

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
RIDENOUR SUBDIVISION**

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THIS DECLARATION is made on the date hereinafter set forth by DIVERSIFIED DEVELOPMENTS, INC., a Georgia corporation (hereinafter referred to as “Declarant”).

W I T N E S S E T H

WHEREAS, Declarant is the owner of certain real property located in Land Lots 190 and 255 of the 19<sup>th</sup> District, 2<sup>nd</sup> Section of Cobb County, Georgia, which property is more particularly described on Exhibit “A” attached hereto and made a part hereof; and

WHEREAS, Declarant intends to develop on lands, including the real property described above, a development to be known as Ridenour Subdivision (hereinafter referred to as the “Development”); and

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined);

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibit “A” shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions and Restrictions, which is for the purpose of enhancing and protecting the desirability and attractiveness of, and which shall run with, the real property, and be binding on all parties having any right, title or interest in the described property or any part thereof, and shall, subject to all 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 and Restrictions, shall have the following meanings:

1.01 Additional Property. “Additional Property” means the additional property which may be added to the Property and made subject to this Declaration pursuant to Article X hereof. A description of the Additional Property is set forth on Exhibit “B” attached hereto and made a part hereof.

1.02 Association. “Association” means Ridenour Homeowners and Recreation Association, Inc. (a non-profit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

1.03 Board. “Board” means the Board of Directors of the Association.

1.04 Builder. “Builder” means those contractors who purchase lots from Declarant and who construct thereon residential structures.

1.05 By-Laws. “Bylaws” means the By-Laws of the Association.

1.06 Common Property. “Common Property” means all real and personal property now or thereafter owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owner.

1.07 Declarant. “Declarant” means (i) Diversified Developments, Inc., a Georgia corporation, its successors and assigns, or (ii) any successor-in-title to the said corporation to all or some portion of the Property or the Additional Property, provided such successor-in-title shall acquire such property for the purposes of development or sale, and provided further that, in a written instrument, such successor-in-title is expressly assigned all rights, privileges and options herein reserved to Declarant by the Declarant as hereunder defined at the time of such conveyance; or (iii) should any of the Property or the Additional Property become subject to a first mortgage given by Declarant as security for the repayment of a development loan, then all the rights, privileges and options herein reserved to the Declarant shall inure to the benefit of the holder of such first mortgage upon its becoming the actual owner of the Property and Additional Property then subject to such first mortgage through a judicial foreclosure or sale made pursuant to any power of sale contained in such first mortgage or by a transfer by deed in lieu of foreclosure; and, the Declarant may be transferred to the successor-in-title of any such acquirer of title to such property, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of such property, and provided further that, in a written instrument, such successor-in-title is expressly assigned all rights, privileges and options herein reserved to Declarant by the Declarant as hereunder defined at the time of such conveyance.

1.08 Lot. “Lot” means any numbered parcel of land shown upon the plat or survey prepared by Gaskins Surveying Co. dated \_\_\_\_\_, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Cobb County, Georgia Records, or as similarly shown on supplemental surveys of such tract or such additional tracts as may be added to the Property from time to time, as provided herein; provided however, that no portion of the Common Property shall ever be a lot except as provided for in Section 2.04.

1.09 Member. “Member” means any member of the Association.

1.10 Owner. “Owner” means the record owner (including 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 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.

1.11 Property. “Property” means that certain real property (other than Common Property) hereinabove described, together with such additional real property as the Declarant may acquire, and subject to the provisions of this Declaration of Covenants, Conditions and Restrictions in accordance with the provisions of Article X hereof.

1.12 Restrictions. “Restrictions” means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.13 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 building or part thereof, garage, porch, shed, greenhouse, or bathhouse, coop or cage covered or uncovered patio, swimming pool, fence, curbing, paving, well, tree, shrub, sign, sign board, 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 1.12 applies to such change.

## ARTICLE II

### COMMON PROPERTY

2.01 Conveyance of Common Property.

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners (such real and personal property is hereinafter collectively referred to as “Common Property”) and, the extent set forth in this Declaration of Covenants, Conditions and Restrictions, the general public.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation, for maintenance of drainage utilities, and for general recreational use. 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 subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(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.

(e) The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

2.02 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property, 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 any 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 Section 2.02 is subject to suspension by the Association as provided in Sections 2.03(c) and 3.05.

2.03 Rights of the Association. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right 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) Charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

(c) Suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;

(d) 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;

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

(f) 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 interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;

(g) 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 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;

(h) To sell, lease or otherwise convey all or any part of its properties and interest therein; provided, however, that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of two-thirds (2/3) of each class of Members.

2.04 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of each class of Members of the Association, be used for any different purpose or purposes.

(a) 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 Development will be reserved by the Declarant and set forth on plats of survey of the Development 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 Development. 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. Such easements shall be Common Property.

(b) Encroachment Easements. If any buildings or other improvements initially constructed 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 airspace of any portion of the Common Property, 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 and for the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

2.05 Delegation of Use. Any Owner may delegate his right to use and enjoy the Common Property to the members of his family, his social invitees or his tenants who reside on a Lot. Tenants who reside on a Lot shall have the same rights of delegation as an Owner. Any delegation of rights must be made in accordance with the By-Laws and will be subject to reasonable regulation by the Board and in accordance with procedures it may adopt.

