



Gaines Creek
of Green Island

DECLARATION OF COVENANTS,
 CONDITIONS, RESTRICTIONS AND EASEMENTS
 FOR
 GAINES CREEK OF GREEN ISLAND

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**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
GAINES CREEK OF GREEN ISLAND**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR GAINES CREEK OF GREEN ISLAND is made this -9th- day of October, 1995, by THE JORDAN COMPANY, a Georgia corporation (hereinafter referred to as the "Declarant").

WITNESSETH THAT:

WHEREAS, the Declarant is the owner of certain real property located in Columbus, Muscogee County, Georgia, which is more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Declarant intends to develop on the real property described in Exhibit "A" attached hereto, a development to be known as "GAINES CREEK OF GREEN ISLAND" (hereinafter sometimes referred to as "GAINES CREEK" or the "Development"); and

WHEREAS, the Declarant intends to impose mutually beneficial covenants, conditions, restrictions and easements under a general plan of improvement for the benefit of all owners of residential property within the Development, by the recording of this Declaration and any amendments thereto, and thereby subjecting the real property described in Exhibit "A" to the covenants, conditions, restrictions, easements, affirmative obligations, charges and liens hereinafter set forth; and

WHEREAS, the Declarant desires to provide a flexible and reasonable procedure for the overall development of GAINES CREEK and to establish an agency and method for the administration, maintenance, preservation, use and enjoyment of the property that is subjected to this Declaration and certain other properties described in this Declaration; and

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of Georgia a nonprofit corporation known as Gaines Creek of Green Island Homeowners Association, Inc., for the purpose of exercising and performing certain functions for the common good and general welfare of the Owners (as hereinafter defined) as hereinafter more fully provided;

NOW, THEREFORE, the Declarant hereby declares that all of the real property described in Exhibit "A" attached hereto and made a part hereof, shall be held, transferred, sold, conveyed, given, leased, occupied and used subject to this Declaration of Covenants, Conditions, Restrictions and Easements, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined), and that the covenants, conditions, restrictions and easements set forth herein shall run

with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns, and to the benefit of the Association.

ARTICLE I

DEFINITIONS

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

1.01 Association. "Association" means Gaines Creek of Green Island Homeowners Association, Inc. (a nonprofit membership corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

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

1.03 Bylaws. "Bylaws" means the Bylaws of the Association.

1.04 Commencement Date. "Commencement Date" means the date on which the first Residence is sold to or occupied by a third party other than the Declarant or the builder of such Residence, unless the builder intends to use such Residence as and for his principal residence, but in no event later than January 1, 1997.

1.05 Common Property. "Common Property" means all real property (together with any and all improvements and/or personal property now or hereafter located thereon) now or hereafter owned or leased by the Association or in certain instances over or in which the Association has been granted or conveyed permanent and perpetual easements or other property rights or interests, for the common use and enjoyment of the Owners; provided, however, certain portions of such property may be designated by the Declarant, in the deed, easement or other instrument of conveyance, for the exclusive use and benefit of one or more, but less than all, of the Lots and the Owners thereof, and in such event all costs associated with the maintenance, repair, replacement and insurance of such portions of the Common Property shall be assessed against the Owners of the Lots benefitted thereby; and, provided further, however, any property leased by the Association shall lose its status as Common Property upon the expiration of such lease.

1.06 Declarant. "Declarant" means The Jordan Company, a Georgia corporation, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A" attached hereto; and provided further, in the instrument of conveyance to any such successor-in-title or

assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property (as hereinafter defined) subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.07 Development Survey. "Development Survey" shall mean and refer to that certain plat or survey entitled "Final Plat of Gaines Creek of Green Island, Lying in Land Lot 96, 8th District, Columbus, Muscogee County, Georgia", prepared by Jordan, Jones and Goulding, Inc., dated August 21, 1995, and recorded in Plat Book 129, folios 22, 23, 24, 25 and 26, in the Office of the Clerk of the Superior Court of Muscogee County, Georgia.

1.08 Development-Wide Standard. "Development-Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board, the ARC, and other committees required or permitted to be established pursuant to the Declaration and the Bylaws.

1.09 Lot. "Lot" means any parcel of land shown upon the Development Survey covering any portion of the Property; provided, however, that no portion of the Common Property shall ever be a Lot except as provided in Paragraph 2.04 hereof.

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

1.11 Membership. "Membership" means the collective total of all Members of the Association.

1.12 Mortgage. "Mortgage" means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of a loan or other obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

1.13 Mortgagee or Mortgage Holder. "Mortgagee" or "Mortgage Holder" means the holder of any Mortgage.

1.14 Occupant. "Occupant" shall mean any person occupying all or any portion of a Residence located within the Development for any period of time, regardless of whether such person is a tenant or the Owner of such property.

1.15 Owner. "Owner" means the record owner (including the Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan or other obligation, the person or entity

who would own the Lot in fee simple if such loan or other obligation were paid and satisfied in full shall be considered the Owner.

1.16 Property. "Property" means that certain real property described in Exhibit "A" attached hereto and made a part hereof.

1.17 Residence. "Residence" shall mean a detached dwelling situated upon a Lot intended for use and occupancy as a residence for a single family. A dwelling and the land owned as a part thereof (the Lot) shall not become a Residence until (a) all inspections and approvals shall have been made and given by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence, and (b) until the Lot and dwelling located thereon shall have been conveyed to a third party other than the builder thereof, unless the builder intends to use such Lot and dwelling as and for his principal residence. The Owner shall notify the Association or its designee immediately upon the completion of all inspections by, and receipt of all approvals from, such governmental authorities for the Residence.

1.18 Restrictions. "Restrictions" means all covenants, conditions, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration and any amendments hereto.

1.19 Structure. "Structure" means:

(a) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any dwelling or part thereof, garage, shed, greenhouse, bathhouse or playhouse, coop or cage, porch, deck, covered or uncovered patio, swimming pool, tennis court, curbing, paving, sidewalk, fence, wall, satellite video receiving dish, antennae, mailbox, newspaper tube, tree, shrub, sod and all other forms of landscaping, sign, signboard, or any other temporary or permanent improvement to such Lot; and

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

ARTICLE II

COMMON PROPERTY

2.01 Conveyance of Common Property.

(a) The Declarant may from time to time transfer or convey real property (together with any and all improvements and/or personal property located thereon) to the Association, or grant or convey easements, leaseholds or other rights or interests in and to such property to the Association and in accordance with this

Paragraph 2.01, for the common use and enjoyment of the Owners (such real and personal property being defined herein as "Common Property") and, to the extent set forth in this Declaration, the general public. The Association hereby covenants and agrees to accept from the Declarant all such transfers, conveyances or grants of Common Property.

(b) It is contemplated by the Declarant that the Declarant will from time to time convey or grant to the Association Common Property for an entrance area, including an entrance wall, signage, lighting, landscaping and sprinkler/irrigation facilities, and other structures and improvements for such entrance to the Development. In addition, the Declarant intends to install street signage for the Development, and any such street signage shall be and become Common Property owned by the Association upon the installation thereof by the Declarant without the necessity of any conveyance thereof from the Declarant. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subparagraph (b) of this Paragraph 2.01 at any time prior to the conveyance of such Common Property to the Association.

