof. At such time, the Architectural Control Committee shall mean and refer to those Persons appointed by the Board of Directors to serve on the Architectural Control Committee.

(c) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Brookstone II Homeowners Association, Inc., as amended from time to time.

(d) "Assessment" shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(e) "Association" shall mean and refer to Brookstone II Homeowners Association, Inc., a Georgia nonprofit corporation.

(f) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(g) "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of Brookstone II Homeowners Association, Inc. which govern the administration and operation of the Association, as the same may be amended from time to time.

(h) "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The designation of any land and/or improvement as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein.

(i) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

(j) "Declarant" shall mean and refer to Willoughby & Sewell Development, Ltd., or any successor-in-title to the entire interest of Willoughby & Sewell Development, Ltd. with respect to the Property and the Additional Property at the time of such transfer to said successor-in-title, or any Person who acquires the entire interest of Willoughby & Sewell Development, Ltd. with respect to the Property and the Additional Property at the time of such acquisition pursuant to foreclosure of a Mortgage,

(k) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Brookstone II, A Country Club Community, and all amendments thereof filed for record in the records of the Clerk of the Superior Court of Cobb County, Georgia.

(l) "Development" shall mean and refer to the Property and all improvements located or constructed thereon and any portion of the Additional Property submitted to the provisions hereof pursuant to Section 2.02.

(m) "Dwelling" shall mean and refer to any improved property intended for use as a single-family detached dwelling or as a patio or cluster home, whether detached or attached, located within the Development.

(n) "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the exercise of a power of sale contained in any Mortgage or the conveyance of property by a deed in lieu of judicial or nonjudicial foreclosure.

(o) "Institutional Mortgage" shall be deemed to mean a Mortgage held by a bank, trust company, insurance company or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(p) "Lot" shall mean and refer to any unimproved parcel of land shown upon a subdivision plat recorded in the office of the Clerk of the Superior Court of Cobb County, Georgia, covering any portion of the Property, upon which it is intended that a Dwelling shall be constructed. A parcel of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such parcel and the improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.

(g) "Mortgage" shall mean and refer to a security deed, deed of trust, mortgage, installment land sales contract or other similar security instrument granting, creating or conveying a lien upon, a security interest in or a security title to a Lot or Dwelling.

(r) "Mortgagee" shall mean and refer to the holder of a Mortgage.

(s) "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, tenant or family member of an Owner, occupying or otherwise using a Dwelling within the Development.

(t) "Owner" shall mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot or Dwelling, excluding, however, those persons having such an interest under a Mortgage.

(u) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.



(v) "Property" shall mean and refer to those tracts or parcels of land described in Exhibit A. together with all improvements thereon, including the Common Areas, roads, utility systems, drainage systems and other improvements serving the Lots and Dwellings, and, upon-submission to the provisions of this Declaration, the tracts or parcels of land described in Exhibit B. or any portion thereof, or any tracts or parcels of land hereafter added thereto, together with all improvements thereon.

## ARTICLE II

### DEVELOPMENT

2.01 Development of Property. Except as otherwise set forth in Section 10.09, all Lots within the Development shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in Article X hereof. Declarant hereby reserves the right, to be exercised in its sole discretion, to designate the boundaries of all Lots, Dwellings and Common Areas in the Property and to construct on any portion of the Property designated as Common Areas recreational facilities, including but not limited to tennis courts, swimming pools and related facilities. Declarant shall designate all Common Areas, if any, on the plat for the Property. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option (as defined in Section 2.02) to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by Declarant or of the Common Areas, (iii) installation and maintenance of any water, sewer and other utility systems and facilities, and (iv) installation of security and/or refuse facilities.

2.02 Development of Additional Property. Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time the Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property. This option may be exercised by Declarant in accordance with the following rights, conditions and limitations, which are the only conditions and limitations on such option to add all or any portion of the Additional Property to the Development:

(a) The option may be exercised from time to time during a period of ten (10) years from the date of this Declaration; provided, however/ that Declarant reserves the right to terminate such option at any time prior to the expiration of such ten (10) year period by executing and filing an agreement evidencing such termination in the records of the Clerk of the Superior Court of Cobb County, Georgia, and, except for such termination by Declarant, no other circumstances will terminate such option prior to the expiration of such, ten (10) year period.

(b) The legal description of the Additional Property as of the date hereof is set-forth in Exhibit B; portions of the Additional Property (together with additions thereto made in accordance herewith) may be added to the Development at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence or location in which any of such portions may be added to the Development. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

(c) If the Additional Property or any portion thereof is added to the Development, Declarant reserves the right to designate the boundaries of the Lots, Dwellings and Common Areas, if any, to be added to the Development in connection therewith.

(d) Should the option to add the Additional Property, or any portion thereof, not be exercised within the term specified herein or be terminated by Declarant, such option shall in all respects expire and be of no further force and effect. In the event that such option expires or is terminated, Declarant shall not be obligated to impose on the Additional Property or any portion thereof any covenants, conditions or restrictions whatsoever.

(e) The option reserved by Declarant to cause all or any portion of the Additional Property to become part of the Development shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property to the Development or to construct thereon any improvements of any nature whatsoever.