### **ARTICLE III**

#### **THE HOMEOWNERS' ASSOCIATION**

3.01 Purpose, Powers and Duties of the Association. The Association shall be formed as a non-profit civic organization 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, and only to the extent, 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 and duty 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.

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 of Covenants, Conditions and Restrictions.

3.03 Voting Rights. Subject to the following provisions of this Section 3.03, the Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. Every person who is an Owner, with the exception of the Declarant, except as otherwise set forth herein, shall be a Class A Member and shall be entitled to one vote for each Lot owned. When more than one person is a Class A member by virtue of an ownership interest in the same Lot, the vote for such Lot shall be

exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons and an attempt by two or more of them to cast the vote of such Lot, such persons shall not be recognized and the vote of such Lot shall not be counted. The membership of Class A Members shall automatically terminate upon the member's sale of his Lot. However, no termination of Class A membership shall affect such Member's obligation to pay assessments as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

(b) Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership, and during its existence the Class B Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled to three (3) votes for each Lot owner by it and for each Lot which has not been conveyed to an individual Owner or Owners for residential occupancy. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (a) the expiration of five (5) years from the date of recording of this Declaration; (b) the date as of which three-fourths (3/4) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either the Declarant or by a builder who purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy; or (c) the surrender by the Declarant of the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed and recorded by the Declarant; provided, however, that so long as any Mortgagee of Declarant holds a security interest in any portion of the Property, as security for a Development Loan to Declarant, the Class B membership shall not terminate without the prior written consent of such Mortgagee. If at the time of termination of the Class B membership Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A member.

### 3.04 Board of Directors and Officers.

(a) Board. The affairs of the Association shall be managed by a Board of Directors. The number of directors and the method of election of directors shall be as set forth in this Declaration and in the By-Laws of the Association. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation Code or this Declaration, the Association's By-Laws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.

(b) Officers. The number of officers and the method of election of officers shall be as set forth in this Declaration and the By-laws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, officers of the



Association shall be appointed by the Board until such time as Declarant no longer has the right to appoint members to the Board.

(c) Casting of Votes. The votes of the members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the By-laws of the Association, as amended from time to time, or by law.

3.05 Suspension of Membership. The Board may suspend the voting right 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 Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.14 or 8.02 hereof; or

(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; and

(d) Any 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 subsection (c) of this Section 3.06, the suspension may be for a period not to exceed 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.

3.06 Voting Procedures. The procedures for the election of Directors to 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 By-laws of the Association, as each shall from time to time be in force and effect.

3.07 Control by Declarant and Appointment of the Board. Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of five (5) members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-laws of the Association, the Declarant hereby retains the right to appoint all five members to the Board. The rights of Declarant to appoint members of the Board also include the right to remove and replace its appointees until such time as its rights to appoint members to the Board ceases. Declarant shall retain the right to appoint and remove its members of the Board until such time as the first of the following events shall occur: (i) the expiration of five (5) years from the date of the recording of this Declaration; (ii) the date upon which three-fourths (3/4) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either Declarant or by a builder who purchased the Lot from Declarant for the purpose of erecting a

dwelling thereon, to an individual Owner or Owners for residential occupancy; or (iii) the surrender by Declarant of the authority to appoint and replace directors by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the Declarant's right to appoint and remove directors of the Association, pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant, if Declarant then owns one or more Lots. Upon the final expiration of all rights of Declarant to appoint and replace directors of the Association, a special meeting of the Association shall be called. At such special meeting, the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section.

3.08 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## **ARTICLE IV**

### **ASSESSMENTS AND MAINTENANCE CHARGES**

4.01 Covenant for Assessments and Creation of Lien and Personal Obligations. The Declarant, to the extent that Declarant is an Owner, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, distributees, 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 in Section 4.07 hereof 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 (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction 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;

(f) That all annual and special assessments together with interest thereon as provided in Section 4.07 of 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 Section 4.01 (c) of 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.

4.02 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 people of the new community of the Development, including, but not limited to, and in addition to other purposes set forth in this Declaration, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, 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 or Maintenance Charge.

(a) Subject to the terms of this Article, each Lot in the Property is hereby subjected to an annual maintenance charge for the purpose of creating a fund to be known as the "maintenance fund," which maintenance charge and assessment will be paid by the

Owner or Owners of each Lot within the Property (and any area annexed under the jurisdiction of the Association) in advance in monthly, quarterly or annual installments.

(b) The annual maintenance charge and assessment will commence as to each Lot on the first day of the month following the earliest to occur of the following events: (i) upon the occupancy of a permanent dwelling located on the Lot as a residence; or (ii) upon the conveyance of the Lot by Declarant to an Owner or tenant for residential occupancy; or (iii) upon the conveyance by a builder who has purchased the Lot from Declarant for the purpose of erecting a dwelling thereon to an Owner or tenant for residential occupancy.