(c) In addition to the property described in subparagraph (b) of this Paragraph 2.01, the Declarant may convey or grant to the Association in accordance with this Paragraph 2.01 such other real and personal property, or easements, leaseholds or other rights or interests in and to such property, as the Declarant may determine to be necessary or proper for and in connection with the completion of the Development, including, by way of illustration and not limitation, areas for landscaping and related sprinkler/irrigation facilities to be preserved and maintained by the Association.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

2.02 Right and Easement of Use and Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property (subject to the provisions of Paragraph 2.04 hereof), which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Paragraph 2.02 is subject to suspension by the Association as provided in Paragraphs 2.03(e) and 3.07 hereof.

2.03 Rights of the Association. The rights and privileges conferred in Paragraph 2.02 hereof shall be subject to the right, and where applicable, the obligation, of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;

(b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security instrument any or all of the Association's property including Common Property and revenues from assessments and other sources; and provided, however, that during the period when the Declarant has the right to appoint and remove directors and officers of the Association, the Association shall not deed, grant or convey to anyone any deed to secure debt, mortgage or other security interest on or in Common Property constituting real estate without approval by the Declarant and a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the Bylaws of the Association;

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

(d) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency, or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the Bylaws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

(e) suspend, pursuant to Paragraph 3.07 hereof, the voting rights of any Member and the right of enjoyment granted or permitted by Paragraph 2.02 hereof;

(f) sell, lease or otherwise convey all or any part of its properties and interests therein;

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

(h) enter into cross-easement agreements, joint use agreements, cost sharing agreements and other agreements with third

parties, including without limitation condominium associations and other homeowners or property owners associations, relating to the Common Property or any part thereof and/or the use or enjoyment of recreational facilities or other amenities of such third parties; and

(i) maintain any and all landscaping treatments previously installed by the Declarant within any street right-of-way, to the extent that such landscaping maintenance is permitted by the Consolidated Government of Columbus, Georgia.

2.04 Types of Common Property. At the time of the transfer or conveyance of any real property (together with any and all improvements and/or personal property located thereon) or grant or conveyance of any easement, leasehold or other right or interest in and to any such property by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed, easement or other instrument of conveyance that such property is to be Common Property and may designate therein that certain portions of such property shall be for the exclusive use and benefit of one or more, but less than all, of the Lots and Owners thereof. The Declarant further may designate in the deed, easement or other instrument of conveyance the specific or general purpose or purposes for which such property or any portion thereof may be used; and in such event, such property or portion thereof shall not be used for any different purpose or purposes, without a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the Bylaws of the Association (and, in the case of any portion of the Common Property designated for the exclusive use and benefit of one or more, but less than all, of the Lots and the Owners thereof, without a two-thirds (2/3) vote of such Owners entitled to vote), and during the period of the Declarant's right to appoint and remove directors and officers of the Association, without the prior written consent of the Declarant.

2.05 Delegation of Use. Any Owner may delegate to the members of his family, his visiting guests, or his tenants who reside on a Lot, in accordance with the Bylaws, his right to use and enjoy the Common Property.

2.06 Maintenance. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of the entrance wall, signage, landscaping, lighting, sprinkler/irrigation facilities and other structures and improvements situated on the Common Property and of all street signage for the Development installed by the Declarant. In addition, the Association shall maintain grass and other landscaping located along or in dedicated rights of way which were installed and maintained by the Declarant, to the extent permitted by the applicable governmental authority. The foregoing maintenance shall be performed consistent with the Development-Wide Standard.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and covenants or agreements to share costs regarding such property where the Board has determined that this would benefit Owners.

ARTICLE III

GAINES CREEK OF GREEN ISLAND HOMEOWNERS ASSOCIATION

3.01 Purposes, Powers and Duties of the Association. The Association shall be formed as a nonprofit corporation for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Development. To the extent reasonably necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code, and (b) shall have the power to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration and in the Bylaws, and shall have every other right, power or privilege reasonably to be implied from the existence of any right, power or privilege given to it therein or reasonably necessary to effectuate any such right, power or privilege.

3.02 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration. For purposes of voting, there shall be two (2) classes of Members as set forth in Paragraph 3.03 of this Declaration.

3.03 Voting Rights.

(a) Each Owner, with the exception of the Declarant, shall be a Class "A" Member and shall be entitled to one Class "A" vote per Residence. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised as those persons determine among themselves and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of such Owner shall be suspended in the event more than one (1) person seeks to exercise it.

(b) The Declarant shall be the sole Class "B" Member and shall be entitled to three (3) votes for each Lot or Residence owned; provided, however, in no event (including without limitation any period during which the Declarant does not own any Lots or Residences in the Development) shall the Class "B" Member have less than the total number of Class "A" votes plus one (1). The Class "B" Membership shall cease and be converted to Class "A" Membership at such time as the Declarant no longer retains the right to

appoint and remove directors and officers of the Association pursuant to Paragraph 3.10 below.

3.04 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of directors and the time and method for their election or appointment shall be as set forth in the Bylaws of the Association.

3.05 Exculpation and Indemnity of Directors and Officers of the Association. The directors and officers of the Association shall not be liable to the Association or the Members for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct or bad faith and except, in the case of the directors, for such matters for which directors shall be liable as set forth in the Articles of Incorporation of the Association. Such directors and officers shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such directors or officers may also be Members of the Association) and the Association, as a common expense of the Association, shall indemnify such directors and officers against, and hold, save and defend such directors and officers free and harmless from, any and all expenses or liability to others on account of any such contract or commitment. In addition, each director and each officer of the Association shall be indemnified and held harmless by the Association, as a common expense of the Association, from any expenses or liability to others by reason of having served as such director or as such officer and against all expenses and liabilities, including court costs and reasonable attorneys' fees, incurred by or imposed upon such director or officer in connection with any proceeding to which he may be a party or have become involved by reason of being such director or such officer, whether or not he is a director or officer at the time such expenses are incurred, except in cases in which the expenses and liabilities arise from a proceeding in which such director or officer is adjudicated or determined to be guilty of willful misfeasance or malfeasance, misconduct or bad faith in the performance of his duties, and in the case of a director, a proceeding in which such director is determined to be liable to the Association or the Members for any matter for which directors shall be liable as set forth in the Articles of Incorporation of the Association. In the event of a settlement of any such proceeding, the indemnification provided hereby shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association and in accordance with the applicable provisions of the Georgia Nonprofit Corporation Code. Any right to indemnification provided for herein shall not be exclusive of any other rights to which a director or officer, or former director or officer, may be entitled.

3.06 Directors' and Officers' Insurance. The Association shall purchase and maintain, as a common expense, directors' and officers' liability insurance, with such coverages and in such amounts as shall be determined by the Board, on behalf of any

person who is or was a director or officer of the Association against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, if such insurance is reasonably available in the determination of the Board.

