

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BAYSWATER COMMON

ARTICLE I

DEFINITIONS

Section 1. The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

(a) "Act" shall mean the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220 et seq. (Michie, 1982), as such act may be amended from time to time.

(b) "Association" shall mean and refer to Bayswater Common Homeowners Association, Inc., a non-profit Georgia Corporation, its successors and assigns.

(b) "Bayswater Common" shall mean and refer to the real property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions of Article II hereof.

(c) "By-Laws" shall refer to the By-Laws of Bayswater Common Homeowners' Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference.

(d) "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or thereafter owned by the Association for the common use and enjoyment of the owners.

(e) "Community" shall mean and refer to that certain real property and interests therein described as Exhibit "A", attached hereto, and (i) such additions thereto as may be made by Declarant (or its mortgagee or transferee, as provided in the Declaration) by Supplementary Declaration of all or any portion of the real property described in Exhibit "B", attached hereto; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.

The Community constitutes a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie, 1982), as such act may be amended from time to time.

(f) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such Standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standards originally established by the Declarant.

(g) "Declarant" shall mean and refer to Lawrenceville-Suwanee Ltd., a Georgia Limited Partnership, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", attached hereto or in Exhibit "B", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is

designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A", attached hereto, and in Exhibit "B", attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one (1) "Declarant" hereunder at any one point in time.

(h) "Intended for use" shall mean the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds by which the Developer has conveyed the property.

(i) "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat (whether attached or detached dwellings), recorded in land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of any owner in the Common Property, which shall include, without limitation, membership in the Association.

(j) "Majority" shall mean those eligible votes, owners, or other groups as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

(k) "Mortgage" shall mean any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(l) "Mortgagee" shall mean the holder of the Mortgage.

(m) "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot located within the Community, excluding, however, any person holding such interest merely as security for the performance or satisfaction of any obligation.

(n) "Person" shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(o) "Project" shall mean any substantive exterior addition, alteration, maintenance or repair performed on a homeowner's lot or principal dwelling that replaces the existing materials or that changes the size, color, surface, texture, or appearance.

(p) "Public / Public View" shall mean, (a.) Any viewing area of a residence from the front of the home, or (b.) any viewing area from a public street in front of or adjacent to a residences' property.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held,

transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "A", attached hereto and by reference made a part hereof.

The property subjected to this Declaration constitutes a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220 et seq. (Michie, 1982), as such act may be amended from time to time.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

Section 3. Master Plan. The Developer intends to develop Bayswater Common in accordance with the master plan. The Developer reserves the right to review and modify the master plan at its sole option, from time to time. The master plan shall not bind the Developer, its successors and assigns, to adhere to said plan in the development of the land shown thereon. The Developer shall not be required to follow any predetermined sequence or order to improvements and developments. The Developer shall have the full power to add to, subtract from or make changes in the master plan regardless of the fact that such actions may alter the relative voting strength of the various types of membership of the Association.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

Section 2. Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting, as further described in Section 6 of this Article. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

Section 3. Meetings. Except as may be herein otherwise provided, all matters concerning meetings of members of the Association, including the time within which and the manner in which notice of any meeting shall be given to said members, and the quorum required for the transaction of business at any of such meetings, shall be as specified in the Articles of Incorporation or By-Laws of the Association, as amended from time to time, and by law.

Section 4. Casting of Votes. Subject to the provisions of this Declaration and the Articles of Incorporation, the votes of the members shall be cast under rules and procedures as may be prescribed in the By-Laws of the Association, as amended from time to time, or by law.

Section 5. Amplification. The provisions of this Article are to be amplified by the Articles of Incorporation and By-Laws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners of Lots as set forth herein. In the event of any conflict or inconsistencies between this Declaration, the Articles of Incorporation or the By-Laws of the Association, this Declaration, the Articles of Incorporation and the By-Laws (in that order) shall prevail.

Section 6. Multiple Ownership. When any property entitling the Owner to membership as a Lot Owner of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, tenants in common, tenants in partnership or in any other manner of common ownership, or of two (2) or more persons or entities having the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, their acts with respect to voting shall have the following effects:

- (1) If only one votes, in person or by proxy, his act binds all;
- (2) If more than one vote, in person or by proxy, the acts of the majority so voting binds all;
- (3) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled its proportionate share of the vote or votes;
- (4) If the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority of even-split for purposes of this paragraph, shall be a majority or even-split in interest;
- (5) The principals of this paragraph shall apply, but not be limited to, insofar as possible execution of proxies, waivers, consents or objections, for the purpose of ascertaining the presence of a quorum.

The voting rights of an Owner may be assigned by said Owner to his lessee who has entered into a lease with a term of two (2) years or more; provided, however, that the Owner may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee.

Section 7. Control by Declarant. Notwithstanding any other provision to the contrary contained in this Declaration, the Articles of Incorporation of the Association or its By-Laws, Declarant shall have the right to appoint or remove any director or directors of the Association or any officer or officers of the Association until the first of the following occur:

(a) Four (4) months after the date as of which seventy-five percent (75%) of the residential lots located within Bayswater Common have been conveyed by Developer to Owners other than a person or persons constituting Developer; or

(b) The surrender by Declarant of the authority to appoint and remove directors of the Association and officers of the Association by written notice to the Association, a certified copy of which notice shall be recorded in the Real Estate Records of Gwinnett County, Georgia; or,

(c) December 31, 1991.

Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association, such rights shall automatically pass to the Owners, including Declarant, if Declarant then owns one or more residential Lots in Bayswater Common.

Thereafter, directors and officers of the Association shall be elected pursuant to the terms and provisions of this Declaration, the Articles of Incorporation of the Association and its By-Laws.

