

or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with any delinquency charges, interest, costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorney's fees, and the fair rental value of the Lot from the time of the institution of an action until the sale of the Lot at foreclosure or until the judgement rendered in the action is otherwise satisfied, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

(d) **Foreclosure.** In the event that an Owner shall fail to pay fully any portion of such Owner's obligations due and payable within thirty (30) days after notice thereof is sent to the Owner by certified mail, return receipt requested, the lien described herein, as well as the lien of any assessments, charges, fines, costs of collection and attorney's fees established elsewhere in this Declaration may be foreclosed by the Association by an action, judgement, and foreclosure in the same manner as other liens for the improvement of real property. The notice shall specify the amount of the assessments or other charges then due, together with authorized late charges and interest accrued thereon.

(e) **Notification of Mortgagee.** In addition to other rights of the Association, if any Owner has not paid any assessment or installment, or any late charges or expenses related thereto, within sixty (60) days after the Due Date of the assessment or installment, the Association shall have the right to notify any or all Mortgagees having a security interest in such Owner's Lot or Lots that such Owner is in default in the performance of his obligations under these Restrictions, and of those actions taken or proposed to be taken by the Association as a result of the default.

**4.08 Certificate of Payment.** Upon written request, an Owner, a Mortgagee of a Lot, a Person having executed a contract for the purchase of a Lot, or a lender considering a loan of funds to be secured by a Lot, shall be entitled upon request to a statement from the Association (or its management agent) setting forth the amount of assessments, fines and penalties, past due and unpaid together with late charges and interest applicable thereto against the Lot. All such requests shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association, within five (5) business days from the receipt of such request, to mail or otherwise furnish such a statement to the party requesting the same to the address directed

in the request shall cause the lien for assessments established by the Declaration to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. The Association may charge a reasonable fee not to exceed ten dollars (\$10.00) as a prerequisite to the issuance of such a statement. Any such statement, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and every Owner and any bona fide purchaser of, or lender on, the Lot in question.

**4.09 Contributions by Declarant.** While Declarant is under no obligation to do so, it is the Declarant's intention to support the Association by funding deficits during such time as the Declarant has the right to appoint members to the Board of the Association. It is not, however, the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by an Owner or Owners. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, the following covenants shall apply:

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

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

(c) **Timing of Reimbursements and Authority of Board.** Declarant shall be entitled to reimbursement from the Association in accordance with the covenants contained in this Section 4.09 at the time Declarant's right to appoint members to the Board of the Association expires or terminates. With regard to uncollected assessments, Declarant shall not be entitled to reimbursement until the assessment is actually collected. With regard to refunds of deposits, Declarant shall not be entitled to reimbursement until any such refund is received by the Association. The Declarant, however, shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by Declarant. The Board of Directors, specifically including members

of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to further evidence the obligations of the Association created hereunder. The failure to execute such a note shall in no way diminish the obligations created hereby.

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

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

## ARTICLE V

### ARCHITECTURAL CONTROL

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

5.02 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any Structure on any Lot. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing Community-Wide Standard, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.03 Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and

subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC may, with the approval of the Board, be reimbursed by the Association for traveling expenses and other out-of-pocket costs incurred in the performance of their duties as members of the ACC.

**5.04            Operations of the ACC.**

(a) **Meetings.** The ACC may hold regular meetings as may be established by the ACC; provided, however, that during such time as Declarant has the right to appoint and replace members of the Board of Directors the frequency of regular meetings will be established by the Board. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and

effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

**(b) Activities.**

(i) The ACC may adopt and promulgate Design Standards, and where appropriate shall make findings, determinations, rulings, and orders with respect to the conformity and harmony with the external design and the Community-Wide Standard and any Design Standards adopted by the ACC, of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration. The ACC shall have the authority to disapprove any plans and specifications on purely aesthetic grounds, with the full understanding that what is considered "aesthetically pleasing" may very well change with changes in the composition of the ACC.

(ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization; subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

**5.05 Design Standards.**

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

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

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

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

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

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

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

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

(b) a foundation plan;

(c) a floor plan;

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

(e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance

of all proposed Structures and alterations to existing Structures;  
and

(f) plans for landscaping and grading.