3.07 Suspension of Membership. The Board, pursuant to such procedure therefor set forth in the Bylaws, may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) shall be subject to the Right of Abatement, as defined in Paragraph 8.02 hereof, by reason of having failed to take reasonable steps to remedy a violation or breach of either the Restrictions or the Architectural Guidelines and Design Standards of the ARC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Paragraph 5.11 or 8.02 hereof;

(b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or

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

Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subparagraph (c) of this Paragraph 3.07, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.08 Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

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

3.10 Control by Declarant.

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation of the Association, or in the Bylaws, the Declarant hereby retains the right to appoint and remove any members of the Board and any officer or officers of the Association until fifteen (15) days after the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of the recording of

this Declaration; or (ii) the surrender by the 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 the Declarant; provided, however, that the Owners may be entitled to elect certain members of the Board in accordance with the provisions of the Bylaws which shall not be removable by the Declarant acting alone.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Paragraph, such right shall automatically pass to the Owners, including the Declarant if the Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board, to serve until the first annual meeting of the Association after control of the Association has passed to the Class "A" Membership, which shall undertake the responsibilities of the Board, and the Declarant shall deliver the books, accounts and records, if any, which the Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which the Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in the Declarant such authority to appoint and remove directors and officers of the Association as provided in this Paragraph 3.10.

ARTICLE IV

ASSESSMENTS

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

(a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against each Lot and the Residence thereon owned by him;

(b) to pay to the Association any special assessments and any specific assessments which may or shall be levied by the Association pursuant to this Declaration against each Lot and the Residence thereon owned by him;

(c) that there is hereby created a continuing charge and lien upon each Lot and the Residence thereon owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Paragraph 4.09 hereof and costs of collection including reasonable attorneys' fees;

(d) that such continuing charge and lien on such Lot and the Residence thereon binds such Lot and Residence in the hands of the

then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lot and the Residence thereon whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the lien of any first priority Mortgage covering the Lot and/or the Residence thereon, and (iii) the lien of any secondary purchase money Mortgage covering the Lot and/or the Residence thereon, provided that neither the grantee nor any successor grantee of such Mortgage is the seller of the Lot or the Residence thereon;

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

(f) that all annual, special and specific assessments (together with interest thereon as provided in Paragraph 4.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot and the Residence thereon owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot and the Residence thereon as provided in Paragraph 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot and Residence owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor-in-title unless expressly assumed by such successor.

4.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Development, including, but not limited to, the acquisition, construction, improvement, maintenance, repair, replacement and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Architectural Guidelines and Design Standards of the ARC, the payment of operating costs and expenses of the Association, and the payment of all principal and interest when due on all debts owed by the Association.

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

4.04 Annual Assessment.

(a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot shall be subject to an annual assessment of Four Hundred Dollars (\$400) per Residence.

In the event that the applicable Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the applicable Commencement Date.

(b) Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may be increased, at any time and from time to time during each Assessment Year, not more than ten percent (10%) above the maximum annual assessment for the previous Assessment Year without a vote of the Membership.

(c) Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may be increased, at any time and from time to time during each Assessment Year, more than ten percent (10%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws and this Declaration.

4.05 Special Assessments.

In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, which special assessments in the aggregate do not exceed an amount equal to the aggregate annual assessment then in effect. Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws and this Declaration.

4.06 Assessment Procedures.

(a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article IV, and

shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs will be covered by special assessment. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article IV.

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Paragraph 4.04(c) and Paragraph 4.05 of this Article IV, notwithstanding any provision regarding notice in the Bylaws to the contrary. Such written notice shall specify under which Paragraph or Paragraphs the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the total votes outstanding shall be required to constitute a quorum, notwithstanding any provision in the Bylaws to the contrary. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

4.07 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and the Residences thereon; provided, however, if different Lots and the Residences thereon have or derive different benefits from the Association (for example, as to portions of the Common Property which have been designated for the exclusive use and benefit of one or more, but less than all, of the Lots and the Residences thereon and the Owners thereof) the assessment for Lots and the Residences thereon may be different to reflect the cost of such different benefits, but for all Lots and the Residences thereon similarly benefitted, the assessment must be uniform.

4.08 Declarant's Liability for Assessments. The Declarant shall be liable for the payment of any assessments on Lots and the Residences thereon, to the same extent as other Owners of Lots and the Residences thereon.

4.09 Effect of Nonpayment of Assessments. Any assessment which is not paid on or before the Due Date or other date established for the payment thereof (subject to such payment procedures established by the Board allowing or requiring payment of any annual or other assessments in installments during the Assessment Year) shall bear interest after the Due Date, or other date established for the payment thereof, at the lower of the highest legal rate of interest which can be charged or the rate of twelve percent (12%) per annum, or at such rate as the Board may from time to time establish; provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to 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 interest and costs of collection, including without limitation reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot and the Residence thereon enforceable in accordance with the provisions of this Declaration.

4.10 Certificate of Payment. Upon written request by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot and the Residence thereon owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot and the Residence thereon in question.

4.11 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the approval of the Declarant for so long as the Declarant has the right to appoint and remove directors and officers of the Association.

4.12 Specific Assessments. The Board shall have the power to specifically assess pursuant to this Paragraph as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board and shall not

constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein, to-wit:

(a) Expenses of the Association which benefit less than all of the Lots and the Residences thereon, which may be specifically assessed equitably among all of the Lots and the Residences thereon which are benefitted according to the benefit received;

(b) Expenses incurred by the Association pursuant to Paragraph 8.02 hereof; and

(c) Reasonable fines as may be imposed in accordance with the terms of this Declaration and the Bylaws.

4.13 Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of the assessments, charges and liens created herein:

(a) All Common Property; and

(b) All property dedicated to and accepted by any governmental authority or public utility, including without limitation public streets.

ARTICLE V

ARCHITECTURAL CONTROL

5.01 Architectural Review Committee - Creation and Composition.

(a) An Architectural Review Committee (the "ARC") shall be established consisting of not less than three (3) or more than five (5) individuals; provided, however, the ARC shall always have an uneven number of members. The ARC may consist of the Board or of individuals appointed by the Board, as the Board may determine in its discretion from time to time. Notwithstanding anything to the contrary contained herein, the Declarant shall have the right, but not the obligation, to appoint all members of the ARC until the plans for all of the Residences for all of the Lots in the Development have been approved by the ARC and the construction of all such Residences has been completed. Thereafter, the Board shall have the right to appoint the members of the ARC. All costs of operating the ARC may, in the discretion of the Declarant or the Board, be borne by the Association.

(b) Each initial member of the ARC shall be appointed for a term expiring on December 31, 1995. Thereafter, each member of the ARC shall be appointed for a calendar-year term. If any vacancy

shall occur in the membership of the ARC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ARC shall continue to act and such vacancy shall, subject to the provisions of Paragraph 5.01(a), be filled by the Declarant (or the Board if at the time the Board has the right to appoint members of the ARC) at the earliest possible time. Any ARC member may resign at any time by giving written notice of such resignation to the Chairman of the ARC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ARC may be removed at any time with or without cause by the Declarant (or the Board if at the time the Board has the right to appoint members of the ARC).

5.02 Purpose, Powers and Duties of the ARC. The purposes of the ARC are (i) to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ARC for approval (1) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (2) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures, (ii) to grant or deny approvals, waivers and variances pursuant to the provisions of Paragraph 5.16 hereof, and (iii) to perform and carry out such other functions of the ARC as set forth in this Declaration. To the extent necessary to carry out such purposes, the ARC 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 purposes, including, without limitation, 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 ARC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ARC as they shall from time to time determine necessary. The members of the ARC shall be reimbursed by the Association for traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ARC.

