

plan for subdivision, improvement and sale of real property and are established for the purpose of enhancing the value, desirability and attractiveness of the real property and every part thereof. The covenants, restrictions and easements set forth herein shall run with the land and shall be binding on all parties having or acquiring any right, title or interest therein or thereto, and shall, subject to the limitations herein provided, inure to the benefit of each "Owner" (as herein defined), his heirs, successors and assigns.

ARTICLE I
DEFINITIONS

The following terms, when used herein, shall have the meaning ascribed thereto below:

1.1 "Act" shall mean the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-22, et seq. (Michie 1982), as such act may be amended from time to time.

1.2 "Annexation" shall mean the process by which the "Annexation Property" is made subject to this Declaration pursuant to Article X.

1.3 "Annexation Property" shall mean the tract or tracts or parcel or parcels of land made subject to this Declaration by an amendment or amendments of this Declaration pursuant to the terms of Section 9.2.

1.4 "Architectural Control Committee" shall mean the committee established pursuant to Article V to supervise compliance with the "Design Standards."

1.5 "Articles" shall mean and refer to the Articles of Incorporation of the "Association," as amended from time to time.

1.6 "Assessment" shall mean and refer to an "Owner's" share of the charges, fees or other expenses from time to time assessed against an "Owner" by the "Association" in the manner herein provided.

1.7 "Assessment Year" shall mean the calendar year, with the first Assessment Year commencing on January 1 of the year immediately following the "Commencement Date."

1.8 "Association" shall mean Reddstone Homeowners Association, Inc., a Georgia nonprofit corporation, or any successor thereof, charged with the duties and obligations of the Association hereunder, its successors and assigns.

1.9 "Board" shall mean the Board of Directors of the

Association, duly elected and acting pursuant to the Articles and "Bylaws."

1.10 "Bylaws" shall mean and refer to the Bylaws of the Association which have been adopted by the Board, as they may from time to time be amended.

1.11 "Commencement Date" shall mean the date designated by Declarant, upon which "Lots" become subject to Assessments.

1.12 "Common Property" shall mean all real and all personal property in which the Association owns an interest for the common use and enjoyment of all the "Owners." Said interest or interests may include, without limitation, estates in fee, estates for a term of years, usufructs or easements.

1.13 "Declarant" shall mean and refer to: (a) Sharon McSwain Development, Inc., a Georgia corporation (herein referred to as the "Original Declarant"); (b) Peachtree Residential Properties, Inc., a Georgia corporation ("Peachtree"), at such time as Peachtree acquires any portion of the Submitted Property and, thereafter, Peachtree shall continue to be the Declarant hereunder (even if from time to time Peachtree does not own any portion of the Submitted Property) until the date on which all Lots shall have been conveyed to Persons who have not purchased such Lots for the purpose of construction of a residence and resale of such Lot and residence, subject, however, to the provisions of Section 3.8 hereof; or (c) any successor-in-title to the Original Declarant (or, after Peachtree has become Declarant, a successor-in-title to Peachtree) to all or some portion of the Submitted Property, provided such successor-in-title shall acquire such property for purposes of development or sale, and provided further, that in a written instrument, such successor-in-title is expressly designated as Declarant hereunder by the grantor of such conveyance, which grantor shall be Declarant hereunder at the time of such conveyance.

1.14 "Design Standards" shall mean the standards adopted, promulgated, amended, revoked and enforced by the Architectural Control Committee pursuant to Article V.

1.15 "Governmental Requirements" shall mean all laws, ordinances, rules, and regulations of any governmental authority, presently in effect or hereafter enacted, as amended from time to time.

1.16 "Lot" shall mean a parcel of land designated as a lot on a "Plat."

1.17 "Mortgage" shall mean any mortgage, deed to secure debt, and any and all other similar instruments used for the

purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

1.18 "Mortgagee" shall mean the holder of a Mortgage.

1.19 "Occupant" shall mean any Person who is in possession of a Lot.

1.20 "Owner" shall mean the record owner (including Declarant), whether one or more Persons or entities, of the 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, the Person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.21 "Person" shall mean a natural person, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

1.22 "Plat" or "Plats" means the subdivision plat or plats, with respect to the Submitted Property, to be recorded in the Office of the Clerk of the Superior Court of the county in which the Submitted Property is located and the subdivision plats which shall be recorded with respect to any portion of the Annexation Property which is made subject to this Declaration by Annexation.