ARTICLE IV
ASSESSMENTS

Section 1. Purpose of Assessments. The assessments provided for herein shall be used for the purpose of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots (in the Community and in particular for the acquisition, improvement, maintenance and operation of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Property, including but not limited to the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, as reasonable reserve funds for maintenance, repair and replacement of those common facilities that must be replaced on a periodic basis and for such purposes as to cover unforeseen contingencies or deficiencies, or for emergency expenditures or such other matters as may be authorized from time to time by the Board of Directors. In determining the fiscal needs of the Association, the Board of Directors of the Association shall be authorized to establish from time to time a reasonable amount which shall be contributed as a part of the annual assessment for capital purposes. As collected, such capital contributions shall be deposited in a separate capital account with separate records maintained therefore and disbursements therefrom shall be only for capital purposes as determined from time to time by the Board of Directors. No Lot shall be subject to any assessment provided for herein unless and until such Lot is subjected to this Declaration.)

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, to be established and collected as hereinafter provided; and (iii) individual or specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed by the Association for violations hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

Section 3. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the initial and succeeding year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the initial and succeeding year to be delivered to each member within thirty (30) days of the Board's determination for the initial fiscal year and at least thirty (30) days prior to the end of the current fiscal year; for the Board's determination for the succeeding fiscal year. The budget and the assessment shall become effective unless disapproved at a

meeting by a Majority of the Owners and the Declarant (so long as the Declarant has an option unilaterally hereof). Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments in any year if approved by two-thirds (2/3) of the Owners and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the Declarant. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Lien Priority. The lien provided for herein shall have priority as provided in the Act.

Section 6. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent and the Owner shall be in default.

(i) If any assessments or any part thereof, or any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten (10%) percent per annum or such higher rate as permitted by the Act shall accrue from the due date. If part payment of assessments and related charges is made, the amount received shall be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

(ii) If assessments, fines or other charges, or any part thereof due from an Owner remain delinquent and unpaid for more than thirty (30) days from the date due, then ten (10) days after notice is given to that Owner, if all outstanding charges have not been paid, the Board may accelerate and declare immediately due any unpaid installments of the Owner's annual assessment.

(iii) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after the assessment payments first become delinquent, then the Owner's voting rights may be suspended by the Board and the Owner excluded from quorum and voting requirements, as provided in the Act, until full payment is made, and, further, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, the Act and Georgia law and suspend the Owner's and occupant's right to use the Common Property as provided in the Act.

Section 7. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Lot subject to assessments under this Declaration on the first day of the month following the conveyance of such Lot to an Owner which does not constitute the Declarant hereunder and shall be due and payable in a manner and on a schedule as the Board of Directors may provide with the exception that the commencement of the assessment shall be tolled for a period not to exceed 180 days during which the Owner is in the process of building a single family residence on the Lot which is the first such improvement thereon. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. Unless otherwise provided by the Board of Directors of the Association, all assessments arising pursuant to this Declaration shall be paid on or before the first day of the month following such assessment(s) without further notice from the Association.

Section 8. Assessment Obligation of Declarant.

(a) After the commencement of assessment payments as to any Lot, Declarant, on behalf of itself and its successors and assigns, covenants and agrees to pay the full amount of the assessments provided herein for each Lot which has been landscaped and maintained by the Association; provided, however, each Lot owned by Declarant which does not contain an occupied residence shall not be subject to any assessment provided for herein.

(b) 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 materials 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 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.

Section 9. Specific Assessments. The Board shall have the power to specifically access pursuant to this section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically access Lots for the following Association expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

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

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

Section 10. Uniform Rate of Assessment. Except as otherwise provided in Section 9 of this Article IV, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis in such other reasonable manner as may be determined by the Board of Directors of the Association.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempt from the assessment, charges, and liens created herein: (1) all properties dedicated to and accepted by a local public authority; (2) the Common Property; and (3) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Georgia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges and liens.

Section 12. Statement of Account. Any Owner, mortgagee, or a person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) days of receipt of

the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

ARTICLE V

MAINTENANCE; CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, and of all landscaping and improvements situated on the Common Property. The Association shall maintain all entry features for the Community. The Association shall also maintain all property outside of Lots located within the Community, which was originally maintained by Declarant.

In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association where the Board has determined that such maintenance would benefit all Owners. This right shall include, but shall not be limited to, the right to assume maintenance responsibility for the exteriors of any attached dwellings, on any Lots within the Community, if any, upon the consent of a majority of the Owners of the affected Lots, in which case the cost of such maintenance shall be assessed only against the Lots benefited.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Party Walls and Structural Support.

(a) General Rules of Law to Apply. Each wall, if any such walls as described hereinafter are constructed, including patio walls, which is built as a part of the original construction of any single family residential dwelling upon any Lot, any part of which is placed on the dividing line between two Lots, shall constitute a party wall; and, to the extent not inconsistent with the provisions of the Article, each of the adjoining Lot Owners shall assume the burdens and be entitled to the benefits of the provisions of this Article, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair or Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. In addition to meeting the other requirements of this Declaration and of any building code or similar regulations or ordinances, an Owner proposing to modify, make additions to, or rebuild any improvement on his Lot in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining owner, and the Bayswater Common Homeowners' Association, Inc.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, such Owner shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rules of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such element.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title. Nothing contained in this Article shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted in this Declaration.

(f) Arbitration. In the event of any dispute arising concerning a party wall, or other provision of this Article, and the parties elect to submit the dispute to arbitration, then, such arbitration shall be conducted pursuant to the Georgia Law of Statutory Arbitration and Award (Chapter 7-2 of the Code of Georgia, Annotated) as the same may be in effect at the time of arbitration. If the statute is repealed, then, if the parties elect to submit the dispute to arbitration, the parties shall apply to the Superior Court of the County in which the Community is located for court ordered referral to arbitration under such rules as such Court may impose.