5.04 Operations of the ARC.

(a) Meetings. The ARC shall hold meetings as often as may be established by the ARC in order to carry out its duties. 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 ARC then in office. Meetings of the ARC shall be held at such time and at such place as the ARC shall from time to time specify. Notice of each meeting of the ARC shall be given to each member thereof in such manner and in accordance with such procedures for giving notice as may be established from time to time by the ARC. At a meeting of the ARC, 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 ARC present at any meeting thereof at which a quorum is present shall constitute the act of the ARC. In the absence of a quorum, any member of the ARC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The ARC shall maintain such records of its proceedings as it may from time to time deem appropriate. The ARC shall make such records available at reasonable places and times for inspection by Members of the Association and by the Secretary of the Association.

(b) Activities.

(i) The ARC shall adopt and promulgate the Architectural Guidelines and Design Standards described in Paragraph 5.05 hereof and shall, as required, make findings, determinations, rulings and orders with respect to the conformity with said Architectural Guidelines and Design Standards of plans and specifications to be submitted to the ARC for approval pursuant to the provisions of this Declaration. The ARC shall, as required, issue approvals which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(ii) Any two (2) or more members of the ARC may be authorized by the ARC to exercise the full authority of the ARC with respect to all matters over which the ARC has authority as may be specified by resolution of the ARC, except with respect to the adoption or promulgation of the Architectural Guidelines and 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 ARC and upon any applicant for an approval, subject, however, to review and modification by the ARC on its own motion or appeal by the applicant to the ARC as provided in this subparagraph (ii). Written notice of the decision of such two (2) or more members shall be given to any applicant for an approval. 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 ARC. 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 ARC, 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 ARC with respect to such matter shall be final and binding.

5.05 Architectural Guidelines and Design Standards.

(a) The ARC shall from time to time adopt, promulgate, amend, revoke and enforce guidelines (the "Architectural Guidelines and Design Standards") for the purposes of:

(i) governing the form and content of plans and specifications to be submitted to the ARC 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 ARC pursuant to this Declaration; and

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

(b) The ARC shall make a published copy of its current Architectural Guidelines and Design Standards readily available to Members and prospective Members of the Association and to all applicants seeking the ARC's approval.

5.06 Submission of Plans and Specifications. No Structure shall be commenced, installed, constructed, erected, placed, maintained or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered or modified 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 ARC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ARC in the Architectural Guidelines and Design Standards.

5.07 Approval of Plans and Specifications. Upon approval by the ARC of any plans and specifications submitted pursuant to this Declaration, one (1) copy of such plans and specifications, as approved, shall be deposited for permanent record with the ARC and a written confirmation of such approval shall be sent to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ARC'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 requirements or conditions specified as part of any such approval.

5.08 Disapproval of Plans and Specifications. The ARC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

(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 Architectural Guidelines and Design Standards; or

(c) any other matter which, in the judgment of the ARC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards for the Development, including but not limited to the standards as set forth in the Architectural Guidelines and Design Standards, or the Development-Wide Standard, or (ii) as to location to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ARC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified requirements or conditions, the ARC shall, upon written request of the applicant, provide a statement of the grounds upon which such action was based. In any such case the ARC 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 ARC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Failure by the ARC to take action within thirty (30) days after receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications in all respects, and no further approval shall be required unless such plans and specifications are amended or modified, in which event such plans and specifications as so amended or modified shall be resubmitted to the ARC for approval or disapproval in the manner provided hereinabove.

5.10 Inspection Rights. Any employee or agent of the Association or the ARC may, after reasonable notice, at any reasonable time or times, enter upon any Lot or 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 ARC, nor any such employee or 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 Paragraph 5.10.

5.11 Violations. If any Structure shall be installed, constructed, erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ARC pursuant to the provisions of this Article, such installation, construction, 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 ARC such violation shall have occurred, the ARC shall be entitled to stop any construction which is in violation of the provisions of this Article. In addition, the ARC shall notify

the Board which shall take appropriate measures to have the Owner correct the violation; the Board shall provide written notice to the Owner by personal delivery or 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 within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Paragraph 8.02 hereof.

5.12 Certification of Compliance.

(a) Upon completion of the installation, construction or alteration of any Structure in accordance with plans and specifications approved by the ARC, the ARC shall, upon written request of the Owner thereof or upon the ARC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating that the plans and specifications therefor have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ARC.

(b) Any Certificate of Compliance issued in accordance with the provisions of this Paragraph shall be prima facie evidence of the facts therein stated; and as to any purchaser or Mortgagee in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article; provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ARC of the actual construction of Structures or of the workmanship, or to represent or warrant to any party the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment.

(c) The issuance of the Certificate of Compliance shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable federal, state or local law, ordinance, building code, rule or regulation.

5.13 Fees. The ARC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and specifications and of inspections performed pursuant to Paragraph 5.10. The fee shall be established from time to time by the ARC, and the ARC shall give Members and prospective Members of the Association and all applicants seeking the ARC's approval advance notice of the establishment and imposition of such fee and the amount thereof.

5.14 Nondiscrimination by ARC. The ARC 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 ARC in the exercise of its powers granted pursuant to this Declaration shall not take

any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

5.15 Disclaimer as to ARC Approval. Plans and specifications are not reviewed for compliance with any applicable federal, state or local law, ordinance, building code, rule or regulation, or for engineering or structural design or quality of materials or equipment, and by approving such plans and specifications neither the ARC, the Declarant, the Association, nor the members, officers, directors, employees and agents of any of them, assumes liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications, and any such approval shall in no way be construed to certify the acceptability, sufficiency or approval by the ARC, the Declarant, the Association, or the members, officers, directors, employees, and agents of any of them, of the actual construction of any building or other Structure or of the workmanship, or to represent or warrant to any party the quality, function or operation of the building or other Structure or of any construction, workmanship, engineering, materials or equipment. Neither the ARC, the Declarant, the Association, nor the members, officers, directors, employees, and agents of any of them, shall be liable for any injury, damages or loss to anyone submitting plans and specifications for approval, or to any Owner or other person or party, arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans and specifications or the manner, design or quality of approved construction.

5.16 Approvals, Waivers and Variances. It is the intent of this Declaration that the regulation of Lots within the Development as set forth in this Declaration be strictly adhered to. Notwithstanding such intent, it is recognized that particular circumstances may from time to time and on a case-by-case basis necessitate the waiving or varying of certain of the Restrictions set forth in this Declaration. Therefore, for good cause shown, the ARC may, in its sole discretion, waive or vary the covenants, conditions, restrictions, requirements and standards set forth in this Declaration on a case-by-case basis so long as such waiver or variance does not violate the overall scheme and intent of this Declaration. Any waiver or variance, when granted by the ARC, shall be final and binding upon all Owners. The granting of a waiver or variance to one Owner shall not automatically entitle another Owner to the same waiver or variance, it being understood that each request for a waiver or variance shall be treated on its own merits. Further, the granting of a waiver or variance to an Owner shall not automatically entitle such Owner to any subsequent or additional waiver or variance. All approvals, waivers and variances by the ARC shall be in writing and signed by at least two (2) members of the ARC and, if requested by the applicant, shall be in recordable form. No approval, waiver or variance in any other form shall be binding on the Association, the ARC or the Declarant.

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 constructed, erected or placed thereon, in the Development.

6.02 Minimum Floor Area, Use and Setback Restrictions and Requirements.

(a) Minimum Floor Area.

(i) With respect to a Lot in the Development, the minimum total climate controlled floor area of the Residence, exclusive of any garage, shall be 3,000 square feet.

