

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR DELAMAR

**Revised January 2020:**  
New language added to Section 11.11, Notices

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR DELAMAR IS MADE PURSUANT TO, AND SHALL BE GOVERNED BY, THE TERMS AND PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. §44-3-220, ET SEQ.

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR DELAMAR**

THIS DECLARATION, made this 5th day of July, 1995, by ASHWOOD DEVELOPMENT COMPANY, a Georgia corporation (hereinafter referred to as "Developer").

**WITNESSETH:**

**WHEREAS**, Developer is the owner of certain real property lying and being in Land Lot(s) 358, 362, and 363 of the 2nd District, 1st Section of Forsyth County, Georgia, which real property is more particularly described in Exhibit A attached hereto and by reference made a part hereof; and

**WHEREAS**, Developer desires to provide for the preservation and enhancement of the property values in Delamar and for the maintenance of the Property (as hereinafter defined) and the improvements thereon, and to this end desires to subject the real property described in Exhibit A to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property (as hereinafter defined) and each owner thereof; and

**WHEREAS**, as hereinafter provided in this Declaration, Developer has retained and reserved the right, privilege and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the residential community described herein, all or any portion of the property described in Exhibit B attached hereto and incorporated herein by this reference, and such other property as Developer may acquire from time to time and wish to subject to the terms of this Declaration; and

**WHEREAS**, Developer has deemed it desirable, for the efficient preservation of the values in Delamar, to create an agency to which should be delegated and assigned the powers of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Developer has caused to be incorporated, under the laws of the State of Georgia, Delamar Homeowners Association, Inc., a non-profit corporation, for the purpose of exercising such functions; and

**WHEREAS**, Developer has deemed it desirable that the provisions of the Georgia Property Owners' Association Act (O.C.G.A. S44-3-220, et seq.) apply to the Property and this Declaration;

**NOW, THEREFORE**, Developer hereby declares that all of the real property described in Exhibit A attached hereto is hereby subjected to the terms and provisions of this Declaration and shall be held, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, easements, assessments, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property described in Exhibit A attached hereto, and shall be binding on all persons having any right, title or interest in all or any portion of said real property, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof. Developer further declares that this Declaration shall be governed by the Act (as hereinafter defined).

## **ARTICLE I**

### **DEFINITIONS**

1.1 "Act" shall mean and refer to the Georgia Property Owners' Association Act, O.C.G.A. S44-3-220, et seq., as the same may be amended from time to time.

1.2 "Additional Property" shall mean and refer to the real property described in Exhibit B and all improvements thereon, together with such other additional property and all improvements thereon as Developer shall acquire from time to time and by amendment to Exhibit B hereto recorded in the Office of the Clerk of the Superior court of Forsyth County, Georgia, include within the property described in Exhibit B.

1.3 "Architectural Control Committee" shall mean and refer to Michael A. Grimsley or such other individual(s) as Developer may appoint, or such entity to which the Architectural Control Committee may assign its duties, until (i) all Lots in the Subdivision shall have been fully developed and permanent improvements constructed thereon and sold to permanent residents, or (ii) Developer, in its sole discretion, relinquishes control over the Architectural Control Committee, whichever first occurs. Thereafter, the Architectural Control Committee shall mean and refer to those members of the Association appointed by the Board to serve as the Architectural Control Committee.

1.4 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Delamar Homeowners Association, Inc., as the same may be amended from time to time.

1.5 "Association" shall mean and refer to Delamar Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.6 "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

1.7 "Builder" shall mean any Person engaged principally in the business of constructing for sale to homeowners single family residential dwellings to whom the Developer sells or has sold one or more Lots for the purpose of constructing thereon a single family residential dwelling.

1.8 "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of Delamar Homeowners Association, Inc. which govern the administration and operation of the Association, as the same may be amended from time to time.

1.9 "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

1.10 "Declaration" shall mean and refer to the covenants, conditions, restrictions and easements and all other provisions herein set forth in this entire document, as the same may be amended from time to time.

1.11 "Developer" shall mean and refer to Ashwood Development Company, a Georgia corporation, its successors and assigns. The term shall also be applied to any Person (as defined herein) who lawfully acquires the rights, privileges and options of Developer in accordance with this Section 1.11 Should any of the Property or the Additional Property become subject to a first mortgage given by Developer as security for the repayment of a loan to improve the Property and/or Additional Property for

development as part of this residential community, then all rights, privileges and options herein reserved to the Developer shall inure to the benefit of the holder of such first mortgage upon its becoming the actual owner of the Property and/or the Additional Property then subject to such first mortgage through judicial foreclosure or sale made pursuant to any power of sale contained in such first mortgage or by conveyance of a deed in lieu of foreclosure. The Developer may transfer all of its rights, privileges and options as Developer to a successor-in-title to all or some portion of the Property or the Additional Property, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of such property, and provided further that such successor-in-title is expressly assigned in writing all of Developer's rights, privileges and options herein reserved to Developer.

1.12 "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the exercise of a power of sale contained in any Mortgage or the conveyance of property by a deed in lieu of judicial or non-judicial foreclosure.

1.13 "Lot" or "Lots" shall mean and refer to any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Forsyth County covering any portion of the Property and upon which a single-family residence may be constructed.

1.14 "Mortgage" shall mean and refer to a security deed, deed of trust, mortgage, installment land sales contract or other similar security instrument granting, creating or conveying a lien upon, a security interest in or a security title to a Lot.

1.15 "Mortgagee" shall mean and refer to the holder of a Mortgage.

1.16 "Owner" shall mean and refer to the record owner, whether one or more Persons, including Developer, of the fee simple title to any Lot, but excluding those persons having such an interest under a Mortgage.

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

1.18 "Plat" shall mean and refer to that certain Final Plat of Delamar, Phase I, prepared by Richard May & Associates, Inc., dated April 10, 1995, and recorded in Plat Book 43, Page 25, in the Office of the Clerk of the Superior Court of Forsyth County, Georgia, as the same may be revised or amended from time to time.

1.19 "Property" shall mean and refer to that tract or parcel of land described in Exhibit A attached hereto and by reference made a part hereof, together with such portion of the Additional Property as Developer may subject to the provisions of this Declaration in accordance with the provisions of Article XIII hereof.

1.20 "Structure" shall mean and refer to: (i) any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, gazebo, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, sign, signboard, satellite dish, mailbox, driveway, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot; (ii) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and (iii) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (ii) of this Section 1.20 applies to such change.

1.21 "Subdivision" shall mean and refer to Delamar.

## ARTICLE II

### DEVELOPMENT

2.1 Development of Property. Except as otherwise set forth in Section 9.11, all Lots within the Subdivision shall be and are hereby restricted exclusively to residential use and shall be subject to the standards and restrictions set forth in Article IX hereof. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot primarily for the purpose of sale, to make improvements and changes to all Lots owned by Developer, including, without limitation, (i) installation and maintenance of any water, sewer and other utility systems and facilities; and (ii) installation and maintenance of security and/or refuse facilities.

2.2 Interest Subject to Plan of Development. Every purchaser of a Lot shall purchase such Lot and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of this Article. Any provision of this Declaration to the contrary notwithstanding, the provisions of this Article II may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Developer.

2.3 Subdivision Plat. Developer reserves the right to modify, amend, revise and add to the Plat, at any time and from time to time, setting forth such information as Developer may deem necessary with regard to the Subdivision, including, without limitation, the locations and dimensions of the Lots, utility systems, drainage systems, utility easements, drainage easements, access easements and building and set-back line restrictions.