The option reserved under this Section 2.02 may be exercised by Declarant only by the execution of an, amendment to this

Declaration which shall be filed in the records of the Clerk of the Superior Court of Cobb County, Georgia, together with a legal description of the Additional Property or such portion or portions thereof as are being added to the Development by such amendment. Simultaneously therewith, Declarant shall convey to the Association the Common Areas, if any, contained within the Additional Property, or such portion thereof so submitted, such conveyance to be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the Property and/or the Additional Property and any exceptions which would be disclosed, by a survey or physical Inspection of such, parcel(s). If the Additional Property or any portion or portions thereof is added to the Development,, then from and after such addition, the number of votes in the Association shall be increased by the number of Lots or Dwellings to be located on the Additional Property or such portion or portions thereof as are added so that there shall continue to be one vote in the Association per Lot or Dwelling in the Development.

2.03 Interest Subject to Plan of Development. Every purchaser of a Lot or Dwelling shall purchase such Lot or Dwelling and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of this Article. Any provision of this Declaration to the contrary notwithstanding, the provisions of this Article II may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Declarant.

2.04 Subdivision Plats. Declarant reserves the right to record, modify, amend, revise and add to, at any time and from time to time, "subdivision plats setting forth such information as Declarant may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of the Lots, Dwellings, Common Areas, Additional Property, roads, utility systems, drainage systems, utility easements, drainage easements, access easements and set-back line restrictions.

### ARTICLE III

#### PROPERTY RIGHTS

3.01 General. Each Lot and Dwelling shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive

ownership and possession of his Lot or Dwelling, subject to the provisions of this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot and Dwelling shall include, and there shall pass with each Lot and Dwelling as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership, in the Association shall automatically pass to his successor-in-title to his Lot or Dwelling. Except as provided in Sections 2.01 and 3.05 hereof. Lots shall not be subdivided and the boundaries between Lots shall not be relocated unless the relocation thereof is made with the consent of at least a majority of the Owners in the Development and of Declarant, so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development. Notwithstanding the foregoing/ nothing herein shall prohibit the combination of two or more Lots into a larger parcel in order to create a Dwelling site larger than one Lot.

3.02 Owner's Easement of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board in accordance with the By-Laws and the terms hereof, every Owner, his family, tenants and guests shall have a non-exclusive right, privilege and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass and run with title to each Lot and Dwelling, subject to the following provisions:

(a) The right of the Association to borrow money (i) for the purpose of improving the Common Areas, or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Common Areas, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 8.02 hereof, to give as security for the payment of any such loan a security deed or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interests, options, licenses, easements and privileges herein reserved or established for the benefit of Declarant, any Owner or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(b) The rights and easements reserved to Declarant in Sections 3.04, 3.05, 3.06, 3.08, 3.09, and 3.10.

(c) The right of the Association to grant and accept easements as provided in Section 3.06 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to Cobb County, Georgia, or to any other public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, for so long as Declarant owns, any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

(d) The rights and easements reserved in Section 3.07 hereof for the benefit of the Association, its directors, officers, agents and employees.

(e) The right of the Association to suspend an Owner's right to use any recreational facilities within the Common Areas (i) for any period during which any Assessment of the Association against the Owner's Lot or Dwelling remains unpaid, and (ii) for any infraction by an Owner of this Declaration or the By-Laws of the Association for the duration of the infraction.

(f) The rights of the holder (and its successors and assigns) of any Mortgage which is prior in right or superior to the rights, interests, options, licenses, easements and privileges herein reserved or established.

3.03 Recreational Facilities. Subject to the terms and provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, every Owner and his family, tenants and guests shall have the non-exclusive right, privilege and easement of access to and the use and enjoyment of the recreational area and such other recreational facilities and amenities as are now or hereafter located in the Common Areas.

3.04 Easements for Declarant. During the period that Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, Declarant shall have an alienable and transferable right and-easement on, over, through, under and across the Common Areas for the purpose of

constructing Dwellings and other improvements in and to the Lots and for installing, maintaining, repairing and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein, and regardless of whether Declarant at that time retains ownership of a Dwelling or Lot or has the right to submit the Additional Property or any portion thereof to the Development, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners in the Development to the use of the Common Areas.

3.05 Changes in Boundaries; Additions to Common Areas.

Declarant expressly reserves for itself and its successors and assigns the right to change and realign the boundaries of the Common Areas and any Lots or Dwellings owned by Declarant. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any portion of the Additional Property, such real property to be conveyed to the Association as an addition to the Common Areas and subject to the title exceptions set forth in Section 2.02 hereof. Furthermore, Declarant reserves for itself, its affiliates, successors and assigns the right, but shall not have the obligation, to convey by quit-claim deed to the Association at any time and from time to time, as an addition to the Common Areas, such other portion of the Development owned by Declarant as it, in its sole discretion, shall choose.