(ii) For purposes of subparagraph (i), "climate controlled floor area" shall mean floor area served by a central heating and air conditioning system or systems. Owners shall include sufficient storage space in the Residence to eliminate the need for outdoor storage sheds.

(b) Restriction of Use: Single-Family Detached Dwellings.

(i) Lots in the Development may be used for residential purposes only and for no other purpose.

(ii) No more than one (1) single-family detached dwelling not to exceed two (2) stories in height, excluding a basement, shall be constructed, erected or permitted to remain on any Lot in the Development.

(c) Setback Requirements. No Structure shall be constructed, erected or placed on any Lot in the Development unless its location is in compliance with the following setback requirements:

(i) Front. No building or other Structure (excluding driveways, sidewalks, mailboxes and landscaping approved by the ARC) shall be located nearer than thirty (30) feet to the front property line of any Lot; except that (1) in the case of Lot 16, Block "A", no building or other Structure (excluding driveways, sidewalks, mailboxes and landscaping approved by the ARC) shall be located nearer than forty (40) feet to the front property line of such Lot, (2) in the case of Lot 26, Block "A", no building or other Structure (excluding driveways, sidewalks, mailboxes and landscaping approved by the ARC) shall be located nearer than fifty (50) feet to the front property line of such Lot, and (3) in the case of Lot 27, Block "A", no building or other Structure (excluding driveways, sidewalks, mailboxes and landscaping approved by the ARC) shall be located nearer than seventy (70) feet to the front property line of such Lot.

(ii) Side. No building or other Structure shall be located nearer than ten (10) feet to the side property line of any diversely owned adjoining Lot; except that in the case of any corner Lots, no building or other Structure shall be located nearer than thirty (30) feet to the side property line adjacent to a street.

(iii) Rear. No building or other Structure shall be located nearer than forty (40) feet to the rear property line of any Lot.

(iv) For the purpose of this subparagraph (c), eaves, steps, patios and open porches shall be considered as a part of a building or other Structure.

(v) Due to the topography of the Property, the ARC shall have the right and authority, in its sole discretion, to alter or waive any portion or all of the setback requirements applicable to a Lot. The ARC also shall have the right and authority, in its sole discretion, to alter or waive any portion or all of the side and rear setback requirements applicable to a Lot to allow the construction or installation of driveways, fences, walls, and other accessory Structures and landscaping on a Lot; provided, however, any such alteration or waiver by the ARC shall not relieve any Owner from the obligation to comply with the applicable zoning ordinances of Columbus, Georgia, including, without limitation, any requirement of obtaining any variance or other approval of or with respect to any proposed construction or installation which may be required thereunder.

6.03 Resubdivision of Lots. No Lot may be subdivided into two or more smaller Lots each intended for ownership and use as a single-family dwelling site. Notwithstanding the foregoing, the Declarant hereby expressly reserves the right to replat any Lot or Lots owned by the Declarant. The Declarant or the Owner of any Lots, subject to prior written approval by the ARC, may combine two or more Lots into a single Lot for the purpose of constructing a single Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter.

6.04 Erosion Control. No land-disturbing activity which may cause or create erosion or siltation shall be undertaken on any Lot, unless such activity is performed or conducted in accordance with the standards and requirements of all applicable state and local statutes and ordinances, and all rules and regulations promulgated pursuant to any such statutes and ordinances, relating to soil erosion and sedimentation prevention and control. Each Owner, by acceptance of a deed conveying a Lot, acknowledges and agrees that neither the ARC, the Association nor the Declarant shall have any liability or responsibility for ensuring compliance by Owners, their contractors or their agents with any applicable standards and requirements of any such state and local statutes, ordinances, rules and regulations in connection with any such land-disturbing activities.

6.05 Trees. No trees (other than dead or diseased trees) shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted to the ARC pursuant to the provisions hereof. Guidelines relating to the preservation of trees and other natural vegetation upon Lots may be included in the Architectural Guidelines and Design Standards of the ARC.

6.06 Accessory Structures; Temporary Buildings and Other Structures.

(a) No accessory Structures, including, without limitation, swimming pools, playhouses, greenhouses, doghouses, flagpoles, exterior television or radio antennae, satellite dish or receiver, and solar equipment, shall be installed, erected, constructed and maintained on any Lot or Structure without the prior written approval by the ARC of plans and specifications therefor. No decorative or ornamental objects, including, without limitation, sculptures, birdbaths and fountains, shall be installed, erected, constructed and maintained on the street side of any Lot without the prior written approval of the ARC. No antennae shall be installed or used on any Lot or Structure for the purpose of transmitting electronic signals. Guidelines relating to the construction, installation or erection of accessory Structures on Lots, including, but not limited to, limitations and restrictions on the location, size, height and exterior materials of accessory Structures, may be included in the Architectural Guidelines and Design Standards of the ARC.

(b) No Structures shall be constructed, erected or permitted to remain on any Lot prior to the construction of a Residence thereon.

(c) No temporary building or other Structures of a temporary character, trailer, tent, shack, garage or building under construction shall be used, temporarily or permanently, as a Residence on any Lot. No Owner, contractor or builder shall erect on any Lot any temporary building or other Structures of a temporary character or any trailer for use in connection with construction on such Lot, without the prior written approval of the ARC.

6.07 Signs.

(a) No signs of any character or description whatsoever and no advertising matter shall, without the prior written approval of the ARC, be installed, placed 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) professional security signs not to exceed six (6) inches by six (6) inches in size displayed from within a Residence on a Lot;

(iii) not more than one "For Sale" or "For Rent" sign, such sign having a maximum face area of six (6) square feet; provided that such sign may only be displayed in the front yard of a Lot; and provided further, 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 by Owners, the signs made available by the Association must be used; and

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

(b) During approved construction of any Structure, signs used by a contractor or builder to advertise the property during the construction and sale period will be permitted, subject to the prior approval thereof by the ARC.

(c) Guidelines relating to the size, color, design and location of signs may be included in the Architectural Guidelines and Design Standards of the ARC.

6.08 Fences and Walls. No fence or wall of any kind shall be constructed, erected, maintained, or altered on any Lot without the prior written approval by the ARC of plans and specifications therefor. Unfinished chain link fences shall not be permitted on any Lot. Guidelines relating to the height, location, design, materials and uses of fences and walls may be included in the Architectural Guidelines and Design Standards of the ARC.

6.09 Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval by the ARC of plans and specifications therefor. Guidelines relating to the design, location and materials of roads and driveways may be included in the Architectural Guidelines and Design Standards of the ARC.

6.10 Clotheslines; Screening of Garbage Cans, Wood Piles, Air Conditioners and Other Equipment.

(a) Clotheslines or drying yards shall not be permitted on any Lot.

(b) All garbage or sanitary cans, containers and receptacles, wood piles, air conditioners and other equipment shall be kept screened by adequate planting or fencing so as to conceal them from view from streets and adjacent property, and may be maintained in an enclosed or landscaped area in accordance with plans and specifications approved by the ARC.

6.11 Mailboxes and Newspaper Tubes. No mailbox, newspaper tube or similar device shall be placed, erected, allowed or maintained on any Lot without the prior written approval by the ARC of plans and specifications therefor, and if at the time of any desired installation of a mailbox, newspaper tube or similar device, the ARC has approved a mailbox, newspaper tube or similar device of a

particular size, color, style and design for use in the Development by all Owners, then such approved mailbox, newspaper tube or similar device must be used.