(c) Neither the Declarant nor any builder who has purchased a lot from Declarant for the purpose of erecting a dwelling thereon shall be subject to the annual maintenance charge and assessment; however, the Declarant hereby agrees that, until such time as it no longer has the right to appoint members to the Board of the Association, the Declarant will pay to the Association any deficit amounts not covered by the income of the Association which are reasonably necessary to maintain the Common Property in a neat, attractive manner, and in addition, where such property is intended for recreational use, useable condition. In determining whether such a deficit exists, paper expenses, such as depreciation, shall not be taken into consideration. Any such deficit amount required to be paid by Declarant shall be treated as an assessment and subject to the provisions of Section 4.07; provided, however, any lien for such an assessment shall apply only to those Lots owned by the Declarant which are subject to this Declaration, and the amount thereof shall be divided equally among all such Lots; and provided further, that in no event shall the Declarant be required to pay any amounts, specifically including any deficit amount, which would exceed an amount equal to the number of Lots owned by the Declarant, at the time the Declarant becomes responsible for payment or the time the deficit is incurred, multiplied by an amount equivalent to that portion or portions of the annual assessment paid or due and payable by all other Lot owners from the time the Declarant became responsible for said payments (including assessments), or the time the deficit was incurred (for purposes of this proviso, "the time the deficit is incurred" means the time in which the expense creating such deficit becomes a binding obligation upon the Association); notwithstanding the preceding, the annual maintenance charge and assessment will commence as to each Lot owned by Declarant or a builder upon the occupancy of a permanent dwelling located thereon as a residence. In addition, and notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of any contribution, the 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 the Declarant, who are in the business of providing such services and

materials. If the Association and the 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.

(d) Beginning on the date this Declaration is executed through December 31, 1987, the annual maintenance charge and assessment will not exceed \$20 per month or a rate of \$240.00 per annum (said rate or charge referred to hereinafter as the "Initial Rate"). The Initial Rate will be determined by the Board of Directors; however, said Initial Rate will not exceed the maximum rate stated in the preceding sentence. Whether such assessment shall be payable monthly, quarterly or annually will be determined by the Board of Directors. Upon the first sale to an Owner who will individually or through tenants or assigns occupy a Lot, such sale to be made by Declarant or by a builder who has purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, a special assessment for the period from June 1, 1987 to December 1, 1987 prorated as to the date of closing at the rate of \$20.00 per month, shall be collected at the closing of such sale for the benefit of the Association. The aggregate fund established by such special assessment shall be for the purpose of meeting the expenditures of the Association until full regular assessments commence as of January 1, 1988.

(e) Beginning January 1, 1988, and from year to year thereafter, the annual assessment may be adjusted by the Board of Directors as the needs of the Development may in the judgment of the Directors require; however, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership, which shall require approval of two-thirds (2/3) of each class of Members present, in person or by proxy, at a meeting duly called for such purpose, with at least sixty percent (60%) of the Owners or other proxies present. If sixty percent (60%) of the Owners do not attend, a second meeting may be called and the quorum will be reduced to thirty percent (30%) of the Owners or their proxies. The due dates shall be established by the Board of Directors.

(f) The Association shall use the proceeds of said maintenance fund in providing for normal, recurring maintenance charges for the Common Property for the use and benefit of all residents of said Property. Such uses and benefits to be provided by said Association may include, by way of clarification, and not limitation, any and all of the following: normal, recurring maintenance of the Common Property (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for existing landscaping and maintaining and repairing recreational facilities) and the acquisition and installation of capital improvements to such Common Property, such as sprinkler systems, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Property; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the Property to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employment of security guards or watchmen, if determined necessary; caring for vacant lots; and doing any other thing or things necessary or desirable in the

opinion of the Board or membership of the Association to keep the property neat and in good order, or which is considered of general benefit to the owners or occupants of the Property, it being understood that the judgment of the majority of the Members of the Association in the expenditures of said funds and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement improvements to the Common Property. The fund shall be established and maintained out of regular annual assessments. In addition to the above, if any Owner has not paid any assessment or installment, or any late charges or expenses related thereto, within sixty (60) days after the Due Date of the assessment or installment, the Association shall have the right to notify any or all mortgagees having a security interest in such Owner's Lot or Lots that such Owner is in default in the performance of his obligations under the Development Documents and of those actions taken or proposed to be taken by the Association as a result of the default.

4.05 Special Assessments for Working Capital Fund, Non-recurring Maintenance, and Capital Improvements. In addition to the annual assessments authorized by this Article IV, the Association may levy:

(a) In any assessment year, special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of nonrecurring maintenance, replacement of a capital improvement upon any Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by a two-thirds (2/3) vote of each class of Members of the Association who are present in person or by proxy at a meeting duly called for such purpose.

4.06 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.04 or 4.05 shall be sent to all Members, or delivered to their residence, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.07 Effect of Nonpayment of Assessments. If any assessment or installment is not paid within fifteen (15) days after the Due Date, there shall be imposed a late or delinquency charge in the amount of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due. Any assessment or installment, and any late charge connected therewith, which is not paid within thirty (30) days after the Due Date of the assessment, shall bear interest (from the Due Date with respect to the assessment or installment, and the date such charge was imposed with respect to the late charge), at such rate of interest as may be established by the Board of the Association; or if no rate has been established by said Board, at the rate of ten percent (10%) per annum; 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. If any one or more installments of any assessment is not paid within thirty (30) days after the Due Date, 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 or installment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with any delinquency charges, interest, and costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorney's fees, 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. In addition to the above, if any Owner has not paid any assessment or installment, or any late charges or expenses related thereto, within sixty (60) days after the Due Date of the assessment or installment, the Association shall have the right to notify any or all mortgagees having a security interest in such Owner's Lot or Lots that such Owner is in default in the performance of his obligations under the Development Documents, and of those actions taken or proposed to be taken by the Association as a result of the default.