3.06 Easements for Utilities and Public Services.

There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant, accept, modify or relocate easements to and from Cobb County, Georgia or any other public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (i) all of the Common Areas, and (ii) those portions of all Lots and all Dwellings as are reasonably necessary, for the purpose of installing, replacing, repairing, maintaining and using master

television antenna and/or cable systems/ security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems and retention ponds and facilities for the Development or any portion thereof, and electrical, gas, telephone, water and sewer lines, provided that such easements shall not unreasonably affect the developability, marketability or value of any such Lot or Dwelling. Such easements may be granted, accepted, modified or relocated by Declarant, its successors or assigns, or by the Board, provided, however, that for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Board must obtain the written consent of Declarant prior to granting and accepting any such easements. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes or shrubbery, (iii) to grade, excavate or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe'-installation, maintenance, repair, replacement and use of such utilities and systems; provided, however, that such utility company or other supplier or servicer shall take reasonable actions to repair any damage caused by such utility company or other supplier or servicer during the exercise of any rights conveyed under any easement granted hereunder.

3.07 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or Dwelling or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon reasonable advance notice to the Owner or Occupant of the Lot or Dwelling directly affected thereby.

3.08 Sales and Construction Offices. Notwithstanding any provisions or restrictions contained herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns the alienable and transferable right and easement in and to the Property for the maintenance of signs, sales offices, construction offices, business offices and model Dwellings, together with such other facilities as in the sole

opinion of Declarant may be reasonably required, convenient or incidental to the completion, improvement and/or sale of Lots, Dwellings, Common Areas or the Additional Property, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

3.09 Maintenance Easement. Subject to the terms of Section 5.02(b) hereof, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Lot and upon unimproved portions of any Dwelling for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

3.10 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over and across all Lots and all unimproved portions of Dwellings for the purpose of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

3.11 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

#### ARTICLE IV

##### MEMBERSHIP

Every Owner shall be deemed a mandatory member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling, and ownership of a Lot or Dwelling shall be the sole qualification for such membership. In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically



pass to such transferee. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association.

Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Lot or Dwelling. In the event of multiple Owners of a Lot or Dwelling, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse, but in no event shall more than one vote be cast or more than one office held for each Lot or Dwelling, e.g. if a person owns three Lots or Dwellings, such person shall be entitled to three votes. When more than one person holds an interest in any Lot or Dwelling, the vote for such Lot or Dwelling shall be exercised as those Owners of such Lot or Dwelling themselves determine. The vote appurtenant to such Lot or Dwelling shall be suspended in the event more than one person seeks to exercise it. The voting weight appurtenant to each Lot or Dwelling is equal and each Lot and each Dwelling shall have one vote. Each Owner, by acceptance of a deed or other conveyance for a Lot or Dwelling, consents and agrees to the dilution of his voting interest, in the Association by virtue of the submission from time to time of each phase of the Property to the terms of this Declaration as provided herein.

## ARTICLE V

### MAINTENANCE

5.01 Responsibilities of Owners. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots and Dwellings, together with all other improvements thereon or therein and all lawns, landscaping, trees and grounds on and within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his or its Lot or Dwelling, as the case may be, in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of (i) all exterior surfaces of all Dwellings, buildings and other structures (including repainting), (ii) all lawns, trees, shrubs, hedges, grass and other landscaping, and (iii) all utility lines and easements located on and serving only such Owner's Lot to the extent such utility lines and easements are not maintained by the utility or appropriate governmental agency or authority. As provided in Section 5.02(b) hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing,

replacing, maintaining or cleaning any item which is the responsibility of such Owner but which responsibility such Owner fails or refuses to discharge. No Owner shall (x) decorate, repaint, change or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other improvements within a Lot unless such decoration, repainting, change or alteration is first approved, in writing, by the Architectural Control Committee as provided in Article X hereof, or (y) do any work which, in the reasonable opinion of the Architectural Control Committee, would jeopardize the soundness and safety of the Development, reduce the value thereof or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Architectural Control Committee.

#### 5.02 Responsibilities of Association.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of (i) all roads, walks, trails, parking lots, landscaped areas, recreational areas and other improvements made by Declarant or the Association situated within the Common Areas, (ii) such security systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iii) all lawns, trees, shrubs, hedges, grass and other landscaping and all lakes and ponds situated within or upon the Common Areas. The Association shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner "or any other person, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any municipal or

other governmental authority, the obligation, to pay such assessments being a separate and independent covenant on the part of each Owner.

(b) In the event that Declarant or the Board determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants/ guests or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the assessment to which such Owner and his Lot or Dwelling are subject and shall become a lien against such Lot or Dwelling. In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

ARTICLE VI  
INSURANCE AND CASUALTY LOSSES

6.01 Insurance.

(a) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation,

extended coverage, flood, vandalism and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its members, its directors and officers/ or any of its agents. Such public liability policy shall provide such coverage's as are determined to be necessary by the Board.

(c) The Board or its duly authorized agents shall have the authority and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws, and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

(d) All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Owners and the costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board; provided, however, that no Mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

6.02 Damage or Destruction to Common Areas. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas 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, in any such event, the Board shall 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 Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior, to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Areas, Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, together with at least seventy-five percent (75%) of the total vote of the Association, shall otherwise agree, the Association

shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the portion of the Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas left in a clean, orderly, safe and sightly condition.