(g) Structural Support. Irrespective of whether the same constitutes a party wall, every portion of a dwelling which contributes to the structural support of another dwelling shall be burdened with an easement of structural support. No Lot Owner shall be permitted to demolish any portion of his dwelling which contributes to the structural support of another dwelling.

Section 4. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Lakes and dams shall, without limitation, be included in the property that may be conveyed by Declarant and which shall be

accepted by the Association. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section, including, without limitation, dredging or otherwise removing all silt from any lake that may be conveyed.

ARTICLE VI

USE RESTRICTIONS AND RULES

Section 1. General. All Owners and occupants of any Lot shall be subject to and shall comply with the use restrictions contained in this Article VI.

In addition, the Board of Directors may, from time to time, without consent of the members, promulgate, modify, or delete rules and regulations applicable to the Lots and the Common Property. This authority shall include, but shall not be limited to, the right to limit the type and size and to set the maximum and minimum speeds of vehicles within the Community. The Board shall also have the authority to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. Such regulations shall be binding upon all Owners and occupants until and unless overruled, cancelled, or modified in a regular or special meeting by vote of Owners holding a Majority of the total votes in the Association and by vote of the Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof.

Section 2. Architectural Standards. No exterior construction, alteration, addition, or erection of any nature whatsoever, including, without limitation, fences, shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, and locations shall have been submitted in writing to and approved by the Architectural Review Committee ("ARC"). The ARC shall consist of three (3) Persons who are Owners or spouses of Owners appointed by the Board of Directors and shall serve at the discretion of the Board; provided, however, that until Certificates of Occupancy have been issued for every Lot in the Community. The ARC may promulgate written guidelines for the exercise of this review.

Any two (2) or more members of the ARC may be authorized by the ARC to exercise the full authority of the ARC with respect to all matters over which the ARC has authority as may be specified by resolution of the ARC. The unanimous action of two (2) or more ARC members with the Board's approval and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by ARC on its own motion.

The ARC and the Bayswater Common Board of Directors shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the ARC or its representatives shall have the right, during reasonable hours, to enter upon any Lot to inspect any Lot and any improvements thereon for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry. In the event the Board or its designee fails to approve or to disapprove such design and location within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with.

Section 2.1. Submission of Plans and Specifications. The ARC will require the following plans and specifications be submitted in writing prior to written approval by the ARC:

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

(b) a foundation plan;

(c) a floor plan;

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

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

(f) plans for landscaping and grading.

Section 2.2 Approval of Plans and Specifications. Upon approval by the ARC of any plans and specifications submitted pursuant to this declaration, one (1) copy of such plans and specifications, as approved, shall be deposited for permanent record with the ARC and a 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 ARC's right, or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

Section 2.3 Disapproval of Plans and Specifications. The ARC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

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

(b) the failure of such plans or specifications to comply with the covenants;

(c) any other matter which, in the judgment of the ARC, would be likely to cause the proposed installation, construction, or alteration of a structure to fail to be in conformity and harmony of external design and general quality with the conditions and restrictions set forth in the Bayswater Common Declaration of Covenants or as to location to be incompatible with topography, finished ground elevation and surrounding structures.

In any case in which the ARC or the Board 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 ARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

Section 2.4 Disclaimer as to ARC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ARC, the members thereof, nor the Association assumes liability or responsibility thereof, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ARC, the Board, nor the

officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against the Association, the ARC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

(a) Limitation of Liability. Review and approval of any application pursuant to this Paragraph is made on the basis of aesthetic considerations only and neither the Board of Directors nor the Architectural Review Committee (ARC) shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board of Directors, the Architectural Review Committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

Section 3. Prohibited Conditions and Activities. No noxious or offensive activity shall be carried on upon any property within the Community, nor shall any unclean, unsanitary, unsightly, or unkempt conditions of buildings or grounds be allowed to exist. Further, nothing shall be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Owner, Owner's family, tenant, or guest provided each Owner, Owner's family, tenant, or guest complies with said covenant restrictions.

Section 4. Animals and Pets. No pet or doghouse may be visible from the street. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Residence, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or occupants or the Owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Residence be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed, and inoculated as required by law.

Section 5. Garbage Receptacles and Woodpiles. All garbage receptacles and woodpiles must be hidden from public view and the view from adjoining property.

Section 6. Minimum Dwelling Size. Ranch dwellings shall not contain less than two thousand (2000) square feet of finished living area, and two-story dwellings shall not contain less than two thousand four hundred (2400) square feet of finished living area, exclusive of open porches, basements, garages, carports, and breezeways.

No raised ranch, split level, or split foyer homes are permitted. All homes must contain a minimum of three bedrooms. No 1 1/2 story homes are permitted.

Section 7. Subdivision of Lots. Unless approved in writing by the ARC, no Lot shall be subdivided, nor shall the boundary lines of any such Lot be changed. Two (2) or more

Lots may be combined for the purpose of creating a larger Lot, but no portion of any such combined Lots may be subdivided or sold without written approval of the ARC, provided, however, that this provision shall not be interpreted to prohibit the transfer of any whole Lot or adjoining Lot under plans which considered such Lots combined to form a larger Lot. Any permitted subdivision or combination of Lots shall not diminish the extent and quality of easements or rights affecting such Lots. The Declarant reserves the right to re-plat any Lot still owned by the Declarant and shown upon recorded plats of the Community in order to modify the boundary lines and to take such other steps reasonably necessary or desirable to make such re-platted Lot suitable and fit as a building site to include, but not be limited to, the relocation of easements, walkways, rights of way, roads, bridges, parks, recreational facilities and other amenities to conform to the new boundaries of such re-platted Lots; provided, however, that no Lot originally shown on a final recorded plat of the Property shall be reduced to a size more than ten percent (10%) smaller than the smallest Lot shown on such plat.