4.08 Certificate of Payment. Upon written demand 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 owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting 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 therein 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 in question.

## ARTICLE V

### ARCHITECTURAL CONTROL

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

5.02 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any Structure on any Lot. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have

all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.03 Officers, Subcommittee and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC 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 ACC.

5.04 Operations of the ACC.

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



(b) Activities.

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

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

5.05 Design Standards.

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

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

(iii) Governing the procedure for such submissions of plans and specifications;

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

(v) Assuring the conformity and harmony of external design and general quality of the Development.

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

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

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

(b) A foundation plan;

(c) A floor plan;

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

(e) Specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alteration to existing Structures; and

(f) Plans for landscaping and grading.

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

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

- (a) The failure to include information in such plans and specifications as may have been reasonably requested;
- (b) The failure of such plans or specifications to comply with this Declaration or the Design Standards;
- (c) Any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards of the Development as set forth in the Design Standards, or (ii) as to location to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case, the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.09 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

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

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

required remedial action 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 Section 8.02 hereof.

5.12 Certificate of Compliance.

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

(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot have been approved by the ACC; provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warrant to anyone the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment. The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation other than those of the ACC.

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

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

5.15. Liability for Defects. Neither the Declarant, the Association, the Board of Directors, Officers of the Association, the ACC, nor any members or subcommittee members thereof, shall be liable in damages to anyone submitting plans and specifications for approval under the architectural control provisions, or to any Owner affected by these Restrictions, by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans and specifications. Every person who submits plans or specifications for approval agrees by the submission of same, and every Owner agrees, that he will not bring any action or suit against the Declarant nor any of the above-described parties responsible for operating the Association and enforcing the Restrictions to recover for any such alleged damages.

## ARTICLE VI

### GENERAL COVENANTS AND RESTRICTIONS

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

6.02 Restriction of Use. Lots may be used for single-family residences only and for no other purpose, provided that Declarant may operate a Sales Office and/or Model Home on a Lot or Lots designated by Declarant.

6.03 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise without the prior written approval of the ACC of plans and specifications for such split, division or subdivision.

6.04 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of 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 for 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 6.05. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

6.05 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure shall be included in the Development Guidelines of the ACC.

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

6.07 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance

with plans and specifications thereof approved by the ACC. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot.

#### 6.08 Signs.

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

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

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

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

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC. Except as provided in the Design Standards, no "Sold" sign shall at any time be installed or maintained on any Lot or on any portion of the Structure visible from the exterior thereof.

#### 6.09 Setbacks.

(a) Each dwelling which is erected on a Lot shall be situated on such Lot in accordance with the building and setback line shown on the recorded plat, and in no event shall any dwelling be erected upon any Lot in a manner which violates such building and setback lines. For purposes of this requirement, all porches, patios, decks, shutters, awnings, eaves, gutters and other such overhangs will not be considered in violation thereof, even though such structure shall extend beyond said building and set back lines if approved by the ACC.

(b) In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ACC. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

6.10 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC.

6.11 Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards of the ACC.

6.12 Antennae. No exterior television or radio antennae of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC. No antennae shall be installed or used for the purpose of transmitting electronic signals.

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

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

6.15 Recreational Vehicles and Trailers. No house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer, trailers of any kind, or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed three (3) consecutive days. Any trash, firewood, wood scraps, building materials or other such materials contained in any vehicle or trailer shall be covered from view. This provision shall not apply to Declarant or any builder in the process of constructing an approved structure on any Lot.

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

6.17 Non-Discrimination. No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the

contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

6.18 Waterfront Land.

(a) On Lots adjacent to lakes, ponds, rivers, streams, creeks or other water bodies or courses:

(i) No boat canal shall be dug or excavated therein, except with the prior written approval of the ACC of plans and specifications for said digging or excavation;

(ii) No bulkheading, barge, docks, piling, float or other marine Structure shall be erected adjacent thereto or thereupon, without the prior written approval of the ACC of plans and specifications for such Structure; and

(iii) No refuse of any kind shall be placed on or disposed of therefrom into the adjacent waters.

(b) On lakes, ponds, rivers, streams, creeks or other water bodies or courses comprising any part of the Common Property, (i) no boat shall be moored so as to obstruct navigation; (ii) no power boat shall be used except a boat powered by an electric motor with a power rating not to exceed 3.5 horsepower; and (iii) no boat of a length greater than fifteen (15) feet, except canoes, shall be launched or used.

(c) Any lake which is depicted on the Plats of the Development and which is part of the Common Property shall be maintained only as a lake and, to this end, the Association shall not cause or permit to be caused any act or acts to the contrary.

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

6.20 Solid Waste.

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

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

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste



of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times, such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Design Standards.

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

6.22. Landscape and Monument Easements. On Lots subject to a Landscape and Monument Easement as set forth on any recorded plat of survey of the Development, such Lots are subject to those easement rights set forth in Section 2.04(a).