## ARTICLE VII

### CONDEMNATION

Whenever all or any part of the Common Areas of the Development shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board (which conveyance may only occur with the approval of Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development), the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be retained by and for the benefit of the Association.

## ARTICLE VIII

### ADMINISTRATION

8.01 Common Areas. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth

in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive and sanitary condition, order and repair pursuant to the terms and conditions hereof. Except to the extent otherwise required by the provisions of the Official Code of Georgia relating to nonprofit corporations, this Declaration, the By-laws or the Articles of Incorporation, the powers herein or otherwise, granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further, consent or action on the part of the Owners. Declarant shall have the right to appoint and remove all members of the Board and any officer or officers of the Association until such time as the first of the following events shall occur: (i) the date as of which the last Lot in the Development owned by Declarant shall have been conveyed by Declarant to an Owner other than a person or persons constituting Declarant unless at such time Declarant has the unexpired option to add the Additional Property or any portion thereof to the Development, or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 8.01 and by Section 12.01 hereof.

8.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the Official Code of Georgia relating to nonprofit corporations, this Declaration, the By-Laws and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Official Code of Georgia, this Declaration, the By-Laws or the Articles of Incorporation, the provisions of the Official Code of Georgia, this Declaration and the By-Laws, in that order, shall prevail, and each Owner of a Lot or Dwelling, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Notwithstanding the foregoing provisions of this Section 8.0.2 or any other provision of this Declaration to the contrary, for so long as Declarant shall own any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage or hypothecate all or any portion of the Common Areas.



8.03 Rules and Regulations. As provided in Article XI hereof, the Association, through its Board, may make and enforce reasonable rules and regulations governing the use of the Lots, Dwellings and Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

## ARTICLE IX

### ASSESSMENTS

9.01 Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Development, and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board.

9.02 Creation of Lien and' Personal Obligation of Assessments. Each Owner of a Lot or Dwelling by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments, such assessments to be established and collected as provided in Section 9.03 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 9.04 hereof, and (c) individual or specific assessments against any particular Lot or Dwelling which are established pursuant to the terms of this Declaration, including, but not limited to fines as may be imposed against such Lot or Dwelling in accordance with Article XI hereof. Any such assessments, together with late charges, simple interest at the rate of twelve percent (12%) per annum, and court costs and attorneys' fees incurred to enforce or collect such assessments, shall be an equitable charge and a continuing lien upon the Lot or Dwelling, the Owner of which is responsible for payment. Each Owner shall be personally liable for assessments coming due while he is the Owner of a Lot or Dwelling, and his grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid assessments shall not apply to the holder of any first priority Institutional Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors or assigns, who takes title to a Lot or Dwelling through Foreclosure, or to any purchaser of such Lot or Dwelling at such foreclosure sale. No sale or transfer shall relieve the Owner of such Lot from liability for any assessments thereafter becoming due or from



the lien thereof. In the event of co-ownership of any Lot or Dwelling all of such co-Owners shall be jointly and severally liable for the entire amount of such assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board.

9.03 Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The Board shall cause the budget and the proposed total of the annual assessments to be levied against Lots and Dwellings for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The total annual assessments shall be divided among the Lots and Dwellings equally, so that each Lot and Dwelling shall be subject to equal annual assessments. Upon the addition of the Additional Property or any portion thereof to the Development, assessments shall continue to be equal and the Lots and Dwellings being added to the Development shall thenceforth pay assessments which are equal to those imposed upon Lots and Dwellings previously in the Development. In such event, the Association's budget shall be accordingly revised by the Board, without the necessity of approval by the Owners, to include Common Expenses and assessments related to such additional Lots and Dwellings. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Declarant, for so long as Declarant has the authority to appoint and remove directors and officers of the Association, or (ii) after December 31, 1991, a majority of the votes of the Owners who are voting in person or by proxy at such meeting (provided that a minimum vote of fifty-one percent [51%] of all the votes of the Association shall be required to disapprove the budget). Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 9.04 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

(i) management fees and expenses of administration, including legal and accounting fees. The accounting fees shall include the cost and expense of an annual audit of the books and records of the Association by an independent public accountant.

(ii) utility charges for utilities serving the Common Areas and charges for other common services for the Development, including trash collection and security services, if any such services or charges are provided or paid by the Association;

(iii) the cost of any policies of insurance purchased for the benefit of all the Owners, and the Association as required or permitted by this Declaration including fire, flood and other hazard coverage, public liability coverage and such other insurance coverage as the Board determines to be in the interests of the Association and the Owners;

(iv) the expenses of maintenance, operation and repair of those portions of the Common Areas which are the responsibility of the Association under the provisions of this Declaration;

(v) the expenses of maintenance, operation and repair of other amenities and facilities serving the Development, the maintenance, operation and repair of which the Board from time to time determines to be in the best interest of the Association;

(vi) the expenses of the Architectural Control Committee which are not defrayed by plan review charges;

(vii) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(viii) such other expenses as may be determined from time to time by the Board of the Association to be Common Expenses; and

(ix) the establishment and maintenance of a reasonable reserve fund or funds (A) for inspections, maintenance, repair and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be inspected, maintained, repaired or replaced on a periodic basis, (B) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (C) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

In no event shall Common Expenses be deemed to include contributions to persons running for political office or expenditures related to political activity of any kind, including zoning matters.