Section 8. Trash and Garbage. No trash, garbage, construction debris, or other unsightly or offensive material shall be placed or allowed to remain upon any part of the Community, except as may be temporary and incidental to the construction of bona fide improvements thereon. During construction, debris must be placed in dumpsters placed on the construction site or in a confined or enclosed space to prevent distribution by the elements. This Section shall not prohibit the Declarant or any builder purchasing property from Declarant from burying trees and rocks on Lots or from using fallen trees and debris as fill material. Burning of trash is prohibited.

Section 9. Vehicles. Only passenger automobiles, passenger vans, motorcycles, pickup trucks and pickup trucks with bed campers that are in operating condition and currently licensed may be parked or stored in areas visible from the street on which the dwelling fronts. Restricted vehicles including trailers, boats (watercraft), recreational vehicles and motor homes may be parked or stored temporarily (not more than 3 days in a given week) in such visible locations. The location of any commercial vehicle having a capacity of over one ton and any house trailer must be approved by the Board of Directors. Any variance from these rules as to type of vehicle and location must be approved by the ARC and the Board of Directors.

Parking and Towing. Disabled and stored vehicles are prohibited from being parked at Bayswater Common, except in garages. For purposes of this Section, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains unmoved at Bayswater Common (except in a garage) for fourteen (14) consecutive days or longer without the prior written permission of the Board of Directors.

If the vehicle is parked on any portion of the Property in violation of this Section or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twentyfour (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If the vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot or dwelling, is obstructing the flow of traffic, is parked in any grassy area, is parked in a space which has been assigned as exclusively serving another Lot, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If the vehicle is towed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary

herein, the Board of Directors may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

Section 10. Setback Lines. There shall be a minimum thirty-five (35) foot front setback requirement applicable to all dwellings within the Community. Further determinations of the required distances between property lines and improvements upon a Lot shall be determined by the ARC as part of the exercise of its authority to approve the location of improvements. Such setbacks may be more restrictive than the setback lines depicted on the final recorded plat for a Lot.

Section 11. Utilities and Services. All utilities and services shall be placed underground from the property line or easement to the structure or other improvement. No utility or other service may be used, connected or operated except through easements and rights reserved unto the Declarant.

Section 12. Antennae. No television antenna, radio receiver or transmitter, or antennae or similar device for receipt or transmission of infrared, microwave, television, or radio signals of any kind may be erected upon the exterior portion of any structure or Lot if cable, satellite dish or other transmission conduit running from an operating master antenna system for such reception is available. The cost of such service shall be borne directly by each subscribing customer or by the Association if the Association approves handling the expense thereof as a service or function to its members. If cable television, satellite services or a master antenna system is unavailable and good television reception is not otherwise available, an Owner may make written application to the ARC for permission to install a television antenna or other device subject to the reasonable aesthetic requirements that may be imposed, including but not limited to, the screening of such device from public and private view.

Section 13. Lot Grade. The natural grade of the Lot is not to be raised or altered in any way to adversely affect an adjacent property owner or owners. Each Owner is responsible to the other Owners, the Declarant and the Association for taking reasonable precautions to prevent the accumulation of sediment, erosion, or any other adverse effect resulting from construction. All site work and grading shall be subject to the approval of the ARC.

Section 14. Temporary Structures. The only type of temporary structure which shall be allowed on any portion of the Community is that used by Declarant, contractors, or builders during construction of improvements or shelters maintained by the Declarant or the Association. Under no circumstances may any kind of recreational vehicle, camper, or temporary shelter be used as a temporary or permanent residence. Temporary construction shelters must be removed from the Community within eighteen (18) months after the start of construction on any Lot unless approval to retain them or remove them is given by the ARC.

Section 15. Clotheslines. No clotheslines shall be visible from any road or from any adjoining property.

Section 16. Removal of Trees. No trees measuring ten (10) inches or more in diameter at a point one (1) foot above ground level nor any flowering tree may be cut or removed, nor any major clearing of small trees be performed upon any Lot without the approval of the ARC, unless located within ten (10) feet of a proposed or existing dwelling unit or within ten (10) feet of a proposed or existing driveway, walkway, tennis court, swimming pool, or similar improvement. Excepted here from shall be damaged or diseased trees as determined by the ARC and trees which must be removed because of an emergency.

Section 17. Fences. No fence of any kind shall be installed in the front yard of a home or maintained on any Lot without the written approval of the ARC. Any portion of a backyard fence visible from the street must be aesthetically pleasing.

Section 18. Commercial and Business Uses Prohibited. No Lot or improvement shall be used for business, commercial or manufacturing purposes whether for profit or not. The following activities are specifically prohibited: Any business that (a) stores substantial amounts of products, (b) stores hazardous materials, (c) sells or uses living animals, (d) maintains a storefront, or (e) any other activity deemed to disrupt the conformity of a residential neighborhood. No noxious or offensive activity shall be undertaken on any Lot, nor shall anything be done which is or may become any annoyance or nuisance to the neighborhood. Nothing in this Section shall prohibit the Builder or Developer's use of a residence as an office. Nothing in this Section shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as tutoring or giving art lessons so long as such activities are in compliance with all applicable governmental and zoning requirements and do not materially increase the number of cars parked on the street or interfere with adjoining homeowners' use and enjoyment of their residence and yards.

Section 19. Drainage and Erosion. Catch basins and drainage areas shall be for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant of a Lot may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. There is hereby reserved to the Declarant and the Association the right to take whatever action either deem reasonably necessary to prevent erosion within the Community including, without limitation, planting trees, plants and shrubs and providing drainage ways and dams.

Section 20. Driveways. All driveways shall be surfaced with concrete and/or brick and must be approved by the ARC.