6.12 Maintenance.

(a) 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 replacing, repairing, painting and staining (or other appropriate external care) of all Structures; (ii) the seeding, watering, weeding and mowing of all lawns; (iii) keeping and maintaining Lots free of unsightly weeds, rubbish, trash, debris, garbage and other unsightly materials; and (iv) 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. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the margin or curbing of any right-of-way bordering said Lot, unless the maintenance of such area is being performed by the Association pursuant to a landscaping easement in favor of the Association with respect to such area or any portion thereof.

(b) In order to promote the consistent maintenance of landscaping of Lots in the Development, each Lot shall be required to have an underground sprinkler system for irrigation of any landscaped areas of the front and side yards of such Lot.

(c) Guidelines relating to the maintenance of Structures and landscaping may be included in the Architectural Guidelines and Design Standards of the ARC.

6.13 Personal and Commercial Vehicles and Trailers.

(a) (i) No tractor, truck tractor, commercial vehicle having more than two (2) axles or weighing more than 6,000 pounds, house trailer or mobile home shall be kept or permitted on any Lot.

(ii) Vehicles used primarily for commercial purposes and vehicles with commercial writings on their exteriors shall not be kept or parked on any Lot except in garages. Notwithstanding the foregoing, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on Lots and on Common Property during normal business hours for the purpose of serving any Lot or the Common Property; provided that, without the written approval of the Board, no such vehicles shall be authorized to remain on a Lot or on the Common Property overnight or for any purpose except for serving a Lot or the Common Property.

(b) All motor vehicles owned, leased or used by any Owner or kept on any Lot shall be currently licensed and maintained in proper operating condition so as not to be or create a hazard or nuisance by reason of noise, exhaust emissions or appearance. All motor vehicles, including trail bikes and motorcycles, shall be

driven only upon paved streets and driveways, and otherwise in accordance with applicable laws and ordinances.

(c) Motor homes, campers, trucks with camper tops, recreational vehicles, boats and boat trailers, and similar vehicles and equipment may be kept on a Lot, provided such vehicle or equipment is concealed from view from streets.

6.14 Above-Ground Swimming Pools; Recreational Equipment. No above-ground swimming pool shall be permitted on any Lot. Recreational and playground equipment shall be kept, placed or installed only upon the rear yard of a Lot and as otherwise approved by the ARC.

6.15 Animals. No livestock, poultry or other agricultural animals may be raised, bred or kept on any Lot or in any Structure thereon. No other animals of any kind, except dogs, cats and other animals commonly accepted as household pets, may be kept on any Lot or in any Structure thereon. Owners shall not allow such household pets to become a nuisance or annoyance to the neighborhood. Such permitted household pets shall not be raised, bred or kept for commercial purposes.

6.16 Solid Waste.

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

(b) No person shall burn rubbish, debris, 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 ARC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored or allowed to accumulate on any Lot.

(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, garbage or sanitary cans, containers and receptacles may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such devices shall be screened or enclosed in the manner herein provided so as to conceal them from view from streets and adjacent property.

(e) During approved construction of any Structure on a Lot, each Lot shall be kept free and clear of debris and trash, and the builder, contractor and/or Lot Owner shall provide or cause to be provided standard construction on-site sanitary facilities for their workmen.

6.17 Streets. All Lots shall be sold with the provision that the Declarant, the Association, or the Consolidated Government of Columbus, Georgia, may at any time, notwithstanding any provisions hereof to the contrary, lower or raise the street surfaces to

conform with the grades established by an engineer of the Declarant, the Association, or the Consolidated Government of Columbus, Georgia, and any such action shall in no way give rise to a claim against any of the foregoing for damages to the abutting property.

6.18 Nuisances. No noxious, destructive or offensive activity shall be carried on upon any Lot or on Common Property and nothing shall be done thereon which may be or become an annoyance or nuisance to the neighborhood. No Owner of a Lot may use or allow the use of the Lot or any Common Property in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or their families or guests, or in such a way as to constitute, in the Board's sole opinion, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

ARTICLE VII

EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01 Reservation of Easements.

(a) Drainage and Utility Easements. The Declarant hereby expressly reserves to itself and its successors and assigns forever, a drainage and utility easement eight (8) feet in width running along and parallel to each side property line of each Lot in the Development and a drainage and utility easement twenty (20) feet in width running along and parallel to the rear property line of each Lot in the Development. The foregoing drainage and utility easements hereby reserved shall be perpetual easements for the purposes of erecting, installing, constructing, maintaining, servicing, repairing and replacing (i) public or quasi-public utilities and services, including, but not limited to, electricity, telephone, cable television, sanitary sewage facilities, pipelines for supplying gas and water, and other utilities and related facilities, and (ii) open ditch storm water drainage and other storm water drainage facilities. The Declarant further hereby reserves for itself and its successors and assigns the right to enter upon each Lot, from time to time, for the purposes of installing such utilities, excavating ditches, and servicing, repairing, maintaining and replacing any of the same within said easement areas.

(b) Sanitary Sewer Easements. The Lots in the Development are expressly made subject to all "sanitary sewer easements" in, on, across, over and under the Lots in the Development, which sanitary sewer easements are shown and depicted on the Development Survey. Except for such sanitary sewer easements or portions of such sanitary sewer easements which heretofore were conveyed to or are now held by the Consolidated Government of Columbus, Georgia, the Declarant hereby expressly reserves to itself and its successors and assigns forever, all sanitary sewer easements in, on, across, over and under the Lots in the Development, which

sanitary sewer easements are shown and depicted on the Development Survey. Such sanitary sewer easements hereby reserved shall be perpetual easements for the purposes of erecting, installing, constructing, servicing, maintaining, repairing and replacing sanitary sewage facilities. The Declarant further hereby reserves for itself and its successors and assigns the right to enter upon each such Lot, from time to time, for the purposes of erecting, installing, constructing, servicing, maintaining, repairing and replacing such sanitary sewage facilities within said easement areas. By recording the Development Survey and executing and recording this Declaration, the Declarant intends to and does hereby dedicate and convey to the Consolidated Government of Columbus, Georgia, forever, for the public use and benefit, all of the foregoing sanitary sewer easements, and related rights, hereby reserved by the Declarant in this Paragraph 7.01(b).

(c) Non-Access, Buffer Area Easement - Lots 1, 2, 3, 4, 5 and 29, Block "A". The Declarant hereby expressly reserves to itself and its successors and assigns forever, perpetual non-access, buffer area easements fifty (50) feet in width in, on, across and over Lots 1, 2, and 29, Block "A," and running along and parallel to the eastern or rear property lines of said Lots 1 and 2 and the eastern or side property line of said Lot 29, and seventy-five (75) feet in width in, on, across and over Lots 3, 4 and 5, Block "A," and running along and parallel to the eastern or rear property lines of said Lots 3, 4 and 5, as such easements are shown and depicted on the Development Survey. Such non-access, buffer area easements so reserved shall be for the purposes of (i) restricting and prohibiting access, ingress and egress to and from the foregoing Lots and any street or road which now exists or which hereafter may be constructed adjacent to such Lots, and (ii) providing an area for scenic and natural area preservation between the Development and any street or road which now exists or which hereafter may be constructed adjacent to such Lots. No improvements of any kind, including, without limitation, improvements for vehicular access, ingress and egress, may be installed, constructed or maintained by the Owners in, on, across, over and under such easement areas. Such easement areas shall be preserved in their natural state and no removal or clearing of trees (other than dead or diseased trees) shall be permitted. The Owner of each such Lot shall keep and maintain the easement area on such Lot free and clear of all underbrush and undergrowth.