1.23 "Property" means that real estate which is submitted to the Act and the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference. The Property is a residential property owners development which shall be subject to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq. (Michie 1982), as may be amended, upon the first to occur of (i) such time designated by Declarant in a written instrument recorded by Declarant in the deed records of the county in which the Submitted Property is located, or (ii) the date upon which every Lot has been conveyed by Declarant to Persons who have not purchased such Lots for the purpose of construction of a residence and resale of such Lot and residence (with Declarant retaining no further interest or estate in the Submitted Property). Prior to the occurrence of the first to occur of clauses (i) and (ii), above, the Property shall not be subject to the Act, and any reference to the Act in this Declaration shall be construed to apply only at such time as the Property is subject to the Act.

1.24 "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.25 "Two-Thirds Vote" means a favorable vote by at least

two-thirds (2/3) of the Owners who are voting in accordance with the provisions of the Bylaws of the Association, this Declaration and/or applicable law.

1.26 "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 of limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot; (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; and (c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.26 applies to such change.

1.27 "Subdivision" means the Submitted Property.

ARTICLE II
COMMON PROPERTY

2.1 Conveyance of Common Property.

2.1.1 Declarant may from time to time convey real and personal property to the Association, or grant easements to the Association, to be held by the Association as Common Property. The Association hereby covenants and agrees to accept from Declarant, and shall be deemed to automatically accept delivery (upon recordation, if required, by Declarant) of, all such conveyances of Common Property. 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 all landscaping and improvements situated on the Common Property. The Association shall maintain all entry features at the main entrance of the Subdivision, similar streetscapes located at other street intersections within the Subdivision, and all medians and cul-de-sac islands located in the Subdivision. The Association shall also maintain all property outside of Lots located within the Subdivision which was originally maintained by Declarant. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Subdivision, where the Board has determined that such maintenance would benefit all Owners.

Association to be used as Common Property, Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may, subject to the applicable Zoning Ordinance of the county in which the Submitted Property is located, designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or portion thereof may be used, and in such event, such real property or portion thereof shall not, without a Two-Thirds Vote and consent of Declarant, be used for any different purpose or purposes.

2.5 Entrance Easements. It is contemplated that certain easements for the erection and maintenance of entrance monuments, subdivision signs, walls, fences and other structures intended to provide an attractive atmosphere or to provide privacy to Owners within the Subdivision will be reserved by Declarant and may be set forth on a Plat or Plats, or on plats of survey of the Subdivision, or portions thereof, recorded in the County Records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Subdivision. Said easement areas shall be designated as such and all Owners taking title to any Lot upon which such an easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the deed conveying such easements to the Association.

2.6 Encroachment Easements. If any buildings or other improvements initially constructed by Declarant, or by any "Builder" (as herein defined) who constructed the original dwelling, on any of the Lots, including without limitation any eaves, roof overhangs, balconies, siding, porches, or other structures which may be attached to the walls and roof of such buildings, and which may encroach onto or over or extend into the air space of any portion of the Common Property or any other Lot, or, conversely, if any such improvements initially constructed on the Common Property encroach onto or over portions of any Lot, a valid easement for the encroachment, for surface and subsurface support thereof, and for the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

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

ARTICLE III

rules and regulations of the Association relating to the use, operation and maintenance of the Common Property. Such suspension shall be for the balance of the period in which such Owner or Person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.5, 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.

3.6 Termination of Membership. Membership shall cease only when a Person ceases to be an Owner.

3.7 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 Owners shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles and the Bylaws.

3.8 Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles or in the Bylaws, Declarant hereby retains the right to appoint and remove any member or members of the Board and any officer or officers of the Association until such time as the first of the following events shall occur: (a) June 30, 2006; (b) the date on which (i) all Lots shall have been conveyed to Persons who have not purchased such Lots for the purpose of construction of a residence and resale of such Lot and residence, or (ii) if the Veterans Administration ("VA") is guaranteeing any Mortgage in the Subdivision, or the Department of Housing and Urban Development ("HUD") is insuring any Mortgage in the Subdivision, 75% of the Lots shall have been conveyed to Persons who have not purchased such Lots for the purpose of construction of a residence and resale of such Lot and residence; or (c) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant. 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 Section 3.8, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots. A special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board which shall undertake the responsibilities of the Board and Declarant shall deliver to the newly elected Board the books, accounts and records, if any, which Declarant has kept on behalf of the Association. Each Owner by acceptance of a deed to or other conveyance of Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as is provided in this Section 3.8.