9.04 Special Assessments. In addition to the annual assessments authorized above, the Association, acting through its Board, may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that, except as otherwise permitted in Section 6.02 hereof, any such assessment shall be approved by (i) Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, and (ii) by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 9.06 hereof. The Board may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be prorated among the Lots and Dwellings equally as provided with respect to annual assessments.

9.05 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any Owner shall be specifically assessed against such Owners and their respective Lots or Dwellings. The individual assessments provided for in this Section 9.05 shall be levied by the Board and the amount and due date of such assessment shall be as specified by the Board.

9.06 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 9.03 and 9.04 hereof, shall be sent to all members not less than fifteen (15) days nor more than forty-five (45) days in advance of such meetings. With respect to annual meetings, the presence of members or proxies entitled to cast over twenty-five percent (25%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement/ and the required quorum at the subsequent meeting shall be the presence in person or by proxy of members having ten percent (10%) of the total votes of the Association. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Notwithstanding such reduced quorum requirement at a subsequent meeting, a minimum vote of fifty-one percent (51%) of all the votes of the Association shall be required to disapprove the Association's budget.

9.07 Liens. All sums assessed against any Lot or Dwelling pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or Dwelling in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot or Dwelling except only for (i) liens of ad valorem taxes, and (ii) liens for all sums unpaid on a first priority Institutional Mortgage or on any Mortgage to Declarant, or its affiliates, successors or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of assessments to the lien of such Mortgages shall only apply to such assessments which have become due and payable prior to a Foreclosure. All other persons acquiring liens or encumbrances on any Lot or Dwelling after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior, to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

9.08 Effect of Nonpayment; Remedies of the Association. Any assessments of an Owner or any portions thereof which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of twelve percent (12%) per annum. A lien and equitable charge as herein provided for each assessment shall attach simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days, the entire unpaid balance of the assessment may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment shall include the late charge established by the Board, interest on the principal amount due at the rate of twelve percent (12%) per annum, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot or Dwelling, vests in the Association and its agents the right and power to bring all

actions against him personally for the collection of such assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot or Dwelling at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein/ including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot or Dwelling and an Owner shall remain personally liable for assessments, interest and late charges which accrue prior to a sale, transfer or other conveyance of his Lot or Dwelling.

9.09 Certificate. The Treasurer, or the manager of the Association shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Board, furnish to any Owner, purchaser from such Owner, or such Owner's Mortgagee which requests the same, a certificate in writing signed by said Treasurer or manager setting forth whether the assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest and other penalty charges. Such certificate shall be conclusive evidence against all but such Owner of payment of any assessments stated therein to have been paid.

9.10 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Lot and Dwelling on the earlier to occur of (i) one year after the day on which such Lot or Dwelling is conveyed to a person other than Declarant, and (ii) occupancy of the Dwelling constructed on the Lot by an Occupant. The annual assessments shall be due and payable in such manner and on such schedule as the Board may provide. Annual assessments and any outstanding special assessments shall be adjusted for such Lot or Dwelling according to the number, of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such assessments commence. Annual and special assessments for Lots and Dwellings in portions of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Dwelling in accordance with the foregoing. Anything contained in this Article to the contrary notwithstanding, Declarant shall not be responsible for the payment of annual or special assessments on Lots or Dwellings which it or its affiliates own unless such Lots or Dwellings contain occupied residences.

## ARTICLE X

### ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

10.01 Purpose. In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development and to protect and promote the value of the Property, the Lots, Dwellings and all improvements located therein or thereon shall be subject to the restrictions, set forth in this Article X. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article X.

10.02 Architectural Control Committee. Subject to the terms of subsection (b) of Article I, the Board shall appoint the Architectural Control Committee which shall consist of up to five (5) (but not less than two (2)) members, all of whom shall be Owners and who may or may not be members of the Board, provided that prior to the termination of Declarant's right to appoint and remove directors and officers of the Association, such members need not be Owners. The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Architectural Control Committee shall elect a chairman and he, or in his absence, the vice chairman, shall be the presiding officer at its meetings. The Architectural Control Committee shall meet at least once in each calendar month, as well as upon call of the chairman, and all meetings shall be held at such places in Cobb County as may be designated by the chairman. A majority of the members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Architectural Control Committee shall constitute the action of the Architectural Control Committee on any matter before it. The Architectural Control Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors and/or attorneys in order to advise and assist the Architectural Control Committee in performing its functions set forth herein. No member of the Architectural Control Committee shall be paid a stipend or honorarium for serving on the Architectural Control Committee.

### 10.03 Permitted Improvements; Standards.

(a) No improvements of any nature whatsoever shall be constructed, altered, added to or maintained upon any part of

the Property, except (i) for Dwellings and other improvements which are constructed by Declarant, (ii) such improvements as are approved by the Architectural Control Committee in accordance with this Article X, or (iii) improvements which pursuant to this Article X do not require the consent of the Architectural Control Committee.