(d) Landscaping, Signage and Wall Easement - Lots 1 and 29, Block "A." The Declarant hereby expressly reserves to itself and its successors and assigns forever, a perpetual easement in, on, across, over and under those portions of Lots 1 and 29, Block "A," as shown and designated as the "landscaping, signage and wall easement" on the Development Survey, for the following purposes:

(i) erecting, constructing, maintaining, repairing and replacing the wall located on and within such easement area;

(ii) erecting, installing, maintaining, repairing and replacing signage, and related lighting facilities, for the Development; and

(iii) the planting or replanting of sod, hedges, shrubbery, bushes, trees, flowers and plants of any nature, and the planting, replanting and maintenance of other forms of landscaping, including, but not limited to, erecting, installing, maintaining, repairing and replacing sprinkler/irrigation facilities, lighting and similar improvements within such easement area, in connection with and as a part of any such landscaping for the Development.

The Declarant further hereby reserves for itself and its successors and assigns the right to enter upon each of the foregoing Lots in the Development, from time to time, for the purposes of erecting, constructing, installing, maintaining, repairing and replacing the wall, signage, landscaping and other improvements described in this Paragraph 7.01(d).

(e) Construction Easement on Lots 1, 2, 3, 4 and 5, Block "A." The Declarant hereby expressly reserves to itself and its successors and assigns a "construction easement" thirty (30) feet in width in, on, across, over and under Lots 1, 2, 3, 4 and 5, Block "A," and running along and parallel to the eastern or rear property lines of said Lots, as such "construction easement" is shown and depicted on the Development Survey, for the purpose of providing a temporary construction area for and in connection with the construction of a paved road on the land of the Declarant lying north and east of and adjacent to the foregoing easement area, said easement specifically including, but not limited to, (i) slope control and erosion control purposes, including, but not limited to, the right to grade and plant slopes and the right to raise or lower the grade or elevation of the land comprising such easement area, in connection with the construction of such road, and (ii) the right of access, ingress and egress over, across and through such easement area in connection with the construction of such road. The foregoing "construction easement" hereby reserved shall automatically expire and terminate upon the earlier of (i) the expiration of two (2) years following acceptance of said road by the Consolidated Government of Columbus, Georgia, for the public use and benefit, or (ii) the expiration of twenty (20) years from the effective date hereof.

(f) Storm Drainage Easements.

(i) Storm Drainage Easements - Lots 1, 4 and 5, Block "A." The Declarant hereby expressly reserves to itself and its successors and assigns forever, the storm drainage easements in, on, across, over and under Lots 1, 4 and 5, Block "A," and located along the eastern or rear property lines of said Lots, as such easements are shown and depicted on the Development Survey. Such storm drainage easements hereby reserved shall be perpetual easements for the purposes of erecting, installing, constructing, maintaining, servicing, repairing and replacing open ditch storm water drainage and other storm water drainage facilities in

connection with any future development of, and for the benefit of, the Declarant's adjacent property. The Declarant further hereby reserves for itself and its successors and assigns the right to enter upon each of the foregoing Lots, from time to time, for the purposes of installing such facilities, excavating ditches, and servicing, repairing, maintaining and replacing any of the same within said easement areas.

(ii) Other Storm Drainage Easements. The Declarant hereby expressly reserves to itself and its successors and assigns forever, the storm drainage easements in, on, across, over and under the Lots in the Development (other than the storm drainage easements reserved in subparagraph (i) of this Paragraph 7.01(f) above), as such easements are shown and depicted on the Development Survey. Such storm drainage easements hereby reserved shall be perpetual easements for the purposes of erecting, installing, constructing, maintaining, servicing, repairing and replacing open ditch storm water drainage and other storm water drainage facilities. The Declarant further hereby reserves for itself and its successors and assigns the right to enter upon each such Lot, from time to time, for the purposes of installing such facilities, excavating ditches, and servicing, repairing, maintaining and replacing any of the same within said easement areas.

(g) Right to Reserve Easements on Declarant's Property. The Declarant hereby expressly reserves to itself and its successors and assigns, the right to create perpetual easements in, on, across, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example and not limitation, the following:

(i) the erection, installation, construction, maintenance, repair and replacement of (1) public or quasi-public utilities and services, including, but not limited to, electricity, telephone, cable television, sanitary sewage facilities (public and private), irrigation systems, pipelines for supplying gas and water, and any other utilities, services or functions and related facilities, and (2) open ditch storm water drainage and other storm water drainage facilities;

(ii) slope control purposes, including the right to grade and plant slopes and 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;

(iii) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature, and the planting, replanting and maintenance of other forms of landscaping, including, but not limited to, erecting, installing, constructing, maintaining, repairing, replacing and relocating fences, walls, signage, lighting, sprinkler/irrigation facilities and similar improvements in connection with and as a part of any landscaping within any such easement area; and

(iv) restricting and prohibiting access, ingress and egress to and from such Property or any portion thereof and any street or road which now exists or which hereafter may be constructed adjacent to such Property, and providing areas for scenic and natural area preservation between the Development and any street or road which now exists or which hereafter may be constructed adjacent to such Property or any portion thereof.

7.02 Easement for Entry. The Declarant and its successors and assigns shall have the right and easement, which may be exercised by the directors, officers, employees and agents of the Declarant and its successors and assigns, at all reasonable times to enter upon all parts of each easement area (which for purposes hereof shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown or described in this Declaration or in a recorded deed or easement agreement or on any recorded survey or plat relating thereto) 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, provided the same are done in accordance with the provisions of this Paragraph 7.02.

7.03 Reservation of Rights and Easements of Declarant. The Declarant hereby reserves for itself the following rights, privileges and easements with respect to the Property, for the benefit of those portions of the Property from time to time owned by the Declarant:

(a) The right, privilege and easement (but not the obligation) to construct, install, maintain, repair, replace, remove, relocate and use improvements on, in, under, over and across all or any part of the Common Property; and

(b) The right, privilege and easement (but not the obligation) to install, maintain, replace, remove and relocate, at Declarant's expense, and without the approval of the Association, such hedges, shrubbery, bushes, trees, flowers, plants and other landscaping of any nature, including, but not limited to, erecting, installing, constructing, maintaining, repairing, replacing and relocating fences, walls, signage, lighting, sprinkler/irrigation facilities and similar improvements in connection with and as a part of any landscaping, as the Declarant shall from time to time desire, within the Common Property.

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 the Declaration, the most restrictive provision shall govern and control.

ARTICLE VIIIENFORCEMENT

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 for so long as it retains the right and authority to appoint and remove directors and officers of the Association, or if it is an Owner, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns. Notwithstanding the foregoing, neither the Declarant, the Association, nor their respective directors, officers or employees, shall be under any obligation, or may be compelled, to take any action to enforce the terms of this Declaration, the Bylaws, or any rules and regulations of the Association.