ARTICLE IV
ASSESSMENTS

4.1 Covenant for Assessments and Creation of Lien and Personal Obligation. The Declarant, to the extent that the Declarant is subject to Assessments, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, legal representatives, successors and assigns, by acceptance of a deed for 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 all Lots owned by him; (b) to pay to the Association any special Assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him; (c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such Assessments are made to secure payment of such Assessments and any interest thereon as provided herein and costs of collection, including reasonable attorneys' fees; (d) that such continuing charge and lien on such Lots binds such Lots 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 Lots 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; and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (A) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (B) to finance the construction, repair or alteration of Structures; (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from liability for any Assessment thereafter assessed; and (f) that all annual and special Assessments (together with interest thereon as provided in this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot or Lots 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 or Lots as provided in this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots 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. Upon the first sale of each and every Lot to an Owner who will individually or through tenants or assigns occupy a Lot, such sale to be made by the Declarant or by a Builder who has purchased the Lot for the purpose of erecting a dwelling thereon, such Owner shall pay his prorated portion of the then present annual

Assessment.

4.2 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the inhabitants of the Subdivision, including, but not limited to, security services and systems, the acquisition, construction, improvement, maintenance and equipping of Common Property, the performance of all duties and obligations of the Association imposed upon or assumed by the Association (whether relating to the Common Property or other property), the enforcement of the Restrictions, the enforcement of the Design Standards, 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. The funds necessary to cover any deductible or exclusion under an insurance policy purchased by the Association for losses, damages or claims made or incurred which pertain to the Common Property shall be raised through Assessments.

4.3 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.

4.4 Maximum Annual Assessment.

4.4.1 Beginning on the date of this Declaration (herein referred to as the "Commencement Date") and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot shall be subject to a maximum annual Assessment of Five Hundred and No/100 Dollars (\$500.00) per Lot. In the event that the 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.

4.4.2 Commencing with the first Assessment Year and continuing thereafter, the maximum annual Assessment may be increased at any time and from time to time during each Assessment Year ten percent (10%) or less above the annual Assessment for the previous Assessment Year without a vote of the Owners.

4.4.3 Commencing with the first Assessment Year and continuing thereafter, the maximum annual Assessment for each Assessment Year may, at any time and from time to time, be

the Board will propose action. For the purposes of this Section 4.6, the presence of Members or of proxies entitled to cast sixty percent (60%) of all of the votes shall constitute a quorum. If the quorum required by this Section 4.6.2 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 fifty percent (50%) of the quorum required by the Bylaws for the first meeting. No such second meeting shall be held more than sixty (60) days following the first meeting.

4.7 Uniform Rate of Assessment. Both annual and special Assessments must be fixed at a uniform rate for all Lots, except as set forth below in Section 4.12.

4.8 Effect of Nonpayment of Assessments. Any annual Assessment which is not paid on or before the Due Date and any special Assessment which is not paid on or before the date set by the Board shall bear interest after the Due Date with respect to annual Assessments, or the date set by the Board with respect to special Assessments, at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) 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 reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

4.9 Statement of Account. Any Owner, Mortgagee or Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of Assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding Ten Dollars (\$10.00), as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of Assessments due on the Lot as of the date specified therein.

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

4.11 Responsibility of Declarant. Notwithstanding any provisions of this Declaration (other than this Section 4.11), unless required as a matter of law, neither Declarant, nor any Person who has purchased land from Declarant for the purpose of constructing improvements for later sale to consumers ("Builder"), shall at any time be subject to the Assessments described in this Article IV (unless a Lot owned by Declarant or a Builder contains a residence occupied by an Occupant as such Occupant's residence [excluding, however, model homes]); however, Declarant hereby agrees that until such time as Declarant no longer has the right to appoint members to the Board of the Association, Declarant will lend to, or guarantee the loan to, the Association any deficit amounts not covered by the income of the Association (including income derived from Assessments) which are reasonably necessary to maintain the Common Property in a neat, attractive, and in addition, where such property is intended for recreational use, usable condition (excluding, however, in making such calculations any amounts to establish or fund capital reserve accounts). In determining whether such a deficit exists, paper expenses, such as depreciation shall not be taken into consideration. In addition and notwithstanding anything to the contrary herein, Declarant may contribute services or materials or a combination of services and materials, rather than lending money. If Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and Declarant cannot agree as to the value of any contribution, Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by Declarant who are in the business of providing such services and materials. If the Association and Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors. All such loans shall be on terms and conditions satisfactory to Declarant, with the interest rate payable thereon not to exceed two (2) percentage points in excess of the "prime rate" publicly announced by Trust Company Bank, Atlanta, Georgia, from time to time. All such loans may be repaid by the Association out of its working capital reserves, including without limitation the special Assessments made under Section 4.5 hereof.