## ARTICLE III

### PROPERTY RIGHTS

3.1 General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred and encumbered the same as any other real property. Lots shall not be subdivided and the boundaries between Lots shall not be relocated unless the relocation thereof is made with the consent of the Board, the Owners of the Lots which would be affected by such relocation and the Developer, for so long as Developer owns a Lot primarily for the purpose of sale. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two or more Lots into a larger parcel in order to create a residential site larger than one Lot provided (a) the Owner of each Lot affected thereby so consents, and (b) the Developer consents, for so long as Developer owns a Lot primarily for the purpose of sale. Each Lot in the Subdivision shall be subject to those easements, if any, which are shown of the Plat as affecting such Lot.

3.2 Easements for Developer. Developer hereby reserves for itself, its successors and assigns, so long as Developer owns any portion of the Property for development and/or sale, the following blanket easements and rights-of-way in, on, over, under and through the Property:

a) For the erection, installation, construction and maintenance of wires, lines, conduits and poles, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, television cables and other utilities;



- b) For the construction of improvements on the Lots;
- c) For the installation, construction and maintenance of storm-water drains, public and private sewers, irrigation systems, and for any other public or quasi-public utility facility;
- d) For maintenance and use of sales offices, model homes and parking spaces in connection with its efforts to market Lots;
- e) For slope control purposes, including the right to (i) grade and plant slopes, (ii) prevent the doing of any activity which might interfere with slopes or create erosion or sliding problems or change, obstruct or retard drainage flow, and (iii) alter drainage and water flow;
- f) For the planting and replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and
- g) For the maintenance and use of such other facilities, equipment and signs as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots or the developing of Lots and the Additional Property.

Rights exercised pursuant to the foregoing easements shall be exercised with a minimum of interference to the quiet enjoyment of the affected property, reasonable steps shall be taken to protect such property and damage shall be repaired by the Person causing the damage at his sole expense.

3.3 Easements for Association. There is hereby reserved a general right and perpetual easement for the benefit of the Association, its directors, officers, agents and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or any portion thereof (including that portion of each Lot, if any, designated for landscape easements as shown on the Plat) in the performance of their respective duties and responsibilities. Said easement shall include, but not be limited to, the right to enter upon the Lots (i) to perform the maintenance responsibilities of the Association set forth in Section 5.02 hereof, and (ii) for emergency, security and safety reasons, which right may also be exercised by all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during reasonable hours and then, whenever practicable, only upon reasonable advance notice to the Owner of the Lot directly affected thereby. This easement shall specifically include the right to enter in, on, under and to cross over those Lots in the Subdivision upon which any entryway treatment, fence or wall, lighting or irrigation facilities or equipment, or entryway landscaping is located for the purpose of inspecting, maintaining and repairing same.

3.4 Structural Support. Each Lot or improvement on a Lot which contributes support of another Lot or improvement on such Lot shall be burdened with an easement of structural support. Said easement for structural support shall be appurtenant to and shall pass with the title to every benefitted Lot.

## ARTICLE IV

### MEMBERSHIP AND VOTING RIGHTS

4.1 Membership in the Association. Every Owner shall be deemed a mandatory member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and ownership of a Lot shall be the sole qualification for such membership. In the event that fee title to a Lot is transferred or otherwise conveyed, the membership in the Association which is appurtenant

thereto shall automatically pass to such transferee. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Lot.

4.2 Voting Rights. The Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. Each Owner of a Lot, with the exception of Developer except as otherwise set forth herein, shall be a Class A member and shall be entitled to one (1) vote for each Lot owned. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse, but in no event shall more than one vote be cast or more than one office held for each Lot owned. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as the Owners of such Lot themselves determine. The vote appurtenant to such Lot shall be suspended in the event more than one person seeks to exercise it.

(b) Class B. The Developer shall be the sole Class B member and shall be entitled to three (3) votes for each Lot owned; provided, however, in no event shall the Class B member have less than the total number of Class A votes plus one. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occurs: (i) the expiration of five (5) years from the date of recording of this Declaration; (ii) the date as of which three-fourths (3/4) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either the Developer or by a Builder, to an Owner or Owners for residential occupancy; or (iii) the surrender by Developer of the authority to appoint and remove members of the Board and any officer or officers of the Association by an express amendment to this Declaration executed by Developer and recorded in the Office of the Clerk of the Superior Court of Forsyth County. If at the time of termination of the Class B membership, Developer still owns any Lots, then as to each Lot owned by Developer, Developer shall be deemed to be a Class A member.

(c) The Subdivision will be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Forsyth County in accordance with Article XIII of this Declaration. The Developer shall notify the Association in writing when the final phase of the Subdivision has been platted of record. By acceptance of a deed conveying a Lot, each owner acknowledges that, upon the filing by Developer of subdivision plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in subsection (b) of this Section 4.2 and in no event shall Class B membership cease and be converted to Class A membership (as provided in subsection (b) of this Section 4.02) until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate Developer to develop any proposed phase of the Subdivision.

## ARTICLE V

### MAINTENANCE

5.1 Responsibilities of Owners. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots, together with all other improvements thereon or therein, exterior or interior, shall be the responsibility of the Owner of such Lot. Each owner shall be responsible for maintaining his or its Lot in a neat, clean and sanitary condition, and such responsibility shall include but not be limited to the maintenance and care of all interior and exterior

surfaces of all improvements, buildings and other structures located on the Lot (including repainting) and all landscaping. As provided in Section 5.2(b) hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such owner but which responsibility such owner fails or refuses to discharge. No Owner shall do any work to his Lot which, in the reasonable opinion of the Architectural Control Committee, would jeopardize the soundness and safety of the Subdivision or impair any easement or hereditament thereto, without in every such case obtaining the prior written approval of the Architectural Control Committee. No building or Structure shall be permitted to fall into disrepair and each building and Structure on a Lot shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

## 5.2 Responsibilities of Association.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain, landscape and keep in good repair, as the case may be, (i) the entryway treatment, entryway signs, entryway landscaping and entrance wall or fence for the Subdivision, (ii) the privacy wall and/or fence, if any, serving the Subdivision, (iii) any landscape easement, and the landscaping treatment as shown on the Plat and serving only the Subdivision, (iv) all retention and detention ponds, if any, located within the Subdivision, and (v) all street lights within the Subdivision. The obligations and duties set forth hereinabove shall be the sole responsibility of the Association and all costs and expenses incurred in performing such work shall be deemed to be Common Expenses. The Association shall not be liable for injury or damage to any person or property caused by the elements or by any Owner or any other person. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

(b) In the event that Developer or the Board determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, then, in either event, Developer or the Association, except in the event of an emergency situation, shall give such Owner written notice of Developer's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such owner shall have ten (10) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any owner to comply with the provisions hereof after such notice, Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the assessment to which such Owner and his Lot are subject and shall be collected as provided for herein for the collection of assessments. In the event that Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Developer for Developer's costs and expenses.

## ARTICLE VI

### INSURANCE AND CASUALTY LOSSES

#### 6.1 Insurance.

(a) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents, and, if available, at reasonable cost (in the sole discretion of the Board), a blanket fidelity bond or employees' dishonesty coverage for all officers, directors, employees and agents of the Association and all other persons handling or responsible for funds of the Association. Such public liability policy and bond shall provide such coverages as are determined to be necessary by the Board.

(b) The Board or its duly authorized agents shall have the authority to and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws, and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

(c) All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Owners and the costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Subdivision shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

6.2 Damage or Destruction to Improvements. Immediately after the damage or destruction by fire or other casualty to all or any part of the improvements covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall 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 Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. The Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 8.4 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association.

