

## Declaration of Covenants, Restrictions and Easements for Twin Brooks

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR TWIN BROOKS is made this 18th day of June, 1993, by TWIN BROOKS, INC. a Georgia corporation (hereinafter referred to as 'Declarant')

### Background Statement

Declarant is the owner of certain real property located in Gwinnett County, Georgia, which is more particularly described on Exhibit "A" attached hereto and made a part hereof.

Declarant intends to develop on the real property described above a development to be known as Twin Brooks (hereinafter referred to as the Development") Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Twin Brooks by the recording of this Declaration and amendments thereto. Declarant desires to provide flexible and reasonable procedures for the overall development of Twin Brooks. Declarant also desires to establish a method for the administration, maintenance preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration.

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

### Declaration

The Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to this Declaration of Covenants Restrictions and Easements (the Declaration), which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The Covenants Restrictions and Easements set forth herein shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

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## **Article I: Definitions**

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

### **1.01 Association.**

“Association” means Twin Brooks Homeowners Association Inc. a non-profit, non-stock membership corporation organized under the Georgia Non-Profit Corporation Code), its successors and assigns.

### **1.02 Builder.**

“Builder” shall mean any individual, corporation, partnership or other entity engaged principally in the business of constructing for sale to homeowners single family residential dwellings to whom the Declarant sells or has sold one or more Lots for the purpose of constructing thereon a Residence.

### **1.03 Board.**

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

### **1.04 By-Laws.**

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

### **1.05 Common Property.**

“Common Property” means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association, for the common use and enjoyment of the Owners.

### **1.06 Declarant.**

“Declarant” means Twin Brooks, Inc., a Georgia corporation, and its successors-in-title and assigns, provided that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the “Declarant hereunder by the grantor of such conveyance, which grantor shall be the “Declarant” hereunder at the Urns of such conveyance; provided further, upon such designation of a successor Declarant, all rights and obligations of the former Declarant in and to such status as ‘Declarant’ hereunder shall cease, it being understood that as to all of the property described in Exhibit “A” attached hereto, and which is now or hereafter subjected to this Declaration there shall be only one person or legal entity entitled to exercise the rights and powers of the ‘Declarant’ hereunder at any one time.

### **1.07 Lot.**

“Lot” means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Gwinnett County, covering any portion of the Property, provided, however, that no portion of the Common Property shall ever be a Lot except as provided in 2.05.

### **1.08 Member.**

"Member" means any member of the Association.

**1.09 Occupant.**

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

**1.10 Owner.**

"Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the lot in fee simple if such loan were paid in full shall be considered the Owner.

**1.11 Property.**

"Property" means that certain real property described on Exhibit "A" attached hereto and made a part hereof which Property is hereby made subject to the covenants and restrictions herein set forth, together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof.

**1.12 Residence.**

"Residence" shall mean a structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A structure and the land owned as a part thereof (the Lot) shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Lot and structure located thereon shall have been conveyed to a third party other than the Builder thereof. The Owner or a Residence shall notify the Association of its designee immediately upon issuance of a Certificate of Occupancy for the Residence.

**1.13 Restrictions.**

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

**1.14 Structure.**

"Structure" means:

(a) Anything or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation any building or part thereof; garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

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

(c) Any change in the grade at any point on a Lot of more than six (6) inches whether or not subsection

(d) (b) of this Section 1.14 applies to such change.

**Article II:**

**Common Property**

**2.01 Conveyance of Common Property**

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the

common use and enjoyment of the Owners of Residences (such real and personal property is hereinafter collectively referred to as Common Property) The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

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

(c) Right of Enjoyment. Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03(f) and 3.05.

### **2.03 Rights of the Association**

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

(a) Promulgate rules and regulations relating to the use, operation and maintenance or tile Common Property;

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

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

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

(e) Charge reasonable fees in connection with the admission to and use of facilities on services by Members and non-members; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need riot be uniform between such classes:

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

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

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

(i) Maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads of Gwinnett County, Georgia.

**(j) HOA Provision – Leasing and Lease Documentation- Leasing and Lease Documentation**

**(a) Purpose.**

This provision is adopted to ensure compliance with the Declaration, promote community safety, manage parking impacts, maintain accurate Association records, and facilitate effective communication between the Association, Owners, and occupants.

**(b) Requirement to Provide Lease Agreement.**

Any Owner who leases or rents a Lot or Dwelling within the Development shall provide the Association with a **complete and executed copy of the lease agreement** for such property.

**(c) Timing of Submission.**

The lease agreement shall be submitted to the Association **no later than ten (10) days after execution** of the lease and **prior to tenant occupancy**, whenever practicable.

**(d) Required Lease and Occupancy Information.**

The Owner shall also provide the Association with the following information for each tenancy:

1. Names of all adult occupants residing in the Dwelling;
2. Lease commencement and termination dates;
3. Property address;
4. Owner and tenant contact information; and
5. **Make, model, and color of all vehicles regularly kept at the property by tenants or occupants.**

License plate numbers may be requested by the Association if necessary for enforcement or safety purposes.