4.12 Allocation of Liability for Common Expenses. The Board may specifically assess Lots for the following Association expenses:

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assess equitably among all of the Lots which are benefitted according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

(c) Expenses of the Association occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot or Lots.

ARTICLE V
ARCHITECTURAL CONTROL

5.1 Architectural Control Committee - Creation and Composition.

5.1.1 The Architectural Control Committee shall consist of not less than three (3) nor more than five (5) individuals; provided, however, that the Architectural Control Committee shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, all members of the Architectural Control Committee shall be appointed by Declarant until the first to occur of: (a) June 30, 2006, or (b) the date upon which every Lot has been conveyed by Declarant to a third party or parties (with Declarant retaining no further interest or estate in the Submitted Property). Upon the expiration of Declarant's right to appoint members of the Architectural Control Committee, all members of the Architectural Control Committee shall be appointed by the Board. All costs of operating the Architectural Control Committee shall be borne by the Association.

5.1.2 Each initial member of the Architectural Control Committee shall be appointed for a term expiring on December 31, 2002. Thereafter each member of the Architectural Control Committee shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the Architectural Control Committee by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the Architectural Control Committee shall continue to act and such vacancy shall, subject to the provisions of Section 5.1.1, be filled by the Board or Declarant, as the case may be, at the earliest possible time. Any Architectural Control Committee member may resign at any time by giving written notice of such resignation to the Chairman of the Architectural Control Committee and such resignation shall take effect on receipt thereof by the Chairman. Any member of the

Architectural Control Committee may be removed at any time with or without cause by Declarant (or the Board if at such time the Board has the right to appoint members of the Architectural Control Committee).

5.2 Purpose, Powers and Duties of the Architectural Control Committee. The purpose of the Architectural Control Committee is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the Architectural Control Committee for approval: (a) as to whether the proposed installation, construction or alteration complies with the Design Standards and is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Subdivision; and (b) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.3 Officers, Subcommittees and Compensation. The members of the Architectural Control Committee shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the Architectural Control Committee as they shall from time to time determine necessary. The members of the Architectural Control Committee shall be reimbursed by the Association for traveling expenses and other out-of-pocket costs incurred in the performance of their duties as members of the Architectural Control Committee.

5.4 Operations of the Architectural Control Committee.

5.4.1 Meetings. The Architectural Control Committee shall hold regular meetings at least once every three (3) months or more often as may be established by the Architectural Control Committee. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the Architectural Control Committee then in office. Regular and special meetings of the Architectural Control Committee shall be held at such time and at such place as the Architectural Control Committee shall specify. Notice of each regular or special meeting of the Architectural Control Committee shall be mailed to each member thereof (if such member has requested in writing that such notice be given to him) at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for

which the meeting is called. Notice of a meeting need not be given to any member of the Architectural Control Committee who signs a waiver of notice either before or after the meeting. Attendance of a member of the Architectural Control Committee at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the Architectural Control Committee, 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 Architectural Control Committee present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the Architectural Control Committee. In the absence of a quorum, any member of the Architectural Control Committee present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The Architectural Control Committee shall maintain both a record of votes and minutes for each of its meetings. The Architectural Control Committee shall make such records and minutes available at reasonable places and times for inspection by Owners. Any action required to be taken at a meeting of the Architectural Control Committee, or any action which may be taken at a meeting of the Architectural Control Committee, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the Architectural Control Committee and be filed within the minutes of the proceedings of the Architectural Control Committee. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the Architectural Control Committee.

5.4.2 Activities. (a) The Architectural Control Committee shall adopt and promulgate the Design Standards and shall, as required, make findings, determinations, rules, and orders with respect to the conformity with the Design Standards of plans and specifications submitted to the Architectural Control Committee for approval pursuant to the provisions of this Declaration. The Architectural Control Committee shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration; and (b) any two (2) or more members of the Architectural Control Committee may be authorized by the Architectural Control Committee to exercise the full authority of the Architectural Control Committee with respect to all matters over which the Architectural Control Committee has authority as may be specified by resolution of the Architectural

otherwise provided in this Section 6.9, no Structure of a temporary nature shall be erected or allowed to remain on any Lot, unless approved in writing by the Architectural Control Committee, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be situated on any Lot, either temporarily or permanently, unless approved in writing by the Architectural Control Committee. Provided, however, that Declarant and others engaged in construction on the Lots may use sheds or other temporary structures during construction for purposes of construction without the approval of the Architectural Control Committee, and may maintain temporary real estate offices for the sale of Lots or homes in the Subdivision, without the approval of the Architectural Control Committee. No fuel tanks shall be located on any Lot.