## **ARTICLE VII**

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

7.01 Easements.

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, 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 and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities;

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

(iii) Slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes

or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;

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

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

(vi) Lake maintenance, access and recreational use for portions of the Property abutting lakes, if any, which easement may be for the benefit of the Declarant and Owners. No easement shall be granted to the Association or others by Declarant to permit any person or person using any lake or lakes on Common Property to enter onto any portion of a Lot not covered by such lake unless such entering person is the Owner of the Lot.

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

(c) The Declarant hereby reserves for itself, its successors and assigns, across the initial phase of the Property, and across each portion of the Additional Property subsequently submitted to this Declaration by Annexation as provided in Article X hereof, perpetual easements appurtenant to all or any portion of the Additional Property not subject to this Declaration for the following uses and purposes:

(i) As easement for ingress and egress by vehicular and pedestrian traffic over (1) such drives, roadways, walkways and paths as are shown on the plat or plats recorded in connection with the initial phase of the Property and such portions of the Additional Property as are submitted to this Declaration, and (2) such drives, roadways, walkways and paths as may be constructed in the future; and

(ii) As easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewerage, storm drainage, electricity, street lights, telephone, and other utilities and services, including the right to use in common with the Owners in the initial phase of the Property and portions of the Additional Property subsequently submitted to this Declaration, the wires, pipes, conduits, and other structures and facilities furnishings such utilities and services to such Owners.

(d) In addition to the above, the Declarant hereby grants a general easement in favor of utility, cable television and other such service companies across the initial phase

of the Property, and across each portion of the Additional Property subsequently submitted to this Declaration by Annexation as provided in Article X hereof, to maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities provided for the benefit of the Owners.

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

7.02 Easement Area. The words “Easement Area” as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto.

7.03 Entry. The 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 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 Article. The 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 7.01.

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

## **ARTICLE VIII**

### **ENFORCEMENT**

8.01 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns.

## 8.02 Right of Abatement.

(a) Except where different notice provisions are provided in Sections 5.11 and 6.14, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement. If any assessment, interest, cost or charge required by this Declaration is not paid within sixty (60) days after such assessment is due or such charge is imposed, the Association shall have the right to notify any or all mortgagees having a security interest in the owner's Lot or Lots that such Owner is in default in the performance of his obligations under the Development Documents, and of those actions taken or proposed to be taken by the Association as a result of the default.

(b) The Right of Abatement, as used in this Section and Sections 5.11 and 6.14 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such action, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or 10% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 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 Section 4.01 hereof, and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a lot or lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

8.03 Specific Performance. 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 or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees. If any assessment, interest, cost or charge required by this Declaration is not paid within sixty (60) days after such assessment is due or such charge is imposed, the Association shall have the right to notify any or all mortgagees having a security interest in the Owner's Lot or Lots that such Owner is in default in the performance of his obligations under the Development Documents, and of those actions taken or proposed to be taken by the Association as a result of the default.

(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 the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Courthouse in Cobb 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 Cobb 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 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 with 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 assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent 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 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, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

## **ARTICLE IX**

### **DURATION AND AMENDMENT**

#### 9.01 Duration and Perpetuities.

(a) The provisions of these Restrictions shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Georgia law limits to twenty (20) years, the period during which covenants restricting lands to certain uses may run, any provisions of these Restrictions affected thereby shall run with and bind the land for a period of twenty (20) years from the date these Restrictions are filed for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia, after which time such provision shall be automatically extended, if permitted by law, for successive periods of ten (10) years, unless an instrument, signed by at least seventy-five (75%) percent of the then Owners of record and the holders of first mortgages on their Lots has been recorded in the Office of the Clerk of said Court, agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any portion of the Property, by acceptance of a deed or other conveyance thereof, thereby agrees that the provisions of these Restrictions may be extended and renewed as provided in this Section.

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

9.02 Amendment. So long as Declarant owns at least one (1) Lot held primarily for sale, or has an unexpired option to add additional property to the Development, these Restrictions may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provisions hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these Restrictions, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to these Restrictions, or (iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private mortgage insurance company to insure mortgage loans on the Lots subject to these Restrictions; provided any such amendment shall not adversely affect the title to any Owner's Lot, unless any such Owner so affected thereby shall consent thereto in writing. These Restrictions may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) percent of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the owner of any real property subject to these Restrictions; and provided further, however, no amendment affecting the Declarant's right to add additional property shall be effective unless also signed by Declarant. No amendment to the provisions of these Restrictions shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to these Restrictions, by acceptance of a deed or other conveyance therefore, thereby agrees that these Restrictions may be amended as provided in this Section.

## **ARTICLE X**

### **ANNEXATION**

10.1 Submission of Additional Property. Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Section 10.01 of this Article, to submit all or portions of the Additional Property to

this Declaration and thereby to cause the Additional Property, or such portions thereof, to become part of the Property. This option may be exercised by the Declarant in accordance with the conditions and limitations set out in Section 10.02 of this Article, which are the only conditions and limitations on such right.