Section 21. Mailboxes. Mailboxes or mail receptacles and their supporting structure to be located on or near the roadway must be of a type and size approved for use by the ARC. After installation, each Owner has the responsibility of keeping it in good repair and appearance.

Section 22. Signs. No commercial sign or other similar signs shall be erected, placed, or maintained temporarily or permanently on any property by anyone, except: (1) signs previously approved by the ARC; (2) signs used with the written permission of the ARC; and (3) signs required by legal proceedings. The ARC may restrict size, color, and content of such signs.

Section 23. Exterior Appearance. All dwellings within the Community shall be of Traditional, European, Cape Cod, design. Spanish or Contemporary plans shall not be permitted. Said dwellings' exteriors shall not be of cedar, nor shall exposed block be allowed. Color schemes are on a case-by-case basis. All front yards are to be sodded with Bermuda, Zoysia, or centipede grass. No fescue sod is permitted in front yards. Chimneys are to be completed to ground level. All front porches must be skirted, and no open stairways are permissible. Enclosed two-car garages are mandatory. The ARC shall retain the right, pursuant to Section 2 of the Article, to modify, alter, or otherwise revise the foregoing restrictions.

No wooden stairs or wooden stair railings are permitted on the front of a dwelling. All dwelling fronts must be brick, stucco, or field stone. No permanent structures, ornamental figures or benches of any sort may be erected in the front yard without the ARC approval. No above ground pools may be Allowed.

Section 24. Abandoned Personal Property. Personal property, other than an automobile as provided for in Section 9 of this Article, and other than typical outdoor furniture, barbecues and other items, is prohibited from being stored, kept, or allowed to remain for a period of more than twentyfour (24) hours upon any portion of the Common property or the exterior of any Lot, without the prior written permission of the Board.

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

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

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

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

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

ARTICLE VII

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance on Common Property. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board shall obtain, if reasonably available, a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available,

directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million (\$1,000,000.00) Dollars.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board is unable to comply because the Board has contracted for or otherwise arranged to obtain insurance coverage through the Declarant.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth;

(a) All policies shall be written with a company licensed to do business in Georgia and holding a rating of A-XI or better in the financial category as established by A. H. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgage having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) A waiver of subrogation by the insurer as to the claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be cancelled, invalidated, or suspended on account of any defect or the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, or any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain workers' compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Associations' funds, if reasonably available. The amount of fidelity coverage, if available, shall be determined in the director's best business judgment, but shall at least equal three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and cannot be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of The Mortgage Corporation or the Federal National Mortgage Association.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance or any portion of individual Lots, and each Owner covenants agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk property insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The property insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism, and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If "all-risk" coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to require the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt on or before the expiration of any policy. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Lot as a specific assessment. The Association shall also have the authority, upon the consent of a majority of the Owners of the affected Lots, to obtain the insurance required by this section for any Lots containing attached dwellings, if any, and to assess the costs thereof to the Owners of the benefited Lots.

Section 3. Damage and Destruction - Insured by Association.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to fire or other casualty. The Board of Directors shall have all enforcement powers specified in Article XII, Section 1, of this Declaration to enforce this provision.

(b) Repair and Reconstruction. Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of all Owners and the Declarant so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, otherwise agree. If property not owned by the Association is damaged, all Owners of such property must also agree within such sixty (60) day period to any plan not to repair or reconstruct the property owned by such Owners. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction or both are not made available to the Association within such period then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

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

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

Section 4. Damage and Destruction - Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers in Article XII, Section 1, of this Declaration.

Section 5. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any Declaration or contract requiring the Association to obtain such insurance for maintenance of the damaged or destroyed property.

ARTICLE VIII

CONDEMNATION

Section 1. Common Property. If a taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Owners other than Declarant and the Declarant, so long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX, hereof, shall otherwise agree, the Association shall restore or replace such improvements to take on the remaining land included in the Common Property to the extent lands are available therefore. The provisions of Article VII, Section 3,

above applicable to Common Property improvements damage, shall govern replacement or restoration of the actions to be taken in the event that the improvements are not restored or replaced.

Section 2. Lots. If a taking includes one or more Lots, or any part or parts thereof, whether or not there is included in the taking any part of the Common Property, then the award shall be dispersed and all related matters shall be handled pursuant to and in accordance with the consent of no less than fifty percent (50%) of all Owners other than Declarant and the Declarant, so long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX hereof, expressed in a duly recorded amendment to this Declaration; provided that the consent of the Owner or Owners of the Lot or Lots so taken must first be obtained. If such consent cannot be obtained, the funds shall be dispersed as the court may determine.

ARTICLE IX

ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Unilateral Annexation by Declarant.

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

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

Section 2. Other Annexation. Subject to the consent of the Owner thereof and the consent of the Declarant, so long as the Declarant has an option to subject additional property to this Declaration as provided above, upon the affirmative vote of a majority of the Owners present or represented by proxy at a meeting duly called for such purposes, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of the Superior Court of the county in which the property to be annexed is located a Supplementary Declaration in respect to the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided therein.

ARTICLE X

MORTGAGEE PROVISIONS

The following provisions are established for the benefit of the holders of first mortgages encumbering any Lots located within the Community. In the event of any conflict between other provisions of the Declaration and the following provisions, the latter shall control:

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), (therefore becoming an "eligible holder"), will be entitled to timely written notice of:

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

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

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

(d) any proposed action which would require the consent of a specified percentage of Mortgage holders.

Section 2. Notices of Meetings. Written notice by the Association shall be sent, upon request, to the holder of all first mortgages encumbering any of the Lots located within the Community setting forth the purpose of the meeting not less than thirty (30) days in advance of any meeting being called for the purpose of amending, extending or renewing any of the provisions of this Declaration or the Articles of Incorporation or By-Laws of the Association. No such amendment, extension or renewal 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 located within the Community unless such mortgage holder shall consent thereto in writing.