## ARTICLE VII

### ADMINISTRATION

7.1 Control of Association. Except to the extent otherwise required by the provisions of the Official Code of Georgia relating to nonprofit corporations, the Act, this Declaration, the Articles of Incorporation or the By-Laws, the powers herein or otherwise granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Owners. Developer shall have the right to appoint and remove all members of the Board and any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of five (5) years from the date of recording of this Declaration; (ii) the date as of which three-fourths (3/4) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either the Developer or by a Builder, to an Owner or Owners for residential occupancy; or (iii) the surrender by Developer of the authority to appoint and remove directors and officers of the Association as evidenced by a written instrument signed by Developer and delivered to the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Developer such authority to appoint and remove directors and officers of the Association as provided by this Section 7.1 and by section 11.1 hereof.

7.2 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the Official Code of Georgia relating to nonprofit corporations, the Act, this Declaration, the Articles of Incorporation and the By-Laws, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Official Code of Georgia, this Declaration, the Articles of Incorporation or the By-Laws, the provisions of the Official Code of Georgia, this Declaration, the Articles of Incorporation and the By-Laws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by the Act, this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

7.3 Rules and Regulations. The Association, through its Board, may make and enforce reasonable rules and regulations governing the use of the Lots, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

## **ARTICLE VIII**

### **ASSESSMENTS**

8.1 Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Subdivision, including but not limited to management fees, administration expenses, utility charges, insurance premiums, maintenance, landscaping and repair costs, and establishment of reserve funds, all as may be more specifically authorized from time to time by the Board.

8.2 Creation of Lien and Personal Obligation of Assessments. Each owner of a Lot, by acceptance of a deed or other conveyance therefore whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (i) annual assessments, such assessments to be established and collected as provided in Section 8.3 hereof, (ii) special assessments, such assessments to be established and collected as provided in Section 8.4 hereof, 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, fines as may be imposed against such Lot in accordance with Article X hereof. Any such assessments, together with late charges, simple interest at the rate of six percent (6%) per annum and collection costs (including court costs and reasonable attorneys' fees actually

incurred) to enforce or collect such assessments, shall be a lien upon the Lot against which each assessment is made in accordance with and as provided for in the Act. Each such assessment, together with late charges, interest and collection costs, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors-in-title unless expressly assumed by them. Assessments shall be paid in such manner and on such dates as may be fixed by the Board.

### 8.3 Computation of Annual Assessments.

(a) It shall be the duty of the Board at least thirty (30) days prior to the Association's fiscal year end to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association, provided no reserve funds may be used for the construction of capital improvements during the period Developer maintains control of the Association. The Board shall cause the budget and the proposed total of the annual assessments to be levied against Lots for the following year to be delivered to each Owner at least fifteen (15) days prior to the annual meeting. The total annual assessments shall be divided among the Lots equally, so that each Lot shall be subject to equal annual assessments. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Developer, for so long as Developer has the authority to appoint and remove directors and officers of the Association, or (ii) a majority of the votes of all Owners of Lots in the Subdivision. The failure of a majority of all Owners of Lots in the Subdivision to appear in person or by proxy at the annual meeting at which the budget and the annual assessments may be disapproved shall not invalidate the budget and annual assessments adopted by the Board. In the event the proposed budget is disapproved 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 and annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 8.4 hereof.

(b) Notwithstanding the foregoing, the maximum annual assessment per Lot for the period beginning on the date this Declaration is recorded in the deed records of Forsyth County, Georgia through December 31, 1995 shall be One Hundred Seventy-Five and No/100ths Dollars (\$175.00). Beginning January 1, 1996, and from year to year thereafter, the maximum annual assessment may be increased by the Board by up to five percent (5%) above the maximum annual assessment for the preceding year without a vote of the membership. The maximum annual assessment for any year may be increased by the Board by more than five percent (5%) above the maximum annual assessment for the preceding year only by a vote of the membership, which shall require approval of the Class B member, if any, and two-thirds (2/3) of the Class A members who are present, in person or by proxy, at a meeting duly called for such purpose. The Board shall fix the annual assessment each year in light of the Common Expenses; provided, however, the annual assessment shall not exceed the maximum annual assessment for such year. If not increased as provided for herein, the maximum annual assessment for each successive year shall equal the maximum annual assessment in effect for the preceding year.

8.4 Special Assessments. In addition to the annual assessments authorized above, the Association, acting through the Board, may levy, in any assessment year, special assessments for Common Expenses or capital improvements (provided no special assessments may be levied for the construction of capital improvements during the period Developer maintains control of the Association), applicable to that year only, provided that, except as otherwise permitted in Section 6.2 hereof, any such assessment shall be approved by the Class B member, if any, and by two-thirds (2/3) of the Class A members who are present, in person or by proxy, at a meeting duly called for such purpose. The Board may make such special assessments payable in installments over a period which may, in the Board's

discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be prorated among the Lots equally as provided with respect to annual assessments.

8.5 Other Assessments. Any Common Expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any owner shall be specifically assessed against such owners and their respective Lots. Any Common Expenses of the Association benefitting less than all of the Lots shall be assessed equitably among all of the Lots so benefitted. Any Common Expenses significantly disproportionately benefitting all of the Lots shall be assessed equitably among all of the Lots in the Subdivision. The assessments provided for in this Section 8.5 shall be levied by the Board and the amount and due date of such assessment shall be as specified by the Board.

8.6 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 8.3 and 8.4 hereof, shall be sent to all members not less than thirty (30) days nor more than forty-five (45) days in advance of such meeting. With respect to such meetings, the presence of members or proxies entitled to cast over sixty percent (60%) of all the votes of the Association at the beginning of the meeting shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the presence of members or proxies entitled to cast over thirty percent (30%) of all the votes of the Association at the beginning of the meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.7 Liens. All sums assessed against any Lot pursuant to this Declaration, together with collection costs (including court costs and reasonable attorneys' fees actually incurred), late charges and interest as provided herein, shall be secured by a lien on such Lot in favor of the Association as provided for in the Act. Such lien shall be superior to all other liens and encumbrances on such Lot except only for (i) liens of ad valorem taxes, and (ii) liens for all sums unpaid on a first priority Mortgage or on any Mortgage to Developer, or its affiliates, successors or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument, and (iii) liens for all sums unpaid on a secondary purchase money Mortgage, provided that neither the grantee nor any successor grantee on such Mortgage is the seller of the Lot. Sale or transfer of a Lot shall not affect the assessment lien. Notwithstanding the foregoing to the contrary, the subordination of the assessment lien to the lien of first priority Mortgages and secondary purchase money mortgages as set forth above shall only apply to such assessments which have become due and payable prior to a Foreclosure. Any Mortgagee or other Person who acquires title to a Lot by Foreclosure shall be liable for assessments thereafter becoming due. All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

8.8 Effect of Nonpayment; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time, not to exceed in any event the greater of \$10.00 or ten percent (10%) of the amount of the assessment or installment thereof not paid when due, and shall also commence to accrue interest at the maximum legal rate of interest allowed under Georgia law but in no event greater than fifteen percent (15%) per annum. A lien as herein provided for each assessment shall attach simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days, the entire unpaid balance of the assessment may be accelerated at the option of the Board and be declared due and payable in full. The lien of such assessment shall include the late charge established by the Board,

interest on the principal amount due at the rate set forth above, all costs of collection (including reasonable attorneys' fees actually incurred and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The lien provided for herein shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, abandonment of his Lot or by renunciation of membership in the Association, and an Owner shall remain personally liable for assessments, interest and late charges which accrue prior to a sale, transfer or other conveyance of his Lot.