10.02 Conditions of Annexation. Any Annexation as permitted in Section 10.01 of this Article shall be in accordance with the following terms and conditions:

(a) The option to submit portions of the Annexation Property may be exercised at any time and from time to time until seven (7) years from the date this Declaration is recorded; provided, however, that the Owners of Lots to which two-thirds of the Class A votes in the Association appertain, exclusive of any vote or votes appurtenant to Lots then owned by Declarant, may consent to the Extension of such option by vote taken not more than one (1) year prior to the date upon which such option will expire.

(b) The legal description of the Additional Property is set forth in Exhibit "B". Portions of the Additional Property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become part of the Property.

(c) All Lots created on portions of the Additional Property which are added to the Property will be restricted exclusively to residential use, in accordance with Article VI of this Declaration.

(d) The dwellings constructed on the Lots on portions of the Additional Property which become part of the property will be certified by an Architect licensed in the State of Georgia or by a Registered Professional Engineer to be compatible with the dwellings constructed in the initial phase of development (that is, the Property as it is constituted upon the recording of this Declaration) in terms of quality of construction, principal materials of construction, and architectural style; however, no assurances are made that any of the structures to be constructed on those portions of the Additional Property which become part of the Property will be substantially identical to dwellings built in the initial phase. The certificate of the Architect or Registered Professional Engineer shall be furnished to the Association and shall be conclusive as to whether the dwellings constructed on the Additional Property, or portions thereof, meet the requirements of this subparagraph, and both the individual Owners and the Association agree to be bound thereby. Such certificate shall be in the same general form as that attached hereto as Exhibit "C".

(e) The option reserved by Section 10.01 of this Article may be exercised by the Declarant alone (without the consent of the Association or any Owner) by the execution by the Declarant of an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that



portion of the Additional Property which is to become part of the Property, the boundaries of all Lots to be located therein, and an identifying number for each such Lot. Any such amendment shall expressly submit that portion of the Additional Property which is to become part of the Property from time to time, and upon the exercise, if any, of such option, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(f) In addition to the procedure outlined in subparagraph (e) above, the option reserved by Section 10.01 of this Article may be exercised with respect to any portions of the Additional Property, notwithstanding that such Additional Property may be owned by persons, including any individual, individuals, corporations, partnerships or any other type of entity, other than Declarant. Declarant shall exercise this option by an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property which is to become part of the Property, the boundaries of all Lots to be located thereon, and an identifying number for each such Lot. Any such amendment shall contain a statement consenting to the annexation of any such Additional Property, together with a reference to a Declaration, (citing the specific Deed Book and Page in which such Declaration is recorded) executed by the Owner or Owners thereof submitting such Additional Property to this Declaration. Upon the exercise of the foregoing procedure, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(g) From and after the date of annexation of any portion of the Additional Property, each Lot so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges accorded every other Lot previously comprising part of the Property. Upon annexation of each portion of the Property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owners, the covenants to maintain the Common Property and the other obligations imposed by this Declaration, as amended from time to time, with respect to that portion of this Additional Property which is then the subject of annexation.

(h) It is understood that if the Development is approved for funding of individual Lot loans by the Federal Housing Administration and/or the Veterans Administration, any variance from the plan of Annexation initially approved by them may jeopardize future funding unless such variance is approved prior to implementation.

(i) Each Owner, by acceptance of a deed to a Lot in the Property and the Association, shall be deemed to have approved annexation in the manner provided in this Article X.

## ARTICLE XI

### MISCELLANEOUS

11.01 Other Changes. Notwithstanding any other provisions herein which may be construed to the contrary, unless at least two-thirds (2/3) of the first mortgages (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) of the individual Lots in the Development have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by such Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common area or property by the Association shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of dwellings on the Lots of the Development, the exterior maintenance of Lots and improvements thereon, the maintenance of the Common Property or party walks or common fences or common roadways and driveways, or the upkeep of lawns and plantings in the Development;

(d) fail to maintain fire and extended coverage on insurable Association Common Property, if any, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

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

11.02 Rights of First Mortgagees.

(a) First mortgagees of Lots in the Development may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Association's Common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lease of a policy, for such Common Property and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Despite any other provision of

this Declaration which may be interpreted otherwise, it is expressly intended that no Owner or any other party have priority over any rights of the first mortgagee of a Lot pursuant to its mortgage or security deed in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Association Common Property.

(b) In addition to the rights of mortgagees elsewhere provided, each first mortgagee of a Lot, upon request, shall (i) be entitled to written notice from the Association of any default in the performance of his obligations under the Development documents of any Owner which is not cured within sixty (60) days; (ii) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (iii) be furnished copies of annual financial reports made to the Owners; and (iv) be entitled to inspect the financial books and records of the Association during reasonable business hours.

11.03 Professional Management. Any agreement for professional management of the Association, or any other contract providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice.

11.04 Notice of Leases; Tenants and Guests. All tenants, lessees, guests and visitors are subject to the covenants contained in this Declaration, and they must abide by the rules and regulations set forth herein and as promulgated by the Association and the ACC. It is the responsibility of the Owner to inform his tenants, lessees, guests and visitors of this requirement. It is also the responsibility of the Owner to inform the Association of any lease of his dwelling, whether by written or oral agreement, and where the Owner will not be occupying his dwelling to provide the Association with a forwarding address where he may be contacted.