Section 3. No Abandonment of Status. The Lot Owners shall not by an act or omission seek to abandon the status of the Community as established pursuant to the provisions of this Declaration, except as may be provided by statute in the case of substantial loss, without the written consent thereto in writing.

Section 4. Restrictions on Association. Unless at least two thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) of the Lots in the Community 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 the Association for the benefit of the Lots in the Community. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common 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 a Lot 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 Lots, the exterior maintenance of Lots, the maintenance of the Common Property, party walls or common fences and driveways, or the upkeep of lawns and plantings in the Community;

(d) fail to maintain fire and extended coverage on insurable Common Property 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 Common Property for other than the repair, replacement or reconstruction of such Common Property.

Section 5. Payment of Charges. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Common Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all first mortgagees of Lots in the Community duly executed by the Association, and an original or certified copy of such agreement shall be furnished to Declarant.

Section 6. No Priority. No provision of the Declaration shall be construed to give a Lot Owner or any other party priority over any rights of first mortgagees of Lots in the Community pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Property.

Section 7. Controlling Document. The rights, privileges and benefits granted and accorded to first mortgagees under the provisions of this Section shall be in amplification of, and not in limitation, of any rights, privileges or benefits granted or accorded to first mortgagees under any other provisions of the Declaration. Also, notwithstanding any provision of the Declaration which may be construed to the contrary, the provisions of this Section shall control in the event of any conflict between any of the provisions of this Section and any other provisions of the Declaration which may be construed to the contrary. No amendment to the Declaration shall alter, modify, change or rescind any right, privilege or benefit granted or accorded there under to any mortgagee holding a first mortgage on any Lot in the Community unless such first mortgagee shall consent thereto in writing.

Section 8. No Mortgage Restrictions. The Declaration does not restrict the unit owner's right to mortgage his or her unit. In addition, they do not limit the unit owner's financing options by requiring the use of a specific lending institution or a particular type of lender, including Federal National Mortgage Association.

Section 9. Reserve Fund. The Association is required to establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the common areas and those limited common areas which the Association may be obligated to maintain. The funds are to be maintained out of regular assessments for common expenses.

A working capital fund is required for the initial months of the projects' operation equal to at least two months' assessments for each Lot. Each Lot's share of the working capital fund must be collected and transferred to the Association at the time of closing of the sale of each Lot and maintained in an account for the use and benefit of the Association. The purpose of the fund is to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment for services deemed necessary or desirable. Amounts paid into the fund are not to be considered as advance payment of regular assessments.

Section 10. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation (the Mortgage Corporation), the following provisions apply in addition to and not in lieu of the foregoing, unless two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall be deemed a transfer within the meaning of this subsection);

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

(c) by act or omission change, waive, or abandon the scheme of regulations or enforcement thereof pertaining to architectural design or the exterior appearance and maintenance of Lots and of the Common Property (the issuance and amendment of architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection);

(d) fail to maintain fire and extended coverage insurance, as required by this Declaration; or

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

Nothing contained in other provisions of this Declaration shall be construed to reduce the percentage vote which must otherwise be obtained under the Declaration for any of the acts set out in this Article X, Section 10.

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

Section 11. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

Section 12. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners may cause an amendment to this Article to be recorded to reflect such changes.

Section 13. FHA/VA Approval. As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX, the following actions shall require the prior written approval of the Federal Housing Administration ("FHA") and/or the Veterans Administration ("VA") so long as the FHA/VA are guaranteeing any Mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article IX, Section I hereof pursuant to a plan of annexation previously approved by FHANA; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation.

Section 14. Applicability of Article X. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

Section 15. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

ARTICLE XI

EASEMENTS

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements from encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to the willful conduct on the part of an Owner, tenant, or the Association.

Section 2. Easements for the Use and Environment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of a specific portion thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;

(ii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default there under

shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community); and

(iii) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Owners present, or represented by proxy, at a meeting duly called for such purpose and by the Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof.

(b) Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the occupants of any leased Lot.

Section 3. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by a separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2, hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. It is intended that this right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or occupant fails or refuses to cure the condition upon request of the Board.

Section 5. Lake Easements. The Declarant hereby reserves for itself and the Association an easement of ingress and egress over and upon all Lots adjacent to lakes, creeks or other watercourses, if any, for the purpose of providing necessary or desirable maintenance to such lake, creek or watercourse or to the land between the water line and the property line of such Lot. This easement shall extend into each Lot for a uniform distance of twenty-five (25) feet from the then existing shoreline and may be further shown upon final recorded plats of the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, bushes or shrubbery and other vegetation and the right to grade the land covered by the easement. This easement is solely for maintenance purposes and not for recreational activity.

Section 6. Easement for Pest Control. There is hereby reserved to the Declarant and the Association a blanket easement upon, across, above and under all property within the

Community to dispense pesticides and take other appropriate and reasonable action for the control of insects and vermin.

Section 7. Irrigation and Effluent Easements. There is hereby reserved to the Declarant and the Association a blanket easement; (1) to pump water from ponds, lakes, and other bodies of water located within the Community, if any, for irrigation purposes; (2) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Property, including within any portion of the recreational amenities, if any; and (3) to spray or locate any treated sewage effluent within the Common Property, including any portion of the recreational amenities, if any, or upon any Lot with the written permission of the Owner.