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

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

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

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

(c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the Community-Wide Standard, or (ii) to fail to be aesthetically pleasing, or (iii) as to location, to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

**5.09 Obligation to Act.** The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted,

together with all conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure of the ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

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

**5.11 Violations.** If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action with thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

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

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



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

**5.15**        Declarant.        The provisions contained in this Article, as well as all other architectural control provisions, including but not limited to building setbacks, contained in this Declaration, the Articles of Incorporation or the Bylaws, shall not apply to Declarant or to any predecessor Declarants. In addition, said provisions shall not apply to any Builder who acquires a Lot from Declarant or any predecessor Declarants, or through other Builders who had acquired the Lot from said parties for the purpose of constructing a dwelling thereon; provided, however, any such Builder must submit to and have its plans and specifications approved by Declarant, if title to the Lot passed through Declarant; and provided further, if title to the Lot passed through a predecessor Declarant, and said predecessor still owns at least one (1) Lot for sale in the Development, then such plans and specifications must only be approved by said predecessor. This Section 5.15 may only be amended with the prior written consent of the Declarant and any predecessor Declarants still owning at least one (1) Lot for sale.

## ARTICLE VI

### GENERAL COVENANTS AND RESTRICTIONS

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

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

**6.03        Restriction of Use.**        Lots may be used for single-family residential purposes only, or if conveyed or dedicated to the Association as Common Property, for such purposes as the Association sees fit (subject to such restrictions as may be contained in the grant or conveyance of said Lot) and for no other purposes; provided, however, that Declarant may use or designate for use any Lot or the Common Property for any purposes necessary or convenient to the improvement and/or marketing and sale of the Property, including, but not limited to, the operation of sales offices and/or model homes.

**6.04        Resubdivision of Property.**        With the exception of conveyances made to accommodate encroachments, or land swaps between Owners in which exchanges of substantially the same square footage of property are made, no Lots may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications

for such split, division or subdivision. This provision shall not apply to the Declarant.

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

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

**6.07**        **Trees.**    No living tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Sections 5.06, 6.05 and 6.06 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC.

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

**6.09**        **Signs.**

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

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

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

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

(iv) such signs as are used to identify and advertise the Property; and

(v) a sign indicating the Builder of the residence on the Lot.

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

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

#### **6.10      Setbacks.**

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

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

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

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

**6.13**        **Antennae.** No exterior television or radio antennae of any sort nor satellite dish shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC. No satellite dish in excess of thirty-six (36) inches in diameter shall be placed, allowed or maintained upon any portion of a Structure or Lot. No antennae shall be installed or used for the purpose of transmitting electronic signals.

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

**6.15**        **Parking and Related Restrictions.**

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

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

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

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

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

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

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

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

**6.18 Waterfront Land.** On Lots adjacent to a lake or creek or other water bodies or courses, no refuse of any kind shall be placed on or disposed of into the adjacent waters which are to be kept clean and free of pollution.

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

**6.20 Solid Waste.**

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

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

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

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

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

**6.22**        **Landscape and Monument Easements**. On Lots subject to a Landscape or Monument Easement as set forth on any recorded plat of survey of the Development, such Lots are subject to those easement rights set forth in Section 2.06.

**6.23**        **Mailboxes**. The Association shall have the right to require that mailboxes be of a similar style. If so determined, the ACC may include specific design requirements within the Design Standards. As Structures, all mailboxes must be approved by the ACC.

## **ARTICLE VII**

### **EASEMENTS, ZONING AND OTHER RESTRICTIONS**

#### **7.01**        **Easements**.

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual rights of way and easements, as well as the power to grant and accept the same to and from the county in which the Property or any portion thereof is located, or any other public authority or agency, public service district, public or private utility, or other Person, in, on, over, under and across any part of the Property (including the Common Property) for any purpose which the Declarant deems appropriate, including, by way of example, and not limitation, the following:

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

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

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

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

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

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

(c) The Declarant hereby expressly reserves to the Declarant, its successors and assigns, across the Property, perpetual, alienable and transferable easements appurtenant to the Property for the following uses and purposes:

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

(ii) an easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewage, storm drainage, electricity, street lights,



telephone, and other utilities and services, including the right to connect with and to use in common with the Owners, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners; and

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

(d) In addition to the above, the Declarant hereby grants a general easement in favor of utility, cable television, security and other such service companies across the Property, to install, maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities provided for the benefit of the Owners.