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

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

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

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

11.09 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writing shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

- (a) Declarant: Attention: Dan E. Burge, President  
Diversified Developments, Inc.  
188 Anderson Street, Suite 200  
Marietta, GA 30060
- (b) Owners: Each Owner's address as  
registered with the Association  
in accordance with the By-laws.

Any written communication transmitted in accordance with this Section 11.09 shall be deemed received on the third (3<sup>rd</sup>) day following the day such written notice is deposited in the United States Mail.

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

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signed, sealed and delivered  
in the presence of:

DIVERSIFIED DEVELOPMENT, INC.  
a Georgia corporation

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Seal)

(Corporate Seal)

FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR RIDENOUR SUBDIVISION

This First Amendment is made and entered into as of this 29<sup>th</sup> day of December, 1987, by DIVERSIFIED DEVELOPMENTS, INC., a Georgia corporation (hereinafter referred to as "Diversified") and LCL DEVELOPMENT, INC., a Georgia corporation (hereinafter referred to as "LCL").

W I T N E S S E T H:

WHEREAS, Diversified is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Ridenour Subdivision, dated September 24, 1986, filed in Deed Book 4131, Page 189 et seq., Cobb County, Georgia records (hereinafter referred to as the "Declaration"); and

WHEREAS, the Declaration provides in Section 1.07 thereof that the rights of Declarant may be transferred to a successor-in-title to all or part of the property covered thereby; and

WHEREAS, by Warranty Deed dated October 13, 1987, recorded at Deed Book 4682, Page 420, Cobb County, Georgia records, Diversified transferred to LCL a substantial part of the property covered by the Declaration and, pursuant to the contract between the parties, was to have simultaneously transferred and assigned to LCL all of its rights as Declarant under the Declaration, which transfer Diversified and LCL hereby desire to effect; and

WHEREAS, the parties mutually desire and agree to submit to the Declaration part of the Additional Property described therein.

NOW, therefore, for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree and it is hereby declared as follows:

1. ASSIGNMENT OF DECLARANT'S RIGHTS. Pursuant to Section 1.07 of the Declaration, Diversified hereby transfers and assigns all of its rights, interests and obligations as Declarant under the Declaration to LCL. LCL hereby agrees to fully perform all of the obligations of Declarant thereunder and to indemnify Diversified against any loss or claim arising from LCL's failure to so perform.
2. ADDITION OF PROPERTY. Pursuant to Sections 10.01 and 10.02 of the Declaration, the Declarant hereby submits the property described on Exhibit "A" attached hereto and incorporated herein by reference to the Declaration; the property described on Exhibit "A" being a part of the property described on Exhibit "B" to the Declaration.
3. CHANGE IN SUBDIVISION NAME. The parties hereby acknowledge that Ridenour Subdivision has been renamed "Sentinel West" Subdivision by LCL, with the consent of

Diversified, as shown by plat recorded at Plat Book 4762, Page 123, Cobb County, Georgia records. The Declaration shall therefore be hereafter referred to as "Declaration of Covenants, Conditions and Restrictions for Sentinel West Subdivision."

4. DECLARANT'S RIGHTS; REVERSION. Notwithstanding the transfer of Declarant's rights by Diversified to LCL, LCL shall not have the right to further amend the Declaration without the prior written consent of Diversified, which consent shall not be unreasonably withheld; provided, however, that this limitation shall expire at such time as LCL, its successors or assigns, acquires the property formerly known as the "Ridenour, Phase II" property, being more particularly described on Exhibit "B" attached hereto and incorporated herein by reference, as to which LCL has an option to purchase. In the event LCL, its successors or assigns, fails to acquire the Exhibit "B" property on or before July 13, 1988, and Diversified gives LCL written notice that it intends to either develop such property or sell it to another person or entity intending to develop such property, then all rights of Declarant under the Declaration shall automatically revert to Diversified. Such reversion shall be effected by the filing of an amendment to the Declaration reciting the occurrence of these events.

5. EFFECT OF AMENDMENT. Except as specifically modified by this First Amendment, all terms of the Declaration shall remain in full force and effect, including, specifically, the right of Declarant to transfer its interest thereunder to a successor-in-title and to submit other parts of the Additional Property, as defined in the Declaration, to the coverage thereof.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be duly executed and sealed as of the day and year first above written.

Signed, sealed and delivered in the presence of:

\_\_\_\_\_

Unofficial Witness

\_\_\_\_\_

Notary Public

Signed, sealed and delivered in the presence of:

\_\_\_\_\_

Unofficial Witness

\_\_\_\_\_

Notary Public

DIVERSIFIED DEVELOPMENT, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

LCL DEVELOPMENT, INC.

By: \_\_\_\_\_

Jack L. Jones, President

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR RIDENOUR SUBDIVISION  
(RENAMED SENTINEL WEST SUBDIVISION)

This Second Amendment is made and entered into as of this 7<sup>th</sup> day of September, 1988, by DIVERSIFIED DEVELOPMENTS, INC., a Georgia corporation (hereinafter referred to as "Diversified").