6.10 Completion of Construction. The Architectural Control Committee shall have the right to take appropriate court action, whether at law or in equity, to compel the immediate completion, including landscaping, of any Structures not completed within one (1) year from the date of commencement of construction. Construction shall be deemed to commence on the date of issuance of the building permit.

6.11 Pets. No Owner or Occupant may keep any pets other than a reasonable number of generally recognized household pets on any portion of the Property, as determined in the Board's discretion.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Property without prior written Board approval. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Feces left upon the Common Property by dogs must be removed by the owner of the dog or the person responsible for the dog. No potbellied pigs may be brought onto or kept at the Property at any time.

6.12 Offensive Activities. No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to other Owners.

6.13 Signs. Except as may be required by legal proceedings, no signs advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Architectural Control Committee, except that one professional security sign not to exceed four (4") inches by four (4") inches in size may be displayed from within a dwelling on a Lot and one (1) professionally lettered "For Rent"

If any vehicle is parked on any portion of the Property in violation of this Section or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Property stating the name and telephone number of the person or entity which will do the towing.

If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Lot or dwelling, is obstructing the flow of traffic, is parked in any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. The Association's right to tow is in addition to, and not in limitation of, all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

6.17 Garbage and Refuse Disposal.

6.17.1 No Person shall dump rubbish, garbage, or any other form of waste on any Lot or on the Common Property.

6.17.2 Except during approved construction, no Person shall burn rubbish, garbage, or any other form of waste on any Lot or on the Common Property.

6.17.3 Except for building materials employed during the course of construction of any Structure approved by the Architectural Control Committee, no lumber, metals, bulk materials or waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in the manner set forth in the Design Standards. If such waste or other material is found on any Lot, the same will be removed by the Owner of such Lot, at the Owner's expense, upon written request of the Architectural Control Committee.

6.17.4 If rubbish, garbage, or any other form of waste is being disposed of by being collected on a regular and recurring

basis, sanitary containers 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 a pick-up. At all other times such containers shall be installed underground or screened or enclosed in the manner set forth in the Design Standards.

6.18 Changing Elevations. Except during the construction of permanent improvements thereon, no Owner shall excavate or extract earth from any Lot for any business or commercial purpose or otherwise. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the Architectural Control Committee.

6.19 Utility Facilities. Declarant reserves the right to approve the necessary construction, installation and maintenance of underground utility facilities, including but not limited to water, storm water, telephone, gas, electricity, cable television and sewerage systems, which may be at variance with these Restrictions.

6.20 Abandoned Personal Property. Personal property, other than an automobile as provided for in Section 6.16, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property without prior written consent of the Board.

If the Board, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine.

If the Board, in its sole discretion, determines that property is being abandoned or stored in violation of this Section, the Board may place a notice on the personal property and/or on the front door of the Lot of the Owner of such property, if known, specifying the nature of the violation and stating that after two (2) days the property may be removed and either discarded or stored by the Board in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

If two (2) days after such notice is placed on the personal property and/or the front door of the Lot, the violation continues or thereafter occurs again within six (6) months of such notice, the personal property may be removed in accordance with the notice without further notice to the owner or user of the personal property.

In addition to the provisions above, the Board, in its discretion, may determine that an emergency situation exists, and the personal property abandoned or stored in violation of this Section, without prior notice to the owner or user of the personal property, be removed and either discarded or stored by the Board at a location which the Board may determine; provided, however, the Board shall give to the owner, if known, notice of the removal of the property and the location of the personal property within three (3) days after the personal property is removed.

If personal property is removed in accordance with this Section, neither the Association nor any officer or agent to the Association shall be liable to any person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

6.21 Buffers. Areas designated on the Plat as "Buffers" shall not contain Structures, except for: (a) uses permitted under Section 6.5; (b) any Structure of a type which may be developed under applicable building codes without the necessity for continuous footings (not to include pier pads for decks, solarium type structures or patios), which require inspections; and (c) development Structures required by engineering considerations for the Subdivision, such as detention ponds, underground utilities and the streets and driveways as shown on the Plat. Swimming pools shall not be constructed in the "Buffers."