(b) The Architectural Control Committee is hereby authorized to promulgate from time to time written architectural standards, policies and guidelines (the "Standards") governing the construction, location, landscaping and design of improvements, the contents of submissions of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to Sections "10.05", 10.06 and 10.08 hereof. Any such Standards published by the Architectural Control Committee shall be binding and enforceable on all Owners with respect to all improvements in the Development requiring the approval of the Architectural Control Committee.

10.04 Construction of Improvements. Dwellings may not be temporarily or permanently occupied until the exteriors thereof and the landscaping of the Lot on which the Dwelling is located have been completed and a certificate of occupancy for such Dwelling has been issued. No temporary house, shack, tent, barn or other outbuilding shall be permitted on any Lot or Dwelling at any time, except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board, nor shall any stable, poultry house or yard, rabbit hut or other similar yard structure be constructed or allowed to remain on any Lot or Dwelling. Construction, reconstruction or remodeling of all Dwellings shall be completed within six (6) months of the commencement date of said construction, reconstruction or remodeling. Once such activity is commenced, work shall be continuous and uninterrupted except for weather delays and causes beyond the Owner's control. If construction, reconstruction or remodeling ceases for a period of more than thirty (30) consecutive days, the Association shall have the right, but not the obligation, to enter the Lot or Dwelling and to take such action as may be required to make the Lot and Dwelling safe, sightly and secure, all without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions; provided, however, the Board shall first follow the notice procedure set forth in Section 5.02(b) hereof. All costs incurred by the Association in connection therewith shall become a part of the assessment against the Owner of such Lot or Dwelling in accordance with the provisions of Section 5.02(b) hereof. During the continuance of construction by an Owner, such Owner shall require its contractors to maintain the Lot or Dwelling in a reasonably

clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, such Owner shall cause its contractors to immediately remove all equipment, tools and construction material and debris from the Lot or Dwelling on which such construction has been completed.

10.05 Architectural Approval, (a) To preserve the architectural and aesthetic appearance of the Development, no construction, reconstruction or placement of improvements of any nature whatsoever shall be commenced or maintained by any Owner, other than Declarant, with respect to the construction, reconstruction, placement, or affecting the exterior appearance of any Dwelling or with respect to any other portion of the Property, including, without limitation, the construction, reconstruction, placement or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, doghouses, greenhouses, playhouses, swing sets, basketball goals, awnings, walls, fences, exterior lights, garages, guest or servants' quarters or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Architectural Control Committee, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot or Dwelling) showing the nature, color, type, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to the compliance of such plans and specifications with such Standards as may be published by the Committee from time to time including the harmony of external design, location and appearance in relation to surrounding structures and topography. One copy of such plans, specifications and related data so submitted shall be retained in the records of the Architectural Control Committee and the other copy shall be returned to the Owner marked "approved," "approved as noted," or "disapproved." The Architectural Control Committee shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors or attorneys retained in accordance with the terms hereof. The fee initially established for such review shall be \$50.00 for each submission, and the Architectural Control Committee shall have the right to increase this amount from time to time. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his Dwelling that do not affect the exterior appearance without the necessity of approval or review by the Architectural Control



Committee. The Architectural Control Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. Actions taken by the Architectural Control Committee shall in no event be treated or considered as establishing a precedent of any kind, it being intended that the Architectural Control Committee shall have total discretion in each instance based upon the facts and circumstances present in each case. In connection with approval rights, and to prevent excessive drainage or surface water, run-off, the Architectural Control Committee shall have the right to establish a maximum percentage of a Lot or Dwelling which can be cleared or graded and a maximum percentage of a Lot or Dwelling which may be covered by Dwellings, buildings, structures or other improvements, which standards shall conform with all applicable governmental requirements, ordinances, rules and regulations. Following approval of any plans and specifications by the Architectural Control Committee, representatives of the Architectural Control Committee shall have the right during reasonable hours to enter upon and inspect any Lot or Dwelling or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the Architectural Control Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Association shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.

(b) In the event the Architectural Control Committee fails to approve or disapprove in writing any proposed plans and specifications within thirty (30) days after such plans and specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with the scheme of the Development as set forth in this Declaration. Upon approval of plans and specifications, no further approval under this Article X shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the Architectural Control Committee upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

10.06 Landscaping Approval. To preserve the aesthetic appearance of the Development, no landscaping, fencing, grading, excavation or filling of any nature whatsoever shall be implemented

and installed by any Owner, other than Declarant, unless and until the plans therefor have been submitted to and approved in writing by the Architectural Control Committee. The provisions of Section 10.05 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation or filling.

10.07 Approval Not a Guarantee. No approval of plans and specifications and no publication of Standards shall be construed as representing or implying that such plans, specifications or Standards will, if followed, result in properly designed improvements. Such approvals and Standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association nor the Architectural Control Committee shall be responsible or liable for any defects in any plans of specifications submitted, revised or approved pursuant to the terms of this Article X, any loss or damages to any person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications.