8.9 Certificate. The Treasurer, or the manager of the Association shall, within five (5) business days from the receipt of a written request and upon payment of a \$10.00 fee, furnish to any Owner, purchaser from such Owner, any lender considering the loan of funds to be secured by a Lot, or such Owner's Mortgagee which requests the same, a certificate in writing signed by said Treasurer or manager setting forth whether the assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest and other penalty charges. Such certificate shall be binding on the Association and every Owner.

8.10 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Lot on the day on which a certificate of occupancy is issued by Forsyth County for the residential dwelling constructed on such Lot and shall be due and payable in such manner and on such schedule as the Board may provide. Annual assessments and any outstanding special assessments shall be adjusted for each Lot according to the number of months then remaining in the then fiscal year of the Association.

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

## **ARTICLE IX**

### **ARCHITECTURAL STANDARDS AND USE RESTRICTIONS**

9.1 Purpose. In order to preserve the natural setting and beauty of the Subdivision, to establish and preserve a harmonious and aesthetically pleasing design for the subdivision and to protect and promote the value of the Property, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article IX. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article IX.

9.2 Architectural Control Committee. The Architectural Control Committee shall initially consist of those persons appointed by Developer as set forth in Section 1.3 of Article I. At such time as all of the Lots in the Subdivision have been fully developed, permanent improvements constructed thereon,



and sold to permanent residents or upon Developer relinquishing control over the Architectural Control Committee, the Developer shall notify the Board and all the Owners of Lots in the Subdivision to that effect, at which time the Developer's rights and obligations as the Architectural Control Committee shall terminate. Notice to the Board and all the Owners by Developer under this provision shall be in writing. After receipt of said notice from the Developer, the Board shall have the right, power and authority to elect a successor Architectural Control Committee which shall consist of up to three (3) (but not less than two (2)) members, who may or may not be members of the Board. The rules and regulations pursuant to which such Architectural Control Committee shall act shall be prescribed by the Board. The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Architectural Control Committee shall elect a chairman and he, or in his absence, the vice chairman, shall be the presiding officer at its meetings. The Architectural Control Committee shall meet at least annually and as may be required, as well as upon call of the chairman, and all meetings shall be held at such in Forsyth County as may be designated by the chairman. A majority of members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Architectural Control Committee shall constitute the action of the Architectural Control Committee on any matter before it. The Architectural Control Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors and/or attorneys in order to advise and assist the Architectural Control Committee in performing its functions set forth herein.

9.03 Permitted Improvements; Standards.

(a) No Structure of any nature whatsoever shall be constructed, altered, added to or maintained upon any part of the Property, except (i) those Structures and other improvements constructed by Developer, (ii) those Structures and other improvements as are approved by the Architectural Control Committee in accordance with this Article IX, and (iii) those Structures and other improvements which pursuant to this Article IX do not require the consent of the Architectural Control Committee.

(b) The Architectural Control Committee is hereby authorized to promulgate from time to time written architectural standards, policies and guidelines (the "Design Standards") governing the construction, location, landscaping and design of Structures and other improvements, the contents of submissions of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to Sections 9.4, 9.5 and 9.10 hereof. Any such Design Standards published by the Architectural Control Committee shall be binding and enforceable on all Owners with respect to all Structures and other improvements in the Subdivision requiring the approval of the Architectural Control Committee. Such Design Standards may be changed from time to time by the Architectural Control Committee in its sole discretion.

9.4 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been first submitted (in duplicate) to and approved in writing by the Architectural Control Committee as to (i) the compliance of such plans and specifications with such Design Standards as may be published by the Architectural Control Committee from time to time, (ii) the conformity and harmony of external design and appearance in relation to the existing standards of the Subdivision, and (iii) the location of the proposed Structure in relation to surrounding structures and topography and finished ground elevations. The foregoing sentence shall not apply to those Structures and other improvements referred to in Section 9.03 (a) (i) and (iii), above. Such plans and specifications shall comply with the Design standards and shall be in such form and contain such information as may be

reasonably required by the Architectural Control Committee. For purposes hereof, the submission of plans and specifications to the Architectural Control Committee shall not be deemed to have occurred until such time as complete plans and specifications are hand-delivered to one of the members of the Architectural Control Committee.

9.5 Approval and Disapproval of Plans and Specifications.

(a) The Architectural Control Committee shall have the right to approve or disapprove any plans and specifications submitted to it in its sole and uncontrolled discretion, which approval or disapproval may be based upon any grounds, including purely aesthetic considerations which shall be deemed sufficient.

(b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval of any plans and specifications for use in connection with any Lot or Structure shall not be deemed a waiver of the Architectural Control Committee's right, in its sole discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

(c) Neither Developer, the Association nor any member of the Architectural Control Committee shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. Further, approval of plans and specifications by the Architectural Control Committee shall not be deemed to represent or warrant to any Person the quality, function or operation of the Structure or of any construction, workmanship, engineering, materials or equipment. Neither Developer, the Association nor any member of the Architectural Control Committee shall be liable in damages or in any other respect to anyone submitting plans or specifications for approval under this Article, or to any Owner, or to any other Person having an interest in any of the Property by reason of mistake in judgment, negligence, misfeasance 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 and specifications and every Owner (i) agrees that he will not bring any action or suit against Developer, the Association or any member of the Architectural Control Committee to recover any such damages, (ii) hereby releases and agrees to hold harmless and to defend Developer, the Association and any member of the Architectural Control Committee from any such alleged liability, claim and/or damage, and (iii) 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.

(d) The Architectural Control Committee shall not discriminate against any Person who submits plans and specifications or any Owner because of the race, color, sex, religion, age, national origin, handicap or familial status of such Person or Owner.

9.6 Obligation to Act. The Architectural Control Committee shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof, provided such thirty (30) day period shall not begin to run until such plans and specifications are complete and contain

all information as may be reasonably required by the Architectural Control Committee. Approval by the Architectural Control Committee, if granted, together with any conditions imposed by the Architectural Control committee, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the Architectural Control Committee to take action within thirty (30) days of the receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications, provided the proposed improvements are generally in harmony with the scheme of the Subdivision as set forth in this Declaration. Upon approval of plans and specifications, no further approval under this Article IX shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications or unless such plans and specifications are materially altered or changed.

9.7 Right of Inspection. The Architectural Control Committee, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Lot and structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and the Architectural Control Committee shall not be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection.

9.08 Violations.

(a) If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the Architectural control Committee such violation shall have occurred, the Association shall be entitled and empowered to enjoin or remove any such construction. Any costs and expenses incurred by the Association in enjoining and/or abating any construction or improvements shall be assessed against the Owner of such Lot and shall be due and payable to the Association on demand, it being understood and agreed that such Owner shall be personally liable to the Association for such costs and expenses. The liability for such costs and expenses shall be a permanent charge and lien upon such Lot enforceable by the Association in the same manner as other liens for the improvement of real property. Additionally, the Association shall be entitled to pursue all legal and equitable remedies to recover such costs and expenses.

(b) The Architectural Control Committee shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within ten (10) days after the mailing of the aforesaid notice of violation, then the Association shall have the right of abatement as provided in Section 10.2 of Article X hereof. In addition to the right of abatement, the Association shall be entitled to seek equitable relief to enjoin such construction.

9.09 Fees. The Architectural Control Committee may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 9.7 hereof. The fee shall be established from time to time by the Architectural Control Committee.