Section 8. Access to Lots. The ownership of any Lot located within the Community shall include, as an appurtenance thereto, a nonexclusive easement and right to pedestrian and motor vehicular access, ingress and egress between the Lot and roads or streets serving the Community over, across and upon the paved access areas in the Community which serve the Lot; provided, however, the Association shall have the authority to impose reasonable rules and regulations regarding the use of such paved access areas, as herein elsewhere set forth. Said easement and right of access, ingress and egress shall be appurtenant to and shall pass with the title to each and every Lot which is subject to this particular Declaration, and, irrespective of whether any other term, condition or provision of the Declaration is altered, amended, modified, rescinded or terminated, said easement and right of access, ingress and egress shall be perpetual and shall run with and bind the land and shall not be altered, amended, subrogated, modified, rescinded or terminated with respect to any Lot unless the Owner thereof, as well as the holder of any mortgage affected thereby, specifically consents thereto by an instrument duly recorded in the Office of the Clerk of the Superior Court of the county in which the Community is located.

Section 9. Delegation of Use. Any Lot Owner may delegate, in accordance with and subject to the By-Laws and rules and regulations of the Association, his right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 10. Rules and Regulations. Reasonable rules and regulations concerning the use of the Common Property may be made and amended from time to time by the Board of Directors of the Association; provided that copies of such regulations and amendments thereto shall be furnished by the Association to all Lot Owners. Such regulations shall be binding upon the Lot Owners, their families, tenants, guests, invitees, and agents, until and unless such regulation, rule or requirement be specifically overruled, cancelled or modified by a two-thirds (2/3) vote of each class of members in the Association. Failure to abide by such regulation, rule or requirement shall be grounds for an action for enforcement thereof in accordance with the provisions of Section 1, Article XII hereof. Also, the Association may suspend for a reasonable period of time the right to use and enjoy portions of the Common Property for infractions of its published rules regarding the use and enjoyment thereof; provided, however, that the Association shall not have the right to deny any Owner the right of access to such Owner's Lot.

Section 11. Exterior Maintenance. Each Lot Owner shall have an easement of use over the property adjoining such Owner's Lot as shall be reasonably necessary to enable such Owner to perform required maintenance to his Lot and on the improvements located thereon. In the event of prolonged construction, reasonable notice thereof shall be given to any such adjoining Owner and such construction shall be done only during reasonable daylight hours. This easement shall be exercised in such a manner as not to materially interfere with the use, occupancy or enjoyment of all or any part of such adjoining property.

Section 12. Construction and Sale Period. Notwithstanding any provisions contained in the Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article IX terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant and ARC may be required, convenient, or incidental to Declarant's and such builder's and developer's development, construction, and sales activities, including, but without limitation, the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices. Declarant and any such builder or developer may use residences or offices owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Authority and Enforcement. Bayswater Common shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Property; provided, copies of all such rules and regulations shall be furnished to all Owners and occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the membership. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Lot Owner shall pay the fine upon notice from the Association and the fine shall be an assessment and a lien against the Lot until paid. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

Fining and Suspension Procedure. The Board shall not impose a fine or suspend the right to vote or to use the Common Property (unless an Owner is shown on the books or management accounts of the Association to be delinquent in any payment due the Association in which case the Board may suspend voting and use rights) unless and until notice of the violation is given as provided in subsection (a) below and either a hearing is held or the time has expired for challenging the proposed sanction as provided in subsection (b) below as follows:

(a) Notice. If any provision of the Declarant or By-Laws or any rules or regulations of the Association is violated, the Board shall serve the violator with written notice sent certified mail, return receipt requested, which shall state: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a statement that the violator may challenge the fact of occurrence of a violation, the proposed sanction, or both; (iv) the name, address, and telephone number of a person to contact to challenge the proposed action; and (v) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of receipt of the notice; provided, the Board may, in its discretion, waive any sanction if the violation is cured within such ten (10) day period. In the event of a continuing violation, each day the violation continues beyond the ten (10) day period constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If the alleged violator timely challenges the proposed action, a hearing before the Board of Directors shall be held in executive session affording the violator a reasonable opportunity to be heard. The hearing shall be set at a reasonable time and date by the Board, and notice of the time, date (which shall be not less than ten (10) days from the filing of notice), and place of the hearing and an invitation to attend the hearing and produce any statements, evidence, and witnesses shall be sent to the alleged violator. Prior to the effectiveness of any sanction hereunder, proof of such notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if the violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. This Section shall be deemed complied with if a hearing is held and the violator attends and is provided an opportunity to be heard, notwithstanding the fact that the notice requirements contained herein are not technically followed.

Section 2. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through its Board of Directors, may elect to enforce any provision of the Declaration, the By-Laws, or the rules and regulations by self-help specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section (1) of this Article. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

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

Section 3. Duration. The covenants and conditions of this Declaration shall run with and bind the Community perpetually to the extent provided in the Act.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; or (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans on the Lots subject to this Declaration; or

(d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least Owners a majority of the eligible vote of the Association and the consent of the Declarant, so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

Section 5. Partition. The Common Property shall remain undivided, and no Lot Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

Section 8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. Preparer. Original Declaration was prepared by Reginald Hudspeth, 1770 Indian Trail Road, Suite 280, Norcross, Georgia, 30093 and amended by the "Association".

Section 10. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 11. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by an officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other

commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may be liable as members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 12. Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association prior to extinguishment of the Declarants veto power shall contain a termination clause permitting the Association to terminate the contract or lease at any time after extinguishment of the Declarant's veto power, without cause and without penalty, upon not more than ninety (90) days' written notice.

Section 13. Books and Records.

(a) Inspection of Members and Mortgagees. This Declaration, the By-Laws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers, or grantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 14. Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, the Owners, by a Majority vote, may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of the audited financial statement within ninety (90) days of the date of the request.