(e) There is hereby reserved for the benefit of Declarant, each Builder, the Association, and their respective heirs, successors and assigns, the alienable, transferable, perpetual right and easement in, on, over, under and across, those strips of land ten (10) feet in width located along and adjacent to those exterior boundaries located adjacent to streets and roads and by lines in the interior of such Lots which are ten (10) feet from and parallel to such exterior boundaries, for the installation, maintenance and use of sidewalks, traffic directional signs, and related improvements, provided that Declarant and Builder shall have no obligation to construct any such improvements. There is further reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable and perpetual right and easement in, on, over, under and across those strips of land fifteen (15) feet in width located along those boundaries of all Lots that constitute a part of the perimeter boundary of the Development, such easement to be for the purpose of constructing, installing, maintaining, repairing and replacing a perimeter wall or fence around the perimeter boundary of the Development, provided that Declarant shall have no obligation to construct any such perimeter wall or fence, nor to maintain or repair the same if installed. The easements set forth in this subsection shall not include any portion of a Lot upon which the foundation of any dwelling is located.

(f) There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, employees, agents and representatives, including, but not limited to, any manager employed by the Association and any

employees of such manager, to enter upon any Lot (including any Structure) 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 notice to an Owner or Occupant of the Lot or Structure.

(g) Notwithstanding any provisions contained in this Declaration to the contrary, for so long as Declarant owns at least one (1) Lot primarily for the purpose of sale, there is hereby reserved for the benefit of Declarant, its successors and assigns, the alienable and transferable right and easement in and to the Property, including the Common Property, for the maintenance of signs, sales offices, construction offices, business offices, storage and model homes, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the improvement and/or marketing and sale of the Property.

(h) There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any Lot (including any Structure) 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.

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

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

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

Association shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken by the same in an Easement Area pursuant to the provisions of Section 7.01.

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

## **ARTICLE VIII**

### **ENFORCEMENT**

**8.01**            **Right of Enforcement.**    This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner or so long as any Builder owns a Lot primarily for sale which was purchased from Declarant, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns.

**8.02**            **Right of Abatement.**

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

those actions taken or proposed to be taken by the Association as a result of the default.

(b) The Right of Abatement, as used in this Section and Sections 5.11 and 6.02 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions of this Declaration or the rules and regulations adopted by the Association, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or ten percent (10%) to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.05 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgement or decree or by any agreement, contract, Mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the lien of any Mortgage recorded prior to the recording of the Declaration, and (iii) the lien or charge of all first and second Mortgages of record (meaning any recorded Mortgages covering the Lot with first or second priority over other Mortgages) made in good faith and for value.

### **8.03 Fines and Penalties and Creation of Lien.**

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

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

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

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

(e) Any fines or penalties assessed pursuant to this Section 8.03 for violations of the Restrictions, including any fines or penalties assessed for violation of rules and regulations relating to the use, operation and maintenance of the Common Property, together with the cost of collection and reasonable attorneys fees, shall be a binding personal obligation of the Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.05 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after their assessment whether arising from or imposed by judgment or decree or by any agreement, contract, Mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof, and (iii) the lien or charge of all first and second Mortgages of record (meaning any recorded Mortgages with first or second priority over other Mortgages) made in good faith and for value.

**8.04**        **Specific Performance.** Nothing contained in this Declaration shall be deemed to affect or to limit the rights of the Declarant, the Association or any Owner to enforce these Restrictions. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of or failure to perform any of the obligations provided by, this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

**8.05 Collection of Assessments and Enforcement of Lien.**

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

**8.06 No Waiver.**

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

**ARTICLE IX**

**DURATION AND AMENDMENT**

**9.01 Duration and Perpetuities.**

(a) This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of that county in which the Property is located, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of twenty (20) years. Notwithstanding the foregoing, and in accordance with O.C.G.A. Section 44-5-60(d)(2), within two (2) years of the end of the initial twenty (20) year period, or within two (2) years of any renewal period, these Restrictions may be terminated as follows:

(i) At least fifty-one percent (51%) of the Owners shall execute a document containing a legal description of the Property, a list of the names of all Owners affected by the Restrictions, and a description of those covenants to be terminated (a reference to the recorded Declaration being acceptable);

(ii) the document shall verify that each Person signing the same is a record Owner of property which is subject to the Restrictions; and

(iii) the document shall be recorded in the office of the Clerk of the Superior Court of the county in which the Property is located no sooner than but within two (2) years

prior to the expiration of the initial twenty (20) year period or any subsequent (20) year period and the document shall be indexed under the name of each Owner appearing in the document.