9.10 Building Restrictions. All Structures and other improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. In addition, the Architectural Control Committee is authorized to promulgate from time to time as part of the Design Standards described in 9.3(b) hereof additional restrictions applicable to the Subdivision. No exterior portion of any building, Structure or other improvement (excepting sidewalks and driveways)

located on or with respect to any Lot shall be located other than as permitted by the applicable set-back line restrictions as may be set forth in the Design standards; provided that the Architectural Control Committee shall be empowered to grant variances with respect to such set-back line restrictions if the written consent of the Owner of each Lot adjoining the Lot as to which the variance is requested is obtained.

9.11 Use of Lots and Dwellings. Except as permitted by Sections 3.2 and 9.17 hereof, each Lot shall be used for residential purposes only and no trade or business of any kind may be carried on therein. The use of a portion of a residence as an office by an Owner or his tenant shall not be considered to be a violation of this covenant if such use is in conformance with all applicable zoning laws affecting the Property and does not create regular customer, client or employee traffic or otherwise create a nuisance. The use of a residence or a portion thereof for business meetings, entertainment or the enjoyment or business of the owner's employees, trustees, agents, clients or customers shall not be considered to be a violation of this covenant if such use is in conformance with all applicable zoning laws affecting the Property and does not create regular customer, client or employee traffic or otherwise create a nuisance.

9.12 Antennas. Without the prior written approval of the Architectural Control Committee, no television antenna, radio receiver, satellite dish or other similar device shall be attached to or installed on any portion of the Property, unless contained entirely within the interior of a residential dwelling constructed on a Lot. No radio or television signals, or any other form of electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Subdivision; provided, however, that Developer and the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio or other similar systems within the Subdivision.

9.13 Water Wells and Septic Tanks. No private water wells may be drilled or maintained on any Lot without the prior written approval of the Architectural Control Committee. Each Lot shall be served by a septic tank, the size and location of which shall be approved by the appropriate governmental authority in Forsyth County and by the Architectural Control Committee.

9.14 Pets. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept by any Owner upon any portion of the Property, provided that generally recognized house pets may be kept in residences, subject to rules and regulations adopted by the Association, through its Board, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. The Association, through the Board, may require that an Owner remove any pet which is dangerous or is kept in violation of this Declaration or the Association's rules and regulations from such Owner's Lot. Pets shall be under leash at all times when walked or exercised outside of all fenced areas on a Lot. All outdoor pets must be kept within a fenced area on a Lot. No invisible electric fences shall be installed on any portion of the Property without the prior written approval of the Architectural Control Committee.

9.15 Nuisance. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Property, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying any other portions of the Property. Notwithstanding the foregoing, Developer shall have the right to dump and bury rocks and trees on the Property as needed for efficient construction and each Builder shall have the right to bury rocks and trees removed from a Lot on such Lot, provided such activity is not prohibited by any applicable law, rule, regulation or ordinance. Noxious or offensive activities shall not be carried on in any Lot and each Owner, his family, tenants, guests, invitees, servants and agents shall refrain from any act or use of a Lot

which could cause disorderly, unsightly or unkempt conditions, or which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Subdivision or which would be in violation of any law or governmental code or regulation. All trash containers, woodpiles, yard and pool equipment, air conditioning compressors, lawn mowers and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Subdivision.

9.16 Motor Vehicles, Trailers, Boats, Etc. All automobiles owned or used by Owners or other than temporary guests and visitors shall be parked in garages to the extent that garage space is available, and garages shall not be used for storage or otherwise so that they become unavailable for parking cars therein. Garage doors shall be kept closed at all times except when yard work is being performed by an Owner. The Board of the Association shall have the authority to promulgate rules and regulations to govern or prohibit the outside storage or parking upon any Lot of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart or any other related forms of transportation devices. Furthermore, although not expressly prohibited hereby, the Board may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts and other similar vehicles, or any of them, from being kept, placed, stored, maintained or operated upon any portion of the Property if in the opinion of the Board such prohibition shall be in the best interests of the Subdivision. No Owners or other occupants of any portion of the Property shall repair or restore any vehicle of any kind upon or within any Lot except (i) within enclosed garages or workshops or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. All motor vehicles of any kind located on a Lot shall be in operable condition, it being intended hereby that the parking or storage of inoperable motor vehicles on any Lot is prohibited. No motor vehicles of any kind, including but not limited to motor homes, boats, trailers, trucks and schools buses, shall be parked on any street within the Subdivision or on any Lot so as to be visible from the street for periods of more than twenty-four (24) continuous hours. No motorized three wheel or four wheel all-terrain vehicles shall be operated upon any portion of the Property or the streets within the Subdivision. The Association, through the Board, may impose a fine for any violation hereof.

9.17 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Developer, any Builder and their respective agents, employees, successors and assigns to maintain and carry on within the Property such facilities and activities as may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots or the developing of Lots, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model residences. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences as model residences, and to use any residence as an office for the sale of Lots and for related activities.

9.18 Fences. No fence or wall of any kind shall be erected, maintained or altered on any Lot by any Owner, other than Developer, without the prior written approval of the Architectural Control Committee.

9.19 Sight Distance at Intersections. All Lots located at street intersections shall be landscaped so as to permit safe sight distance across the street corners. No Structure of any kind shall be placed or permitted on any Lot where such Structure would create a traffic or sight problem.

9.20 Signs.

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

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one "For Sale" or "For Rent" sign per Lot; provided, however, that in no event shall any such sign be larger than six square feet in area;
- (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Control Committee;
- (iv) such signs as are used to identify and advertise the Subdivision;
- (v) a sign indicating the Builder of the residence on the Lot; and
- (vi) security signs.

(b) Following the consummation of the sale or lease of any Lot, the "For Sale" or "For Rent" sign and the Builder sign shall be removed immediately.

9.21 Garage Sales. All garage sales shall be conducted in accordance with applicable such rules and regulations as the Board may establish from time to time concerning same. All approved signs located within the Subdivision advertising any garage sale shall be removed within twenty-four (24) hours after the conclusion of the garage sale.

9.22 Mailboxes. All mailboxes, mailbox posts and mailbox attachments located on the Lots shall be of a style and color as specified in the Design Standards.

9.23 Clotheslines. No outside clotheslines shall be constructed, placed or maintained on any Lot.

9.24 Exterior Structures. No artificial vegetation, exterior sculptures, fountains or similar items shall be constructed, placed or maintained on any Lot without the prior written approval of the Architectural Control Committee.

9.25 Guns. The use of firearms on the Property is expressly prohibited. The term "firearms" includes, without limitation, BB guns, pellet guns and small firearms of all types.

9.26 Construction of Improvements. Construction of all dwellings on a Lot shall be completed within nine (9) months of the commencement date of said construction. If any dwelling on a Lot is not completed within nine (9) months of the commencement date of said construction, the Association, its employees and agents, shall have the right, but not the obligation, to enter upon said Lot and to take such action as is necessary to complete construction of said dwelling, with the costs thereof being assessed against the Owner of such Lot. Such Owner shall be personally liable to the Association for the direct and indirect costs of completion of said dwelling, and the liability for such costs shall constitute a lien upon the Lot enforceable by the Association in the same manner as other liens for the improvement of real property or by any other appropriate proceeding in law or in equity. The Association shall give notice

to the Owner of such Lot prior to commencing any work, as set forth in Section 9.8 hereof, and the provisions thereof shall be applicable with respect to the foregoing.

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

9.28 Drainage. No obstructions or debris shall be placed in any catch basins or drainage areas. No Owner or any occupant of a Lot shall obstruct or re-channel drainage flows after installation of drainage swales, storm sewers and storm drains without the prior approval of the Architectural Control Committee.