10.08 Building Restrictions. All Dwellings and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. In addition, the Architectural Control Committee is authorized to promulgate from time to time as part of the Standards described in 10.03(b) hereof additional restrictions applicable to the Development, including, without limitation, restrictions relating to height of improvements above grade, roof pitch and minimum square footage of heated and air-conditioned living space in each Dwelling. No exterior portion of any building, structure or other improvement (excepting sidewalks and driveways) located on or with respect to any Lot or Dwelling shall be located other than as permitted by the applicable set-back line restrictions as set forth in the Standards; provided that the Architectural Control Committee shall be empowered to grant variances with respect to such set-back line restrictions in its sole and absolute discretion.

10.09 Use of Lots and Dwellings. Except as permitted by Sections 3.08 and 10.15 hereof, each Lot and Dwelling shall be used for residential purposes only and no trade or business of any kind may be carried on therein. No more than one (1) Dwelling shall be located on any Lot. The use of a portion of a Dwelling as an office by an Owner or his tenant shall not be

considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic or otherwise create a nuisance. The use of a Dwelling or a portion thereof for business meetings, entertainment or the enjoyment or business of the Owner's employees, trustees, agents, clients or customers shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee, traffic or otherwise, create a nuisance.

10.10 Antennas. No television antenna, radio receiver, satellite dish or other similar device shall be attached to or installed on any portion of the Development, unless contained entirely within the interior of a building or other structure, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot or Dwelling which may unreasonably interfere with the reception of television or radio signals within the Development; provided, however, that Declarant and the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio or other similar systems within the Development, and should cable television services be unavailable and adequate television reception not be otherwise available, then an Owner may make written application to the Architectural Control Committee for permission to install a television antenna.

10.11 Water Wells and Septic Tanks. No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot or Dwelling without the prior written approval of the Architectural Control Committee.

10.12 Pets. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept by any Owner upon any portion of the Development, provided that generally recognized house pets may be kept in Dwellings, subject to rules and regulations adopted by the Association, through its Board/ and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. Pets shall be under leash or voice control at all times when walked or exercised outside of all fenced areas on a Lot or Dwelling.

10.13 Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Development, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying any other portions of

the Development. Noxious or offensive activities shall not be carried on in any Lot or Dwelling or in any part of the Common Areas, and each Owner, his family, tenants, guests, invitees, servants and agents shall refrain from any act or use of a Lot, Dwelling or of the Common Areas which could cause disorderly, unsightly or unkempt conditions, or which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Development or which could result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Development. Any Owner, or his family, tenants, guest, invitees, servants or agents, who dumps or places any trash or debris upon any portion of the Development shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot or Dwelling are subject.

10.14 Motor Vehicles, Trailers, Boats, Etc. All automobiles owned or used by Owners or Occupants other than temporary guests and visitors shall be parked in garages to the extent that garage space is available, and garages shall not be used for storage or otherwise so that they become unavailable for parking cars therein. The Board of the Association shall have the authority to promulgate rules and regulations to govern or prohibit the. outside storage or parking upon any Lot or Dwelling or within any portion of the Common Areas (other than areas provided therefor within the Common Areas, if any) of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart or any other related forms of transportation devices. Furthermore, although not expressly prohibited hereby, the Board may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts and other similar vehicles, or any of them, from being kept, placed, stored, maintained or operated upon any portion of the Development if in the opinion of the Board such prohibition shall be in the best interests of the Development. No Owners or other occupants of any portion of the Development shall repair or restore any vehicle of any kind upon or within any Lot or Dwelling or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs, and then

only to the extent necessary to enable the movement thereof to a proper repair facility. Declarant hereby reserves the right (without any obligation to do so) to designate a portion of the Common Areas as a parking area for boat trailers, motor homes and similar vehicles.

10.15 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots and/or Dwellings or the developing of Lots, Dwellings, Common Areas and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved by Declarant from time to time, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 10.15 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and/or Dwellings and for related activities.

10.16 Fences. No fence or wall of any kind shall be created, maintained or altered on any Lot or Dwelling without the prior written approval of the Architectural Control Committee.

10.17 Vents. No plumbing vent or heating vent shall be placed on the front side of any roof of any Dwelling or accessory structure, and any such vent shall be painted the same color as the roof on which it is placed.

10.18 Sight Line Restrictions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between four (4) and six (6) feet above the streets in and around Brookstone II, A Country Club Community, shall be placed or permitted to remain on any corner Lot or Dwelling within the triangular area of such corner Lot or Dwelling formed by the street boundary lines and the line connecting such boundary lines at points twenty-five feet (25') from the intersection of such street boundary lines. The same sight line restrictions shall apply on any Lot or Dwelling within ten feet (10') from the intersection of any street boundary line with the edge of a driveway.

10.19 Signs. (a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the

Architectural Control Committee's prior written approval of plans and specifications therefor, be installed/ altered or maintained on any Lot, or on any portion of a Dwelling visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one "For Sale" or "For Rent" sign; provided, however, that in no event shall any such sign be larger than six square feet in area; and
- (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Control Committee.