6.22 Maintenance of Lots. Each Lot shall be maintained in a slightly and sanitary condition and grass and landscaping shall be properly maintained. Such maintenance shall include without limitation the care and maintenance of any portions of the Lot labeled or used as drainage easements; provided, however, the Association shall be responsible for the cleaning, maintenance and repair of any detention ponds (labeled as such on any subdivision plats recorded with respect to all or any portion of the Submitted Property). Should any Owner fail or refuse to maintain his Lot in such condition, the Association shall be entitled to provide written notice to such Owner of the deficiencies in maintenance, as determined by the Association. If such deficiencies in maintenance are not corrected within thirty (30) days after receipt of such written notice by such Owner, the Association may, at the expense of the Owner, enter the Lot and perform such maintenance. The cost of such maintenance may be specially assessed against the Owner of such Lot, and the Association shall have lien rights therefor as in the case of other Assessments. The provisions of this Section permitting the Association to perform maintenance and assess the cost thereof shall not apply to any Lots owned by Declarant.

6.23 Entrance Monuments. Declarant shall have the right to construct an entrance monument at the entrance to the Subdivision, without the prior approval of the Architectural Control Committee.

6.24 Clotheslines. No outside clotheslines placed on any Lot shall be visible from any adjacent Lot, Common Property or street.

6.25 Recreational Equipment. Recreational and playground equipment placed or installed on any Lot shall be located only behind the residence as such residence fronts on a street, unless otherwise approved in writing by the Architectural Control Committee. For Lots which are adjacent to two or more streets, recreational and playground equipment shall be screened so that the same is not visible from either street.

6.26 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for the prevention and control of such erosion or siltation. The Architectural Control Committee may, as a condition or approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices of controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape, and required landscaping as provided for in Section 6.27. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the Architectural Control Committee.

6.27 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the Architectural Control Committee of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Design Standards of the Architectural Control Committee.

6.28 Prohibition of Damage, Nuisance and Noise. Without prior written Board consent, nothing shall be done or kept on the Property or any part thereof which would increase the rate of insurance on the Property or any Lot or part thereof, which would be in violation of any Governmental Requirement, or which would increase the Common Expenses.

Noxious, destructive or offensive activity shall not be carried on upon the Property. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, nuisance or annoyance to other Owners

Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof.

In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specifically assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

(B) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities.

(C) Liability for Assessments. When an Owner who is leasing his or her Lot fails to pay any annual or special Assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner

hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, the lessee shall pay to the Association all unpaid annual and special Assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by the lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by the lessee shall reduce, by the same amount, the lessee's obligation to make monthly rental payments to the lessor. If the lessee fails to comply with the Board's request to pay Assessments or other charges, the lessee shall pay to the Association all amounts authorized under Article IV, Section 1 hereof as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(c) Applicability of this Section. This Section shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

ARTICLE VII
EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.1 Easements.

7.1.5 There is hereby reserved to Declarant and the Association an easement for ingress, egress, installation, construction, landscaping, and maintenance of entry features and similar streetscapes for the Subdivision, over and upon each Lot which is bounded by the right-of-way providing primary access to the Subdivision and every other Lot located at the corner of a street intersection. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and streetscapes and the right to grade the land under and around the entry features and streetscapes.

7.1.6 If any portion of an exterior wall of a residence is situated within three (3) feet of any adjoining Lot line, a valid easement shall and does exist, three (3) feet in width along the adjoining Lot and adjacent to the said Lot line, which easement may be used for the purpose of construction, reconstruction and maintenance of said exterior wall of a residence that is situated within three (e) feet from the nearest point of said easement. The Owner of any Lot subject to this easement shall not erect or build any structure upon or over said easement which will unreasonably interfere with the purposes of said easement.

7.1.7 For a period of three (3) years from the date of conveyance of each Lot, Declarant reserves an easement and right on, over and under the ground within that Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as near as practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

7.1.8 A right of entry on any Lot or Common Property is hereby granted to law enforcement officers, and fire and rescue personnel as needed to carry out their duties, including enforcement of cleared emergency vehicle access.

7.1.9 The Association by and through its employees, agents and contractors, is hereby granted an easement and right-of-entry through, over and upon each Lot for the purpose of discharging and performing any duty imposed, or exercising any right granted, by this Declaration, including but not limited to the duty or right of maintenance or replacement imposed upon either the Association or upon any Owner.

7.2 Entry. Declarant and its employees, agents, successors

and assigns, shall have the right at all reasonable times to enter upon all parts of each "Easement Area" (as defined in this Section 7.2) 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 Section 7.2. Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 7.1. The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or the Plat relating thereto.

7.3 Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

ARTICLE VIII
RULE MAKING AND ENFORCEMENT

8.1 Authority and Enforcement. The Property shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use and enjoyment of Lots and the Common Property; provided, copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of the Owners of a Two-Thirds Vote at an annual or special meeting of the membership.