9.29 Recreational Equipment. Recreational equipment, playground equipment and children's toys shall be placed and/or installed only upon the rear of a Lot as approved by the Architectural Control Committee. Basketball goals may be placed adjacent to the driveway serving such Lot. No such goals shall be attached to or installed on the residential dwelling on any Lot. No above-ground pools shall be allowed on any Lot.

9.30 Dwelling Restrictions. Every residential dwelling constructed on a Lot shall contain at least the minimum number of square feet as specified in the Design Standards but in no event less than the minimum number of square feet specified in the applicable zoning regulations of Forsyth County. No window air conditioning units may be installed in any residential dwelling. No more than one (1) residential dwelling may be constructed on any Lot.

9.31 Trees. Except for dead, damaged or diseased trees, no trees having a diameter of six inches (6") or more (as measured at a point twelve inches (12") above ground level) shall be removed from any Lot without the prior written approval of the Architectural Control Committee. The Architectural Control Committee may designate that certain trees, regardless of size, are not to be removed from a Lot, which designation shall be noted on the approved plans and specifications for such Lot.

9.32 Structure Finish. Whenever any Structure is constructed on a Lot in whole or in part with concrete blocks, cinder blocks or other fabricated masonry block units, such blocks shall be finished with brick, natural stone, painted stucco or other approved material over the entire exposed surface area above finish grade as set forth in the Design Standards.

9.33 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless made an integral and harmonious part of the architectural design of the residential dwelling to be constructed on a Lot and approved by the Architectural Control Committee.

9.34 Exterior Lighting. No exterior lighting visible from any street shall, without the Architectural Control Committee's prior written approval of plans and specifications therefore, be installed, altered or maintained on any Lot or on any portion of a Structure or motor vehicle visible from the exterior thereof, except:

- (a) approved exterior lighting as originally installed on a Lot;

- (b) one (1) decorative post light;
- (c) street lights in conformity with an approved street lighting program for the Property;
- (d) seasonal decorative lights; and
- (e) front house illumination of model homes.

9.35 Occupants Bound. The provisions of this Declaration shall also apply to all occupants of any Lot, whether or not specifically mentioned herein.

9.36 Leasing. Lots may be leased by Owners for residential purposes only for terms of not less than six (6) months. All leases shall require that the tenant acknowledge receipt of a copy of this Declaration. The lease shall obligate the tenant to comply with the terms and provisions of the Declaration and shall provide that in the event of noncompliance therewith, the Association, in addition to any other remedies it may have, may evict the tenant on behalf of the owner of the Lot and specifically assess all costs associated therewith against the Owner of such Lot.

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

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

## **ARTICLE X**

### **ENFORCEMENT**

10.1 Enforcement. Each Owner shall comply strictly with the By-Laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by Developer, for so long as Developer owns any Lot primarily for the purpose of sale, the Board on behalf of the Association, or by an aggrieved owner. Should Developer or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees actually incurred, shall be paid by the violating owner on demand, it being understood and agreed that such Owner shall be personally liable for such costs and expenses. Such costs and expenses shall be added to and become a part of the assessment to which the owner and his Lot are subject and shall be collected as provided for herein for the collection of annual assessments. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and



for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages and that Developer, the Association or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of Developer, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Developer or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws or any rules and regulations of the Association, however long continued.

10.2 Self-Help. In addition to any other remedies provided for herein, the Developer, for so long as Developer owns any Lot primarily for the purpose of sale, and the Association or its duly authorized agents shall have the power to enter upon a Lot to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, the use restrictions or the Design Standards. Unless an emergency situation exists, the Developer or the Board, as the case may be, shall give the violating Owner ten (10) days' written notice of its intent to exercise self-help. If the Owner shall not have taken reasonable steps toward the cure or remediation of the violation complained of within such ten (10) day period, then the Developer or the Association, as the case may be, shall have the right to exercise self-help. All costs of self-help, including court costs and reasonable attorney's fees, shall be assessed against the violating owner and payable on demand. Such costs and expenses shall be added to and become a part of the assessment to which the owner and his Lot are subject and shall be collected as provided for herein for the collection of annual assessments.

## ARTICLE XI

### GENERAL PROVISIONS

11.1 Control by Developer. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION OR IN THE BY-LAWS OF THE ASSOCIATION, Developer shall have the right to appoint and remove all members of the Board of the Association and any officer or officers of the Association as provided by and for the term set forth in Section 7.01 hereof. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees that Developer shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 11.01 and the provisions of Section 7.01. Upon the expiration of Developer's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 7.01 and this Section 11.01, such right shall pass to the Owners, including Developer if Developer then owns one or more Lots, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the owners shall elect a new Board which shall undertake the responsibilities of the Board, and Developer shall deliver all books, accounts and records, if any, which Developer has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Developer has in its possession.

11.2 Amendments by Developer. During any period in which Developer retains the right to appoint and remove any directors and officers of the Association, Developer may unilaterally amend this Declaration for any purpose whatsoever by an instrument in writing filed and recorded in the records of

the Office of the Clerk of the Superior Court of Forsyth County, Georgia, including, but not limited to, (A) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (B) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (C) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot or other improvements subject to this Declaration, (D) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots or other improvements subject to this Declaration, or (E) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration. The approval of any Owner or Mortgagee shall not be required with respect to any amendment by Developer during such period unless (i) such amendment materially alters or changes any owner's right to the use and enjoyment of his Lot as set forth in this Declaration or adversely affects the title to any Lot, in which case such amendment shall be valid only upon the written consent thereto by two-thirds (2/3) of the then existing Owners affected thereby, or (ii) such amendment would materially and adversely affect the security title and interest of any Mortgagee, in which case such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Developer may also unilaterally amend this Declaration during any period in which Developer retains the right to appoint and remove directors and officers of the Association for the purpose of incorporating such additional property and improvements as Developer may acquire from time to time as a part of the Additional Property described in Exhibit 6 attached hereto. No approval of any Owner or Mortgagee shall be required for such an amendment. Every Owner of a Lot, by acceptance of a deed or other conveyance therefor, thereby agrees that Developer may unilaterally amend this Declaration, subject to the provisions of sections (i) and (ii), above, and to this end, every Owner hereby constitutes and appoints Developer the agent and attorney-in-fact of Owner to unilaterally amend this Declaration, subject to the foregoing subsections, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed. The aforesaid agency hereby granted is coupled with an interest and is irrevocable by death or otherwise. Any amendment made pursuant to this Section 11.02 shall be certified by Developer as having been duly approved by Developer, and by such Owners and Mortgagees, if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 11.02.

11.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 11.02 and Section 12.06 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by members of the Association. Such amendment must be approved by members holding at least three-fourths (3/4) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee, and (ii) during any period in which Developer retains the right to appoint and remove any directors and officers of the Association, or has the unexpired option to submit the Additional Property or any portion thereof to the provisions of this Declaration, such amendment must be approved by Developer. Notwithstanding the foregoing, during such time as Developer owns one or more Lots primarily for the purpose of sale, no amendment shall be made to this Declaration which would impose a

greater restriction on the use or development of such Lots owned by Developer without Developer's prior written consent.

(c) The agreement of the required percentage of the Owners and, where required, Developer and any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment or, in the alternative, provided that Developer does not then have the right to appoint and remove any directors and officers of the Association, the sworn statement of an authorized officer of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained and that all required notices were properly given. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

11.4 Declaration Runs with Property. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns. Every purchaser or grantee of any interest in the Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property.