W I T N E S S E T H:

WHEREAS, Diversified is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Ridenour Subdivision, dated September 24, 1986, filed in Deed Book 4131, Page 189, et seq., Cobb County, Georgia Records (hereinafter referred to as the "Declaration"); and

WHEREAS, the Declaration provides in Section 1.07 thereof that the rights of Declarant may be transferred to a successor-in-title to all or part of the property covered thereby; and

WHEREAS, by Warranty Deed dated October 13, 1987, recorded at Deed Book 4682, Page 420, Cobb County, Georgia Records, Diversified transferred to LCL Development, Inc. (hereinafter referred to as "LCL") a substantial part of the property covered by the Declaration; and, pursuant to the contract between the parties, simultaneously transferred and assigned to LCL all of its rights as Declarant under the Declaration; and

WHEREAS, the First Amendment to Declaration of Covenants, Conditions and Restrictions for Ridenour Subdivision was recorded on December 30, 1987, at Deed Book 4762, Page 123, Cobb County Records, which Amendment named LCL as the Declarant, added additional property, and changed the name of the subdivision to Sentinel West Subdivision; and

WHEREAS, said First Amendment also provided for the reversion of the rights granted to LCL as Declarant, in that, if LCL failed to acquire the property set forth on Exhibit "B" attached to said First Amendment, on or before July 13, 1988, and Diversified Developments, Inc. were to give notice to LCL of its intent to develop the property, then all rights of the Declarant under the Declaration were to automatically revert to Diversified; and

WHEREAS, said events now having occurred, in that LCL failed to acquire the Exhibit "B" property on or before July 13, 1988, and Diversified having given notice of its intent to develop the Exhibit "B" property, the rights of the Declarant have automatically reverted to Diversified.

NOW, THEREFORE, Diversified hereby amends the Declaration and First Amendment under and pursuant to the authority set forth in the Declaration and First Amendment, as follows:

(1) Reversion of Rights of Declarant. Pursuant to paragraph 4 of the First Amendment, Diversified hereby states and sets forth that the occurrence of the events permitting the automatic reversion of all rights of the Declarant have occurred, in that LCL failed to acquire the Exhibit "B" property on or before July 13, 1988, and that Diversified has given written notice to LCL of its intention to develop said Exhibit "B" property. Therefore, Diversified is hereby declared to be the Declarant, as such term is used and defined in the Declaration, and accedes to all rights, title and obligations of the Declarant pursuant to the Declaration as amended.

(2) Effect of Amendment. Except as specifically modified by this Second Amendment, all terms of the Declaration and First Amendment shall remain in full force and effect.

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

Signed, sealed and delivered  
in the presence of:

DIVERSIFIED DEVELOPMENTS, INC.

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
Dan E. Burge, President

(CORPORATE SEAL)

THIRD AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR RIDENOUR SUBDIVISION  
(RENAMED SENTINEL WEST AND WYCKFORD SUBDIVISIONS)

This Third Amendment is made and entered into as of this 14<sup>th</sup> day of November, 1992, pursuant to a vote of the Owners as described in the Declaration of Covenants, Conditions, and Restrictions for Ridenour Subdivision (hereinafter referred to as "Covenants").

W I T N E S S E T H:

WHEREAS, the Owners have considered four amendments, and

WHEREAS, there has been formal notification and individual signed balloting as provided by the Covenants, and

WHEREAS, the required 75% of the Owners have approved the four amendments, and

WHEREAS, the Board of Directors of the Ridenour Homeowners and Recreation Association Inc. (hereinafter referred to as "Association"), also described in the Covenants, has directed the Secretary to record those amendments with the Clerk of the Superior Court of Cobb County as required by the Covenants,

NOW, THEREFORE, the Owners hereby amend the Covenants as follows:

Article VI, Section 6.06 be entirely changed to read:

"No living tree having a diameter of six (6) inches or more (measured from a point two (2) feet above the ground level) shall be removed from any lot without prior written approval by the ACC. New construction or alteration of any structure requiring living tree removal from any lot requires conformity with approved landscaping plan and specifications submitted pursuant to the provisions of Section 6.05 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the property may be included in the Design Standards of the ACC."

Article VI, Section 6.13 to changed to read:

Added at end of paragraph. "Garbage cans, bags, and all other refuse containers must be left outside only on the days of garbage pick up."

Article VI, Section 6.23 (added) to read:

"Detached structure. No detached structures, including, but not limited tom, buildings, garages, carports, workshops and tool storage sheds shall be allowed, except as specifically approved by the ACC in writing."

Article VI, Section 6.24 (added) to read:

"Commercial Vehicles. No commercial vehicles of any kind shall be permitted to be stored or parked outside on any lot on a permanent basis, but shall be allowed on a temporary basis not to exceed three (3) days. A commercial vehicle is defined as any non passenger vehicle or any passenger vehicle with advertising. All commercial vehicles stored or parked on a permanent basis shall be garaged in an attached garage whose condition meets and conforms to the design standards set forth by the ACC."

IT WITNESS WHEREOF, the President of the Association has caused this Third Amendment to be duly executed as of the day and year first above written.

Signed and delivered in the  
Presence of:

Ridenour Homeowners and Recreation  
Association, Inc.

\_\_\_\_\_  
J. B. Moore, Vice President

By: \_\_\_\_\_  
Robert J. Hovey, President

\_\_\_\_\_  
Kathy Marzel, Secretary/Notary Public