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

**9.02 Amendment.**

(a) Amendments by Declarant. So long as the Declarant owns at least one (1) Lot primarily for the purpose of sale, for so long as any Builder owns a Lot primarily for the purpose of sale which was purchased from Declarant, these Restrictions may be amended unilaterally at any time and from time to time by Declarant without the approval of any Owner or Mortgagee; provided, however, that, with the exception of amendments which add any portion of the Additional Property to the terms of this Declaration, (i) in the event that such amendment materially and adversely affects the title to any Lot or any Owner's right to the use and enjoyment of his Lot or the Common Property, 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 thereof of all such Mortgagees so affected.

(b) Binding Effect and Agreement to Consent to Certain Amendments. Each Owner, by acceptance of a deed or other conveyance to a Lot agrees to be bound by such amendments as are permitted by this Section, and further agrees that, if requested to do so by the Declarant, such Owner will consent in writing to the amendment of this Declaration or any other instruments relating to the Development: (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these Restrictions (iii) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to

enable such lender or purchaser to make for purchase Mortgage loans on the Lots subject to these Restrictions, (iv) if such amendment would enable any governmental agency, such as the Department of Veterans Affairs or reputable private mortgage insurance company to insure mortgage loans on the Lots subject to these Restrictions or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration; provided any such amendment shall not adversely affect the title to any Owner's Lot, unless any such Owner so affected thereby shall consent thereto in writing.

**(c) Amendments by Owners and Consent of Declarant.**

These Restrictions may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) percent of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the owner of any real property subject to these Restrictions or any portion of the Additional Property or if any Builder owns a Lot primarily for sale which was purchased from Declarant; and provided further, however, no amendment affecting the Declarant's right to add Additional Property shall be effective unless also signed by Declarant. No amendment to the provisions of these Restrictions shall materially and adversely alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any Mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Notwithstanding the foregoing, nor any other provisions contained in this Declaration, no amendment to the Declaration, the Articles of Incorporation or the Bylaws, which modifies or affects the rights, privileges, options or exemptions of the Declarant shall be effective unless consented thereto in writing by the Declarant.

**(d) Amendment to Submit Development to Georgia Property Owners' Association Act.** These restrictions may be amended at any time to submit the development to the terms and provisions of the Georgia Property Owners' Association Act, including the amendment of any provisions of the Restrictions to conform to mandatory provisions of said Act, by an agreement signed by a majority of all Owners of Lots within the Development, and for so long as the Declarant has the right to approve amendments as set forth above, the Declarant.

**(e) Filing of Amendments.** Any amendment made pursuant to this Section shall only become effective at such time as the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of that county in which the Property is located or at such later date as may be specified in the amendment itself. Agreement of the required



majority of Owners to any amendment of the instrument shall be evidenced by their execution of the amendment. The written consent thereto of any Mortgagee affected thereby shall also be filed with such amendment. In the alternative, provided that the Declarant does not then have the right to control the Association pursuant to the Declaration, the sworn statement of the President, of any Vice President, or of the Secretary of the Association attached or incorporated in an amendment executed by the Association, which sworn statement states unequivocally that agreement of the required majority was otherwise lawfully obtained and that all notices required were properly given (specifically including the Georgia Property Owners' Association Act if the Development has been submitted thereto), shall be sufficient to evidence the required agreement.

(f) **Agreement to be Bound.** Every purchaser or grantee of any interest in any real property now or hereafter subject to these Restrictions, by acceptance of a deed or other conveyance therefor, thereby agrees that these Restrictions may be amended as provided in this Section.

## **ARTICLE X**

### **LEASES**

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

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

**10.03 Required Lease Provisions.** The Board of Directors may set the minimum lease term; however, said minimum term shall not be set for greater than one (1) year. All leases and lessees are subject to the provisions of the Declaration and Bylaws. The Owner must make available to the tenant a copy of this Declaration. Any leases of a Lot, or a portion thereof, shall be deemed to contain the provisions of Sections 10.03(a), (b), (c) and (d),

whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of his Lot shall contain the language of said provisions, and further, that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and its incorporation as part of the lease along with the following provisions:

(a) Lessee acknowledges that promises made to Lessor, as contained in Article X, Sections 10.03(a), (b), (c) and (d) of the Declaration of Covenants, Conditions and Restrictions for Spalding Heights which govern the leased Premises, and which provisions are incorporated within this lease agreement, are made for the benefit of the Association for the purpose of discharging Lessor's duties to the Association through Lessee's performance. In order to enforce those provisions made for the benefit of the Association, the Association may bring an action against Lessee for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