11.5 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 U.S. President Bill Clinton.

11.6 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 Developer or the Board, as the case may be, 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. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Office of the Clerk of the Superior court of Forsyth County, Georgia. 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. This Declaration shall be construed under and in accordance with the laws of the State of Georgia.

11.7 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.8 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 provisions 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.

11.9 Rights of Third Parties. This Declaration shall be recorded for the benefit of Developer, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or in the operation or

continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Developer and Mortgagees as herein provided, the owners shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

11.10 No Trespass. Whenever the Association, Developer, the Architectural Control Committee, and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve or do any other action within any portion of the Property, the entering thereon and the taking of such action shall not be deemed to be a trespass.

11.11 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid **or issued electronically in accordance with Chapter 12 of Title 10, the "Uniform Electronic Transactions Act"**. [added January 2020] All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots. Notices sent by United States Mail shall be deemed effective on the third day after mailing. Notices delivered in person shall be effective on the date of delivery. All notices to the Association shall be delivered or sent in care of Developer at the following address: 985 Ponce de Leon Avenue, Suite 300, Atlanta, Georgia 30306 or to such other address as the Association may from time to time notify the owners. All notices to Developer shall be delivered or sent to Developer at the above address or to such other address as Developer may from time to time notify the Association. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association.

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

11.13 Agreements. All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property, except that no such agreements shall be binding as to the Developer without the written consent of the Developer.

11.14 Variances. Notwithstanding anything to the contrary contained herein {with the exception of set-back line restrictions as set forth in Section 9.10, above), the Board, and Developer for so long as Developer has the right to appoint and remove all members of the Board of the Association and any officer or officers of the Association as set forth in Section 7.01 hereof, shall be authorized to grant individual variances from any of the provisions of this Declaration or the By-Laws, except the provisions of Article VIII of the Declaration regarding assessments, 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 Property.

11.15 Contracts Executed During Developer Control. All contracts or leases executed by or on behalf of the Association prior to the termination of Developer's right to appoint and remove the directors and officers of the Association shall contain a termination clause permitting the Association to terminate the contract or lease at any time without cause and without penalty, upon not more than ninety (90) days' written notice.

11.16 Security. NOTWITHSTANDING ANY PRIVACY WALL AND/OR FENCE SERVING THE SUBDIVISION, DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES WITH REGARD TO THE EFFICACY OF SUCH STRUCTURES FROM A SAFETY OR SECURITY STANDPOINT. EACH OWNER, OCCUPANT, GUEST OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DEVELOPER IS NOT AN INSURER AND THAT EACH OWNER, OCCUPANT, GUEST AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE.

## ARTICLE XII

### MORTGAGEE PROVISIONS

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

12.1 Notices of Action. An institutional holder, insurer or guarantor of a first Mortgage, who provides written request to the Association, such request to state the name and address of such holder, insurer or guarantor and the Lot (hereinafter the "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 Subdivision or which affects any Lot on which there is a Mortgage held, insured or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an 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 eligible holder, 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.

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

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

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

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

12.3 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least

two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

(a) by act or omission, directly or indirectly, seek to abandon, partition, subdivide, encumber, sell, or transfer any real property owned by the Association (other than personal property). The granting of easements for public utilities or other similar purposes consistent with the intended use of the real property, if any, owned by the Association shall not be deemed a transfer within the meaning of this subsection;

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

(c) by act or omission change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of any real property owned by the Association {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 insurance, as required by this Declaration; or

(e) use hazard insurance proceeds received in connection with losses to any real property owned by the Association (other than personal property) for other than the repair, replacement or reconstruction of such property.

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

12.4 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of real property owned by the Association.

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

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

12.7 Veterans Administration and Federal Housing Administration Approval. As long as there is a Class B membership, the following actions require the prior approval of the Veterans Administration and the Federal Housing Administration so long as the Veterans Administration and the Federal Housing Administration are guaranteeing any Mortgage in the Subdivision: annexation of additional property to the Subdivision, except for annexation by Developer in accordance with Article XIII hereof pursuant to a plan of annexation previously approved by the Veterans Administration or the Federal Housing Administration; merger, consolidation or dissolution of the Association; and material amendment of the Declaration, Articles of Incorporation or By-Laws.

12.8 Applicability. 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.

12.9 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 after the Mortgagee receives the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

### **ARTICLE XIII**

#### **ANNEXATION OF ADDITIONAL PROPERTY**

Developer hereby reserves the option, to be exercised in its sole discretion, to submit from time to time the Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property. This option may be exercised by Developer in accordance with the following rights, conditions and limitations, which are the only conditions and limitations on such option to add all or any portion of the Additional Property to the Property.

(a) The option may be exercised from time to time during a period of five (5) years from the date of recording of this Declaration; provided, however, that Developer reserves the right to terminate such option at any time prior to the expiration of such five (5) year period by executing and filing an agreement evidencing such termination in the Office of the Clerk of the Superior Court of Fulton County, Georgia, and, except for such termination by Developer, no other circumstances will terminate such option prior to the expiration of such five (5) year period.

(b) The legal description of the Additional Property as of the date hereof is set forth in Exhibit B; portions of the Additional Property (together with additions thereto made in accordance with this Declaration) may be added to the Property at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence or location in which any of such portions may be added to the Property. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

(c) If the Additional Property or any portion thereof is added to the Property, Developer reserves the right to designate the boundaries of the Lots to be added to the Property in connection therewith. All Lots created on portions of the Additional Property which are added to the Property shall be restricted exclusively to residential use.

(d) Should the option to add the Additional Property, or any portion thereof, not be exercised within the term specified herein or be terminated by Developer, such option shall in all respects expire and be of no further force and effect. In the event that such option expires or is terminated, Developer shall not be obligated to impose on the Additional Property or any portion thereof any covenants, conditions or restrictions whatsoever.

(e) The option reserved by Developer to cause all or any portion of the Additional Property to become part of the Property shall in no way be construed to impose upon Developer any obligation to add all or any portion of the Additional Property to the Property or to construct thereon any improvements

of any nature whatsoever.

(f) The option reserved under this Article XIII may be exercised by Developer alone (without the consent of the Association or any Owner) by the execution of a supplemental declaration which shall be filed in the Office of the Clerk of the Superior Court of Fulton County, Georgia, together with a legal description of the Additional Property or such portion or portions thereof as are being added to the Property by such supplemental declaration, and by the recording of an approved subdivision plat in the Office of the Clerk of the Superior Court of Fulton County, Georgia indicating the Lots to be added to the Property.

(g) The option reserved herein may be exercised with respect to any portions of the Additional Property, notwithstanding that such Additional Property or portions thereof may be owned by Persons other than Developer. In such event, the supplemental declaration adding such portion or portions of the Additional Property shall be executed by the Developer and by the Person who owns such Additional Property or portion thereof.

(h) Any provision of this Declaration to the contrary notwithstanding, the provisions of this Article XIII may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Developer.

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed in its name by its duly authorized officer under seal, as of the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness

Notary Public

My commission expires:

(NOTARIAL SEAL)

DEVELOPER  
ASHWOOD DEVELOPMENT COMPANY,  
a Georgia corporation

By:

Title:

(CORPORATE SEAL]



**CONSENT OF OWNER**

THE RYLAND GROUP, INC., a Maryland corporation (“Ryland”), as the owner of record of the property as defined in the Declaration of Covenants, Conditions, Restrictions, and Easements for Delamar (the “Declaration”) to which this Consent is attached, hereby consents to and joins in the execution of the Declaration for the purpose of submitting the Property to the terms and conditions of the Declaration.