Every Owner and Occupant shall comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance shall entitle the Association and, in an appropriate case, one or more aggrieved Lot Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, the Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any Occupant of a Lot violates the Declaration,

evidence, and witnesses shall be sent to the alleged violator. The minutes of the meeting shall contain a written statement of the results of the hearing. This Section shall be deemed complied with if a hearing is held and the violator attends and is provided an opportunity to be heard, notwithstanding the fact that the notice requirement contained herein are not technically followed.

8.3 Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 8.2 of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. The rights set forth in this Section 8.3 are herein referred to collectively and singly as the "Right of Abatement."

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner.

8.4 Collection of Assessments and Enforcement of Lien.

(a) Any Assessments which are not paid when due shall be delinquent. Any Assessment due for a period of thirty (30) days shall incur a late charge equal to the greater of (i) ten percent (10%) of the overdue Assessment, or (ii) Ten Dollars (\$10.00). In the event that the Assessment remains due and unpaid for a period of sixty (60) days, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such Assessment, late 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 other remedies contained herein, 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 the

said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in the County in which the Lot against which the lien sought to be foreclosed is located ("County"), 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 the County are published, all other notice being hereby waived by each Owner, and the Association or any Person on behalf of the Association, or 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 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 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 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 or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of the Assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen per centum 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 hereby 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) EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER 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.

8.5 No Waiver. The failure of the Declarant, the Association, the Owner of any Lot, or his 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

9.1 Duration. This Declaration and the Restrictions contained herein shall run with and bind the Submitted Property for a period of twenty (20) years from and after the date when this Declaration is filed for record in the Office of the Clerk of the Superior Court of the county in which the Submitted Property is located, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years; provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the Office of the Clerk of the Superior Court of the county in which the Submitted Property is located, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a Two-Thirds Vote.

9.2 Amendments by Declarant.

9.2.1 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 the county in which the Submitted Property is located, without the approval of any Owner or Mortgagee; provided, however, that: (a) 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 consent thereto by the Owners affected thereby; or (b) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 9.2.1 shall be certified by the Declarant as having been duly approved by the Declarant, and such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself.

9.2.2 Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are

permitted by this Section 9.2.2 and further agrees that, if requested to do so by the Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Subdivision: (a) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration; (d) 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 (e) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

9.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 9.2 hereof, shall be proposed and adopted in the following manner: (a) notice of the subject matter of the proposed amendment shall be delivered to each Owner; (b) a resolution adopting a proposed amendment may be proposed by either the Board or by Owners. If the subject matter of the proposed amendment is to be voted on at a regular or special meeting of the Members, notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered; however, a meeting is not required to be held provided that the provisions of this Declaration and/or applicable law pertaining to action to be taken by written consent is followed. Such amendment must be approved by a Two-Thirds Vote; provided, however: (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee; and (ii) during any period in which the Declarant has the right to appoint and remove officers and directors of the Association, every amendment must be approved by the Declarant; and (c) the agreement of the required percentage of the Owners and, where required, the Declarant and any Mortgagee, 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 and any Vice President or 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 become effective only when recorded or

at such later date as may be specified in the amendment itself.

9.4 Challenges to Amendments. Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

ARTICLE X
ANNEXATION

10.1 Unilateral Annexation by Declarant.

10.1.1 As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B", attached hereto and by this reference made a part hereof, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the office of the Clerk of the Superior Court of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected, Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

10.1.2 The rights reserved unto Declarant to subject additional land to the Declaration shall not impose, and shall not be implied or construed to impose, any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not obligate Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

10.2 Other Annexation. Subject to the consent of the owner thereof and the consent of Declarant, so long as Declarant has an option to subject additional property to this Declaration as provided above, upon the affirmative vote of the Owners of a Two-Thirds Vote, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the

their respective devisees, legatees, heirs, executors, administrators, legal representatives, successors and assigns, in accordance with the provisions of the Bylaws. Nothing herein contained shall make responsible or subject to liability any successor to Declarant by operation of law or through purchase of Declarant's interest in the Submitted Property (or any part thereof) at foreclosure, sale under power, or by deed in lieu of foreclosure, for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the time such successor succeeded to the interest of Declarant.

11.8 Indemnification. In accordance with Section 14-3-110 of the Georgia Nonprofit Corporation Code, and to the full extent allowed in Section 14-2-851 of the Georgia Business Corporation Code, and in accordance with the provisions contained therein, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending, or contemplated action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized (as provided in Section 14-3-110 of the Georgia Nonprofit Corporation Code) in a specific case upon a determination that indemnification of the Person is proper under the circumstances.

11.9 Partition. The Common Property shall remain undivided, and no Lot Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Subdivision and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Subdivision.

11.10 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.