Section 15. Leasing of Lots. In order to protect the equity of the individual Owners at Bayswater Common, to carry out the purpose for which the Community was formed by preserving the character of the Community as a homogeneous residential community of predominantly owner-occupied homes, to prevent the Community from assuming the character of a renter-occupied development with renter-occupants' attitudes often dissimilar to those of owner-occupants and non-resident-owner property maintenance standards often inconsistent with community standards, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the Community be substantially owner-occupied, leasing of Lots shall be governed by the restrictions imposed by this Section. **EXCEPT AS PROVIDED IN THIS SECTION, THE LEASING OF LOTS AT BAYSWATER COMMON SHALL BE PROHIBITED.**

(a) Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person(s) other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Leasing, for purposes hereof, does not include roommates or cohabitants of an Owner when the Owner occupies the Lot.

(b) Undue Hardship. The Board shall be empowered to allow reasonable leasing of Lots, upon written application, to avoid undue hardship upon an Owner. By way of illustration, and not by limitation, examples of circumstances which would constitute "undue hardship" are those in which:

(1) an Owner must relocate his or her residence and cannot, within one hundred eighty (180) days from the date the Lot was placed on the market, sell the Lot except at a price below its current appraised market value, after having made reasonable efforts to do so;

(2) the Owner dies and the Lot is being administered by his or her estate; or

(3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot, in which case the Owner must reapply every year for renewal of the hardship exception.

Those Owners who have demonstrated to the Board that the inability to lease their Lot would result in undue hardship and have obtained written Board approval may lease their Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Lot to avoid undue hardship must submit a written application to the Board setting forth the circumstances necessitating the leasing and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and By-Laws, in order to enforce the provisions of this Section. Any transaction which does not comply with this Section shall be voidable at the option of the Board.

(c) Leasing Provisions. Such leasing as is permitted at Bayswater Common shall be governed by the following provisions:

(i) Notice. At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board with: (1) a copy of the proposed lease, (2) the name, address, and home and business telephone numbers of the proposed lessee and all occupants of the Lot, (3) the Owner's address other than at the Lot, and (4) such other information as the Board may reasonably require. The Board shall approve or disapprove the form of said lease. In the event a lease form is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto. When leasing is approved, a copy of the lease, signed by the lessee and lessor, shall be submitted to the Board within ten (10) days after it has been signed by both parties.

(ii) General. Lots may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots or assignment of leases without written Board approval. No transient tenants may be accommodated in a Lot. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The

Board shall approve or disapprove any lease form submitted by an Owner within fifteen (15) days of receipt of such lease form. The Owner must provide the tenant copies of the Declaration, By-Laws, and the rules and regulations, and the lease form shall provide that the Owner has done so.

(iii) Compliance with Declaration, By-Laws, and Rules and Regulations. Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Lot shall contain and incorporate the following language. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

Compliance with Declaration, By-Laws, and Rules and Regulations. Lessee agrees to abide and comply with all provisions of the Declaration, By-Laws, and Association rules and regulations. Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and Association rules, and Owner is responsible for all violations and losses caused by such occupants. If the lessee or a person living with the lessee violates the Declaration, By-Laws, or Association rules, fines may be assessed against the Owner and lessee.

Any such violation by the lessee or person living with the lessee is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to Bayswater Common Homeowner's Association, Inc., acting through the Board, the power and authority to evict the lessee on behalf of and for the benefit of the Owner. If the Association does so, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof. The Association also may require an Owner to evict the lessee for violations hereunder.

Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property and amenities of the Community.

(d) Applicability of this Section. Those Owners who are leasing their Lots on the effective date of this Amendment may continue to lease their Lots without demonstrating undue hardship, until any conveyance or transfer of the Lot. Upon any conveyance or transfer of the Lot, any guarantee thereof is prohibited from leasing except in cases of undue hardship as provided above. However, all leases or lease extensions or modifications executed after the effective date of this Amendment are subject to the terms of subsection (c) above. Any Owner of a leased Lot shall provide the Board a copy of the lease agreement within thirty (30) days of request by the Board. Notwithstanding the above, this Section shall not apply to any leasing transaction entered into by the holder of any Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

(e) Sale of Lots. A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give written notice to the Board of such intention at least seven (7) days prior to the transfer. Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give written notice to the Board of his or her purchase of the Lot. This Section shall not be construed to create a right of first refusal in the Association or in any third party.

Section 16. Agreements. Subject to the prior approval of Declarant, so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 17. Bayswater Common Homeowners' Association, Inc. Every Owner, by acceptance of a deed to property within the Community, acknowledges that he or she is subject to the Master Declaration and that he or she is automatically a member of and subject to assessment by Bayswater Common Homeowners' Association, Inc.

Section 18. Implied Rights. The Association may exercise any right or privilege given it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 19. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws, and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

Section 20. Rights of Third Parties. This Declaration shall be recorded in the public real estate records of the Clerk of the Superior Court of the County in which the Community is located and shall inure to the benefit of Declarant, the Association, the Lot Owners and the holders of mortgages affecting any property within the Community, their respective heirs, legal representative, successor-in-title, successors and assigns; and by such recording no owner of property not located within the Community or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of the Declarant and mortgagees as herein provided, the Lot Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any such owner.

Section 21. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidating association may administer the covenants, conditions and restrictions established by this Declaration within the existing property, together with the covenants and restrictions established upon any other property, as one plan.

Section 22. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Declarant or Directors of the Association, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

Section 23. Contracts. The Association, prior to passage of control, is not bound either directly or indirectly to contracts or leases including a contract or lease, without cause, which is exercisable without penalty at any time after transfer of control, upon not more than ninety (90) days' notice to the other party.

Section 24. Information. The Association is required to make available to Lot Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, other rules concerning the project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Section 25. Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety at Bayswater Common; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security at Bayswater Common. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner.

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Section 26. Enhanced Standards and Guidelines. For the purpose of conformity, standards and guidelines not specifically enumerated in the Covenants or By-Laws may be specified within the Architectural Standards document.