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

(c) Upon request by the Association, Lessee shall pay to the Association all unpaid annual assessments and special assessments, as lawfully determined and made payable during and prior to the terms of this lease agreement and any other period of occupancy by Lessee; provided, however, that Lessee need not make such payments to the Association in excess of, or prior to the due

dates for, monthly rental payments unpaid at the time of the Association's request. All payments made to the Association shall reduce by the same amount Lessee's obligation to make monthly rental payments to Lessor under the Lease. If Lessee fails to comply with the Association's request to pay assessments, Lessee shall pay to the Association all late or delinquent charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent Lessee would be required to make such payments to the Association if Lessee were the Owner of the Premises during the term of this lease agreement and any other period of occupancy by Lessee.

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

**10.04 Enforcement.** For the purpose of enforcing the provisions of Section 10.03, which shall be incorporated in the provisions of any leases of a Lot, each Owner, by acceptance of a deed or other conveyance of a Lot, hereby irrevocably appoints the Association, which may act by any one of its authorized officers, as his attorney-in-fact, to enforce said provisions and to take action, at law or equity, which could be taken by said Owner against the Lessee should Lessee default in performance under the lease agreement. Each Owner hereby further acknowledges that this power of attorney shall only apply in the event of noncompliance by a Lessee with the provisions of Section 10.03, and that the Association, its Board of Directors, employees and agents shall be held harmless by each Owner in exercising the power of attorney herein granted to the Association.

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

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

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

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

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

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

## ARTICLE XI

### MISCELLANEOUS

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

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

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

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

**11.05** Notices. All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent or any kind made pursuant to this Declaration, whether by the Declarant, the Association, the ACC, the Owner, or any other Person, shall be in writing. All such writings shall be delivered, as may be appropriate, to the following addresses, and to any such other address requested by any party, notice of which has been provided in accordance herewith:

(a) Declarant: Woodcliff Development, L.L.C.  
Attn: Don Donnelly  
5930 Post Road  
Cumming, Georgia 30130

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

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

**11.06      No Liability.** Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other Person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

## ARTICLE XII

### MORTGAGEE PROVISIONS

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

**12.01      Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provided written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such eligible holder;

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

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

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

**12.02 Right to Records.** Upon written request in accordance with Section 12.01, all eligible holders shall:

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

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

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

**12.03 Insurance.**

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the vent of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the Common Property. All property insurance policies shall be for the benefit of the Association and, to the extent that Declarant owns any portion of the Common Property, for the benefit of Declarant, as their interests may appear, their successors and assigns. All liability insurance shall contain cross-liability endorsements to cover liability of the Association to an individual Owner, and shall also name the Declarant as an additional insured. Any such policies of insurance shall require that the certificate holders and insured be given thirty (30) days prior written notice of any cancellation of such policies.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and

obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, for so long as the Declarant owns at least one (1) Lot primarily for purpose of sale, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destructions, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

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

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

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

**12.04**      **No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot

in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**12.05 Services Provided by Declarant and Professional Management.** The Declarant can provide services and goods for the benefit of the Association and bill or charge the Association for the same. Any agreement for professional management of the Association, or any other contract providing services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee upon ninety (90) days written notice.

**12.06 Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

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

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

**12.09 Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action, including but not limited to the amendment of this Declaration, shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of receipt of any such request sent by or at the direction of the Association by certified mail, return receipt requested.

[EXECUTION CONTAINED ON NEXT PAGE]



IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed on that date first above written.

Signed, sealed and delivered in the presence of:

**DECLARANT:**  
WOODCLIFF DEVELOPMENT, L.L.C.

    *Jacqueline L. Gubal*      
Unofficial Witness

BY:     *[Signature]*      
Don Donnelly  
TITLE:     Manager    

    *[Signature]*      
Notary Public

(CORPORATE SEAL)