11.11 Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot, the Owner shall give to the Association,

in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

11.12 Agreements. Subject to the prior approval of Declarant, so long as Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article X above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Subdivision or the privilege of possession and enjoyment of any part of the Subdivision.

11.13 Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

11.14 Variances. Notwithstanding anything to the contrary contained herein, the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Subdivision.

11.15 VA/HUD Approval. So long as Declarant has an option unilaterally to subject property to this Declaration as provided in Article X, and so long as Declarant has the power to elect and remove officers and directors of the Association, the following actions shall require the prior approval of the Veterans Administration ("VA") so long as the VA is guaranteeing any Mortgage in the Subdivision, and the Department of Housing and Urban Development ("HUD") so long as HUD is insuring any Mortgage in the Subdivision: annexation of additional property to the Subdivision, except for annexation by Declarant in accordance with Article X, Section 10.1 hereof pursuant to a plan of annexation previously approved by the VA and HUD; dedication of Common Property to any public entity; and material amendment of the Declaration, Bylaws or Articles.

11.16 Constructive Notice. Each Owner, by his acceptance of a deed or other conveyance of a Lot, acknowledges for himself, his heirs, legal representatives, successors and assigns, that he is bound by the provisions of this Declaration.

11.17 Security. The Association may, but shall not be

required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

11.18 Dispute Resolution. Any Lot Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any officer or director, or the property manager of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.

ARTICLE XII
INSURANCE

12.1 Requirements.

(a) The Association's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(b) The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a

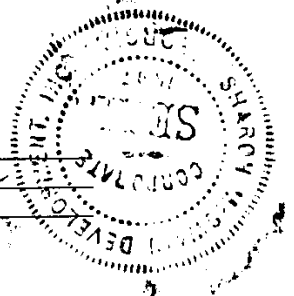
IN WITNESS WHEREOF, Declarant has hereunto set its hand and seal as of the day and year first above written.

DECLARANT:

SHARON MCSWAIN DEVELOPMENT, INC.

By: [Signature]
Name: Sharon McSwain
Title: PRESIDENT

[CORPORATE SEAL]



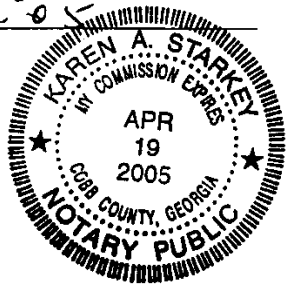
Signed, sealed and delivered in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public

My Commission Expires: 4-19-05

[NOTARIAL SEAL]



run thence North 44 degrees 53 minutes 25 seconds West a distance of 295.15 feet to a iron pin found (5/8 Inch rebar) on the southeastern side of the right of way of Freemanville Road, a 60 foot right of way;

run thence along said side of said right of way and along the arc of a curve having a radius of 1,972.31 feet a distance of 842.99 feet to the Point of Beginning, said arc being subtended by a chord bearing North 30 degrees 45 minutes 38 seconds East a distance of 836.59 feet;

being shown as Tracts One, Two and Three on that certain ALTA/ACSM Land Title Survey for L & D Development, LLC, dated December 15, 1998, revised April 19, 1999, prepared by Technical Survey Services, Inc. And bearing the seal of Walter Y. Prevatte, Georgia Registered Land Surveyor No. 2107.

EXHIBIT "B"

Any real property lying and being within one (1) mile of the Submitted Property.

BORROWER ACCEPTS AND AGREES to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it. IN WITNESS WHEREOF, Borrower has signed and sealed this Security Instrument.

Signed, sealed and delivered in the presence of:

[Signature]
Unofficial Witness

[Signature] (Seal)
Victor Alvaro -Borrower

[Signature]
Unofficial Witness

[Signature] (Seal)
Marianne Borel by Victor Alvaro -Borrower
UPOA dated 7/25/99

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

Notary Public [Signature]

County



Deed Book 31338 Pg 88
led and Recorded Nov-27-2001 08:34am
2001-0302262
Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia

OCTOBER 10, 2001

THE INDEBTEDNESS TO SECURE WHICH THE WITHIN DEED TO SECURE DEBT WAS EXECUTED, HAVING BEEN FULLY PAID, THE CLERK OF THE SUPERIOR COURT OF FULTON COUNTY GEORGIA, IS HEREBY AUTHORIZED TO ENTER THE SAME SATISFIED OF RECORD.

IRWIN MORTGAGE CORPORATION

BY: [Signature] BY: [Signature]
ALICE M. MILLER LINDA SALTER
VICE PRESIDENT VICE PRESIDENT

BOOK 28259 PAGE 033