(b) Following the consummation of the sale or lease of any Lot or Dwelling, the "For Sale" or "For Rent" sign shall be removed immediately.

10.20 Garage Sales. All garage sales shall be conducted in accordance with applicable law and such rules and regulations as the Board may establish from time to time concerning same.

10.21 Clotheslines. No outside clotheslines shall be constructed, placed or maintained on any Lot or Dwelling without the prior written approval of the Architectural Control Committee.

## ARTICLE XI

### RULE MAKING

11.01 Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots, Dwellings and the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners at least thirty (30) days prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, canceled or modified by the Board or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

11.02 Authority and Enforcement. Subject to the provisions of Section 11.03 hereof, upon the violation of this Declaration, the By-Laws or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, the Owners or Occupants of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the Association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and their respective families, guests and tenants) to use any of the recreational facilities located in the Common Areas, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests or tenants or by his co-Owners or the family, guests or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days per violation.

11.03 Procedure. Except with respect to the failure of an Owner to pay assessments, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner or other Occupant of the Development for violations of the Declaration, the By-Laws or any rules and regulations of the Association, unless and until the following procedure is followed:

(a) Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying:

(i) The alleged violation;

(ii) The action required to abate the violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(b) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

(i) The nature of the alleged violation;

(ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;

(iii) An invitation to attend the hearing and produce any statement, evidence and witnesses on his behalf; and

(iv) The proposed sanction to be imposed.

(c) The hearing shall be held in executive session of the Board pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer, director or other individual who delivered such notice. In addition, the notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

## ARTICLE XII

### GENERAL PROVISIONS

12.01 Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant shall have the right to appoint and remove all members of the Board of the Association and any officer or officers of the Association as provided by and for the term set forth in Section 8.01 hereof. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of



the Association in accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 8.01. Upon the expiration of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 8.01 and this Section 12.01, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Dwellings, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall, elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

12.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the records of the Office of the Clerk of the Superior Court of Cobb County, Georgia, without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot, Dwelling or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot or Dwelling, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration as provided in Section 2.02 hereof. Any amendment made pursuant to this Section 12.02 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, agrees to be bound by such amendments as are permitted by this Section 12.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (A) if such

amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (B) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Dwellings subject to this Declaration, (C) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot, Dwelling or other improvements subject to this Declaration, or (D) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots, Dwellings or other improvements subject to this Declaration.

12.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 12.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by members of the Association. Such amendment must be approved by Owners holding at least one-half (1/2) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee, and (ii) during any period in which Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option under this Declaration to add the Additional Property or any portion thereof to the Development, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the

Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

12.04 Enforcement. Each Owner shall comply strictly with the By-Laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot or Dwelling, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the recreational facilities located in the Common Areas or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by Declarant, the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages and that Declarant, the Association or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws or any rules and regulations of the Association, however long continued.

12.05 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon

and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of twenty (20) years from and after the date of the recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods 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 twenty (20) year period or the last year of any ten (10) year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the records of the Clerk of the Superior Court of Cobb County, Georgia, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in the Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

12.06 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Lillian Carter, mother of former U.S. President James Earl Carter.

12.07 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the records of the Clerk, of the Superior Court of Cobb County, Georgia. The captions of each Article and

Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Georgia.

12.08 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions, hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

12.09 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provisions of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

12.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of Declarant and Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

12.11 Notice of Sale, Lease or Mortgage. In the event an Owner sells, leases, mortgages or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee or transferee.

12.12 No Trespass. Whenever the Association, Declarant, the Architectural Control Committee, and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.

12.13 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots or Dwellings. Notices, sent by United States Mail shall be deemed effective on the third day after mailing. Notices delivered in person shall be effective on the date of delivery. All notices to the Association shall be delivered or sent in care of Declarant at the following address:

Willoughby & Sewell Development, Ltd.  
4906 Willow Creek Drive  
Marietta, Georgia 30066

or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant at the above address or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association.

IN WITNESS WHEREOF, the duly authorized officers of the undersigned Declarant have executed this Declaration under seal, as of the day and year first above written.

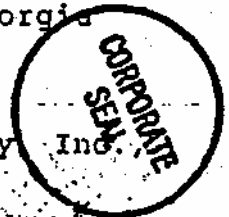
DECLARANT:

Signed, sealed and delivered  
in the presence of:

WILLOUGHBY & SEWELL  
DEVELOPMENT, LTD., a Georgia  
limited partnership

Robert M. Brewer  
Unofficial Witness

By: Willoughby & Sewell  
Development Company, Inc.  
as General Partner



Janice Jorgensen  
Notary Public

By: [Signature]

Title: President

Attest: [Signature]

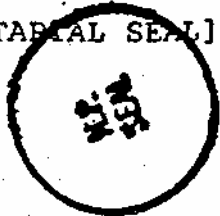
Title: [Signature]

My Commission Expires:

Notary Public, Georgia, State at Large  
My Commission Expires Nov. 30, 1989

[NOTARIAL SEAL]

[CORPORATE SEAL]



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