8.02 Right of Abatement.

(a) In the event of a violation or breach of any Restriction contained in this Declaration, the Association, acting through the Board, shall give written notice by personal delivery or 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 delivery or mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Paragraph and in Paragraph 5.11 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot, 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 hereof, 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 Paragraph, and with the cost thereof and all costs of collection, including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or twelve percent (12%) per annum, 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 Paragraph 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Paragraph 4.01 hereof, (iii) the lien of any first priority Mortgage covering the Lot and/or the Residence thereon, and (iv)

the lien of any secondary purchase money Mortgage covering the Lot and/or the Residence thereon, provided that neither the grantee nor any successor grantee of such Mortgage is the seller of the Lot or the Residence thereon.

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

8.04 Collection of Assessments and Enforcement of Lien.

(a) 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 (together with any Residence and/or other Structures thereon) 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.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns, the following irrevocable power of attorney: To sell said Lot (together with any Residence and/or other Structures thereon) subject to the lien at auction, at the usual place of conducting sales at the Courthouse in Muscogee County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Muscogee County, Georgia, are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or its assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or its assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the

conveyance to be made by the Association, or its assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot, and the Association or its assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent (15%) of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT AND/OR RESIDENCE SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

8.05 No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, or 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. 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 Muscogee County, Georgia, after which time this Declaration and the Restrictions shall automatically be renewed for successive periods of twenty (20) years each, unless terminated as provided in O.C.G.A. §44-5-60(d). There shall be no limit on the number of times this Declaration and the Restrictions contained herein shall be renewed. Notwithstanding the foregoing provisions to the contrary, any perpetual easement reserved herein shall be permanent and have perpetual duration if so provided in the language reserving such easement.

9.02 Amendments by Declarant.

(a) During any period in which the Declarant retains the right to appoint and remove any directors and officers of the Association, the Declarant may amend this Declaration by an instrument in writing filed and recorded in the Office of the Clerk of the Superior Court of Muscogee County, Georgia, without the approval of any Member or Mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written approval or consent thereto by a majority in number of the then existing Members 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 approval or consent thereto of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by Eligible Mortgage Holders and so affected by such amendment. Any amendment made pursuant to this Paragraph 9.02 shall be certified by the Declarant as having been duly approved by the Declarant, and such Members and Eligible Mortgage Holders 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, agrees to be bound by such amendments as are permitted by this Paragraph 9.02.

(b) Notwithstanding any other provision of this Declaration to the contrary, each Owner, by acceptance of a deed or other conveyance to a Lot, agrees that during any period in which the Declarant retains the right to appoint and remove any directors and officers of the Association, the Declarant may amend this Declaration, the Bylaws or any other instruments relating to the Development, and thereafter, the Board may amend this Declaration, the Bylaws or any other instruments relating to the Development, without the consent or approval of any Member or Mortgagee (i) 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, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Department of Housing and Urban Development, to enable such lender or purchaser to make or purchase Mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Lots subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

9.03 Amendments by Association.

(a) Amendments to this Declaration, other than those authorized by Paragraph 9.02 hereof, shall be adopted by the affirmative vote, written consent, or any combination of affirmative vote and written consent of Members holding at least sixty-six and two-thirds percent (66-2/3%) 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 Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders, and (ii) during any period in which the Declarant has the right to appoint and remove directors and officers of the Association, such amendment must be approved by the Declarant. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the subject matter of the proposed amendment and the fact that such proposed amendment will be considered at such meeting.

(b) The agreement of the required percentage of the Members and, where required, the Declarant and the required percentage of any Eligible Mortgage Holders, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that the Declarant does not then have the right to approve such amendment, the sworn statement of the President or any Vice President and the Secretary 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 be effective only when recorded or at such later date as may be specified in the amendment itself.

ARTICLE XINSURANCE

10.01 Insurance. At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all insurable facilities and improvements located on the Common Property 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 one hundred percent (100%) of the cost of replacement, less any deductible amounts, of such improvements, fixtures and contents thereof; and (ii) public liability insurance with such coverages and in such amounts as shall be determined by the Board as appropriate for the type of activities which shall be allowed on the Common Property and for the other activities of the Association. In addition to the other insurance required by this Paragraph 10.01 and Paragraph 3.06, the Association shall obtain worker's compensation insurance, if and to the extent required by law, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if such bonds are

reasonably available in the determination of the Board. 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. The premiums for such insurance shall be common expenses paid for by the Association.

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

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, so long as the Declarant has the right and authority to appoint and remove directors and officers of the Association, 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 destruction, 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 twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be replaced, 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 Development in a neat and attractive condition.

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.

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 of competent jurisdiction that any restriction, covenant or other provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

11.03 Headings. The headings of the Articles and Paragraphs 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 shall be deemed to include the plural, and vice versa.

11.05 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ARC, an Owner, or any other person, shall be in writing. Unless another form or method of notification is required or permitted under another paragraph hereof, all such writings shall be sufficient only if delivered in person or deposited in the United States Mail, with sufficient first-class postage prepaid, and sent to the following addresses:

- (a) Declarant: The Jordan Company
 Suite 100
 6001 River Road
 Columbus, GA 31904

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

Any written communication transmitted by mail in accordance with this Paragraph 11.05 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. The 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, the 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 and agrees that the Declarant shall have no such liability.

11.07 Deannexation. The Declarant has, and hereby reserves, the right to amend this Declaration, unilaterally and in its sole discretion, at any time so long as it has the right and authority to appoint and remove directors and officers of the Association, without prior notice and without the consent of any Member or Mortgagee, for the purpose of removing certain portions of the Property then owned by the Declarant or the Association from the provisions of this Declaration to the extent originally annexed in error or as a result of any changes whatsoever in the plans for the Property and the Development desired to be effected by the Declarant, provided such removal is not contrary to the overall scheme of development for the Property.

11.08 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 Elizabeth II, Queen of England.

ARTICLE XII

MORTGAGEE PROVISIONS

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

12.01 Notices of Certain Events. A holder of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, and the Lot number or Residence address, such holder thereby becoming an "Eligible Mortgage 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 Residence on which there is a first Mortgage held by such Eligible Mortgage Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Residence subject to a first Mortgage held by such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, and any default in the performance by an Owner of a Residence of any other obligation under the Declaration or Bylaws 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 require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

12.02 Actions Requiring Consent. Unless at least sixty-six and two-thirds percent (66-2/3%) of the first Mortgagees or Members representing at least sixty-six and two-thirds percent (66-2/3%) of the total Association vote entitled to vote thereon consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property (the granting of easements or rights-of-way for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subparagraph);

(b) change the pro rata interest or obligations of any individual Lot or Residence for the purpose of levying assessments or other charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(c) by act or omission seek to abandon or terminate the Association;

(d) partition or subdivide any Lot into two or more smaller Lots each intended for ownership and use as a single-family dwelling site; or

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

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

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

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

12.05 Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any 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.

12.06 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 corporate law for any of the acts set out in this Article.

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

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

THE JORDAN COMPANY

By: Sandra J. McKinnon
Title: Vice President

Attest: Jaren J. Foster
Title: Assistant Secretary
(CORPORATE SEAL)

Signed, sealed, attested and delivered in the presence of:

Witness

Sinda J. Poole
Notary Public

[Notarial Seal]

Date of Execution by Notary: 10/9/95
My Commission Expires: 8/8/98