THIS CONSENT is binding upon Ryland, its successors and assigns.

IN WITNESS WHEREOF, the undersigned has executed this Consent as of the 7th day of August, 1995. The undersigned warrant that they are authorized to execute this Consent on behalf of Ryland.

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

(NOTARY PUBLIC)

DEVELOPER  
ASHWOOD DEVELOPMENT COMPANY,  
a Georgia corporation

By:

Title:

(CORPORATE SEAL]

**EXHIBIT A**

**ALL THAT TRACT OR PARCEL OF LAND** lying and being in Land Lots 358, 362 and 363 of the 2nd District, 1st Section of Forsyth County, Georgia, and being more particularly described as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 37, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 of Delamar Subdivision according to that certain Final Subdivision Plat for Delamar Phase I, dated April 10, 1995, and recorded in Plat Book 43, pages 25 through 29, Forsyth County, Georgia records, which plat is incorporated herein and made a part hereof by reference.

**EXHIBIT B**

**ALL THAT TRACT OR PARCEL OF LAND** lying and being in Land Lot(s) 358, 362, 363, 430, 431, 361, 432 of the 2nd District, 1st Section of Forsyth County, Georgia.

CROSS-REFERENCE TO DECLARATION  
OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
DELAMAR, RECORDED IN DEED BOOK  
881, PAGE 39, FORSYTH COUNTY,  
GEORGIA RECORDS

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR DELAMAR**

THIS FIRST AMENDMENT is made as of the 5th day of April, 1996, by ASHWOOD DEVELOPMENT COMPANY, a Georgia corporation (hereinafter referred to as "Developer"), and THE RYLAND GROUP, INC., a Maryland corporation (hereinafter referred to as "Owner").

**W I T N E S S E T H:**

**WHEREAS**, Developer previously submitted and subjected certain real property lying and being in Land Lots 358, 362 and 363 of the 2nd district, 1st Section of Forsyth County, Georgia to the terms and conditions of that certain Declaration of Covenants, Conditions, Restrictions and Easements for Delamar, dated July 5, 1995 and recorded in Deed Book 881, Page 39, Forsyth County, Georgia records (hereinafter referred to as the "Declaration"); and

**WHEREAS**, pursuant to the terms of Article XIII of the Declaration, Developer retained and reserved the right, privilege and option to submit to the terms and provisions of the Declaration all or any portion of the real property described in Exhibit B to the Declaration, such property being defined as the "Additional Property" in the Declaration; and

**WHEREAS**, Developer desires to submit a portion of the Additional Property to the terms and provisions of the Declaration, which portion is more particularly described in Exhibit A attached hereto and by reference made a part hereof; and

**WHEREAS**, Owner is the owner of record of the property described in Exhibit A and desires to subject such property to the terms and provisions of the Declaration;

**NOW, THEREFORE**, Developer, pursuant to and in accordance with the Declaration, hereby amends the Declaration as follows:

1. Property. The portion of the Additional Property described in Exhibit A attached hereto is hereby submitted and made subject to the Declaration. Said property shall be owned, held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the provisions of the Declaration. From and after the filing for record of this First Amendment in the office of the Clerk of the Superior Court of Forsyth County, Georgia, the

portion of the Additional Property described in Exhibit A attached hereto shall be included in the meaning of the term “Property”, as such term is defined in the Declaration.

2. Consent of Owner. Owner joins in the execution of this First Amendment for the sole purpose of evidencing its consent to the submission of the property described in Exhibit A to the terms and provisions of the Declaration.

3. Effect. Except as modified hereby, the Declaration shall remain unchanged and in full force and effect. This First Amendment shall be binding upon and inure to the benefit of all owners of lots and their respective heirs, legal representatives, successors and assigns.

**IN WITNESS WHEREOF**, Developer and Owner have caused this First Amendment to be executed in their respective names by their respective duly authorized corporate officers as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

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

[NOTARIAL SEAL]

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

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

[NOTARIAL SEAL]

**DEVELOPER:**

ASHWOOD DEVELOPMENT  
COMPANY, a Georgia corporation

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

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

[CORPORATE SEAL]

**OWNER:**

THE RYLAND GROUP, a  
Maryland corporation

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

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

[CORPORATE SEAL]

**EXHIBIT A**

**ALL THAT TRACT OR PARCEL OF LAND** lying and being in Land Lots 358, 362 and 363 of the 2nd District, 1st Section of Forsyth County, Georgia, and being more particularly described as Lots 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52 of Delamar Subdivision as per that certain Final Subdivision Plat for Delamar Phase II, dated April 10, 1995, and recorded in Plat Book 45, pages 25-29, Forsyth County, Georgia records, which plat is incorporated herein and made a part hereof by reference.

**AMENDMENT 1**

CROSS-REFERENCE TO DECLARATION  
OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
DELAMAR, RECORDED IN DEED BOOK  
881, PAGE 39, FORSYTH COUNTY,  
GEORGIA RECORDS

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR DELAMAR**

THIS FIRST AMENDMENT is made as of the 13th day of May, 1997, by ASHWOOD DEVELOPMENT COMPANY, a Georgia corporation (hereinafter referred to as "Developer").

**W I T N E S S E T H:**

**WHEREAS**, Developer previously submitted and subjected certain real property lying and being in Land Lots 358, 362 and 363 of the 2nd district, 1st Section of Forsyth County, Georgia to the terms and conditions of that certain Declaration of Covenants, Conditions, Restrictions and Easements for Delamar, dated July 5, 1995 and recorded in Deed Book 881, Page 39, Forsyth County, Georgia records (hereinafter referred to as the "Declaration"); and in addition, pursuant to the First Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Delamar, dated April 6, 1996, and recorded in Deed Book 966, Page 1, aforesaid records, has submitted additional certain real property to the Declaration and shown in that certain Final Subdivision Plat for Delamar Phase II, recorded in Plat Book 45, Pages 25-29, Forsyth County, Georgia records; and

**WHEREAS**, pursuant to the terms of Article IV of the Declaration, Developer established a Class B membership of the Delamar Homeowners Association, Inc. (the "Corporation"), which Class B membership exists until such time as, among other reasons, Developer surrenders such Class B membership by an express amendment to the Declaration; and

**WHEREAS**, pursuant to the terms of Article VII of the Declaration, Developer retains the right to appoint all members of the Board of Directors of the Corporation and all officers of the Corporation until such time as, among other reasons, Developer surrenders such rights by an express amendment to the Declaration; and

**WHEREAS**, Developer desires to surrender its rights to retain a Class B membership and to appoint members of the Board of Directors and all officers of the Corporation.

**NOW, THEREFORE**, Developer, pursuant to and in accordance with the Declaration, hereby amends the Declaration as follows:

**AMENDMENT 2**

1. Relinquishment of Rights. Developer hereby expressly relinquishes its right to (i) retain a Class B membership in the Corporation and (ii) appoint all members of the Board of Directors and all officers of the Corporation.

2. Effect. Except as modified hereby, the Declaration shall remain unchanged and in full force and effect. This Second Amendment shall be binding upon and inure to the benefit of all owners of lots and their respective heirs, legal representatives, successors and assigns.

**IN WITNESS WHEREOF,** Developer has caused this Second Amendment to be executed in its name by its duly authorized corporate officer as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**DEVELOPER:**

ASHWOOD DEVELOPMENT  
COMPANY, a Georgia corporation

\_\_\_\_\_  
Witness

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

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

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

[NOTARIAL SEAL]

[CORPORATE SEAL]