BOOK 23860 PG 065

**EXHIBIT "A"**

All that tract or parcel of land lying and being in Land Lot 126 of the 17th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING AT A POINT located on the land lot line dividing Land Lots 126 and 130 of the 17th District of Fulton County, Georgia, a distance of 110.28 north, as measured along said land lot line on a bearing of north 00 degrees 18 minutes 45 seconds east, from an iron pin located at the common intersection of Land Lots 125, 126, 130 and 131 of said District; proceeding thence north 37 degrees 43 minutes 28 seconds east a distance of 203.88 feet to a point; thence north 01 degree 33 minutes 32 seconds east a distance of 124.29 feet to a point; thence north 88 degrees 26 minutes 28 seconds west a distance of 81.68 feet to a point; thence north 33 degrees 37 minutes 46 seconds east a distance of 768.42 feet to a point located on the southwestern right-of-way line of Johnson Ferry Road (having a variable width); proceeding thence in a southeasterly direction along the southwestern right-of-way line of Johnson Ferry Road, and following the curvature thereof, a distance of 999.42 feet to a point; thence leaving said right-of-way line and proceeding south 57 degrees 59 minutes 15 seconds west a distance of 485.97 feet to a point; and thence north 89 degrees 49 minutes 20 seconds west a distance of 786.60 feet to the point marking the POINT OF BEGINNING; said tract contains 15.304 acres of land and is shown and depicted in detail on that certain plat of survey entitled "Final Subdivision Plat for Woodcliff", prepared by Rochester & Associates, Inc., dated October 21, 1997.

**LESS AND EXCEPTED** from the above-described property is that portion of the property being dedicated to Fulton County, Georgia as right-of-way, which includes a 30-foot strip along Johnson Ferry Road, and the areas comprising Woodcliff Drive, Redding Court, Long View Court and Woodcliff Pointe, as shown on the above-referenced Final Subdivision Plat.

BOOK 23860PG066

**COPY**

WHEN RECORDED, RETURN TO:  
DEBORAH C. ANTHONY  
COFER, BEAUCHAMP, STRADLEY & HICKS, LLP  
99 W. PACES FERRY RD NW, STE 200  
ATLANTA, GA 30305-1364

Cross-Reference: Declaration of Covenants,  
Conditions and Restrictions for Woodcliff,  
as recorded in Deed Book 23860, Page 3, *et*  
*seq.*

STATE OF GEORGIA

COUNTY OF FULTON

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR WOODCLIFF**

THIS AMENDMENT is made this 29<sup>th</sup> day of November, 2000, by WOODCLIFF DEVELOPMENT, L.L.C., a Georgia limited liability company (hereinafter referred to as "Declarant").

**Statement of Background**

The Declarant recorded that certain Declaration of Covenants, Conditions, and Restrictions for Woodcliff in Deed Book 23860, Page 3, *et seq.*, Fulton County, Georgia records, together with all amendments and supplements thereto (collectively, "Declaration"). The Declarant deems it appropriate to amend the Declaration for the purpose of surrendering its Class B membership in the Woodcliff Homeowners Association, Inc.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration of Covenants, Conditions, and Restrictions for Woodcliff as follows:

The Declarant hereby surrenders its Class B membership, including without limitation its weighted vote and the authority to appoint and remove members of the Board of Directors of the Association. Except as modified, the Declarant retains all other rights of the Declarant under the Declaration remaining after surrender of the Class B membership, and the Declaration shall remain in full force and effect, as hereby amended.

IN WITNESS WHEREOF, the undersigned has hereby executed and delivered this Amendment as of the date first above shown.

Signed, sealed and delivered in the presence of:

WOODCLIFF DEVELOPMENT, L.L.C., a Georgia limited liability company

Witness

By:

Heather M. Martin  
Notary Public

James W. Donnelly, Jr.  
Name: James W. Donnelly, Jr.  
Title: Manager

My Commission Expires: Notary Public, Forsyth County, Georgia  
My Commission Expires August 28, 2003

(NOTARY SEAL)

*Woodcliff Homeowners Association, Inc.*

December 12, 2000

To Whom It May Concern:

I hereby resign from the Board of Directors of Woodcliff Homeowners Association, Inc.  
effective today December 12, 2000.

Sincerely,

A handwritten signature in cursive script that reads "Fran Marty". The signature is written in black ink and is positioned above the printed name.

Fran Marty

Cc: File

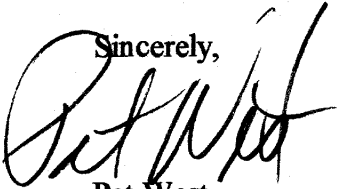
*Woodcliff Homeowners Association, Inc.*

December 12, 2000

To Whom It May Concern:

I hereby resign from the Board of Directors of Woodcliff Homeowners Association, Inc.  
effective today December 12, 2000.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat West", written over the word "Sincerely,".

Pat West

cc: File