Financial terms of the lease (including rent amount or security deposit) may be redacted at the Owner's discretion.

**(e) Acknowledgment of Governing Documents.**

All leases shall require tenants to comply with the Declaration, Bylaws, and Rules and Regulations of the Association. Owners remain fully responsible for tenant compliance and for all violations committed by tenants, occupants, or guests.

**(f) Failure to Comply.**

Failure to submit the required lease documentation or vehicle information shall constitute a violation of the Declaration and shall be subject to enforcement pursuant to **Article VIII (Enforcement)**, including notice, fines, or other remedies permitted by law.

**(g) No Approval Implied.**

Submission of lease or vehicle information is for recordkeeping and enforcement purposes only and shall not constitute approval of the lease, tenant, or rental arrangement by the Association.

**(h) Continuing Obligation.**

Owners shall submit updated lease and vehicle information upon lease renewal, tenant change, or change in vehicles.

(i) **Vehicle Identification and Parking Enforcement.**

Vehicle information submitted pursuant to this Section, including the **make, model, color, and any other identifying information of tenant or occupant vehicles**, shall be used by the Association solely for purposes of **parking regulation, safety enforcement, and compliance** with Section 6.24 (Street Parking and Safety Regulations).

Failure of an Owner to provide accurate and current vehicle information may:

1. Limit the Association's ability to identify vehicles associated with a particular Lot;
2. Result in **street parking violations being attributed to the Owner's Lot** when a vehicle is reasonably determined to be associated with that property; and
3. Subject the Owner to enforcement action pursuant to **Article VIII**, including fines, towing (where permitted by law), and other remedies for violations of Section 6.24.

Owners shall be responsible for ensuring that all tenant and occupant vehicles comply with street parking restrictions and safety regulations, regardless of whether vehicle information has been submitted or updated.

**2.04 Conveyance of Common Property by Declarant to Association.**

The Declarant may transfer or convey to the Association any personal, improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all of its Members. Such conveyance shall be made "as is" without any warranty or representation whatsoever by Declarant. Declarant may convey all or portions of the Common Property to the Association at any time after completion of the amenities if in the sole judgment of Declarant the Association can properly operate and maintain the Common Property.

**2.05 Types of Common Property**

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

**2.06 Delegation of Use**

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

**2.07 Maintenance**

The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. In addition, the Association shall maintain grass and other landscaping located along or in dedicated rights-of-way which were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority.

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

**Article III:  
Twin Brooks Homeowner's Association**

**3.01 Purpose, Powers and Duties of the Association**

The Association shall be formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the Members. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Development To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

**3.02 Membership in the Association**

Every Owner shall automatically be a Member of the Association. Such membership shall terminate only as provided in this Declaration. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.03.

**3.03 Voting Rights**

The Association shall have two classes of voting membership. Class A and Class B. Class A Members shall be all Owners other than the Declarant who shall be the Class B Member. Each Class A Member shall have one vote. The Class B member shall have the same number of votes as are cumulatively held by all Class A Members plus one, provided that the Class B Membership shall terminate on the first to occur of either (1) the Declarant's voluntary termination of Class B Membership, or (2) when the Declarant has sold ninety-five (95%) of the Lots within the Property.

**3.04 Board of Directors**

The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in the By-Laws of the Association.

**3.05 Suspension of Membership**

The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) Shall be subject to the Right of Abatement, as defined in Section 8.02, by reason of having failed to take reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.10, 6.14 or 8.02 hereof:

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

(c) Shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.05, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

**3.06 Termination of Membership**

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

**3.07 Voting Procedures**

The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Business Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, as each shall from time to time be in force and effect.

### **3.08 Control by Declarant**

(a) 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, Declarant hereby retains the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association until 15 days after the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of the recording of this Declaration; (ii) the date upon which ninety-five (95%) percent of the Lots within the Property have been conveyed by Declarant to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant, provided, however, that the Owners shall be entitled to elect certain members of the Board of the Association in accordance with the terms of the By-Laws of the Association which shall not be removable by the Declarant acting alone.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of

the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence & any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## **Article IV: Assessments**

### **4.01 Covenant or Assessments and Creation of Lien and Personal Obligation**

Each Owner of a Lot and/or Residence, jointly and severally, or himself, his heirs, legal representatives, successors and assigns, by acceptance of a deed for a Lot and/or Residence, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) To pay the Association the annual and special assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots or Residences owned by him;

(b) That there is hereby created a continuing charge and lien upon all Lots and/or Residences owned by him against which all such assessments are made in secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and all costs of collection, including reasonable attorneys' fees;

(c) That such continuing charge and lien on such Lot or Residence binds such lot or Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots or Residences whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan, the proceeds of which are used (1) to purchase a Lot or Residence (together with any and all Structures which may from time to time be placed on located thereon) and (2) to finance the construction, repair or alteration of Structures located on a Lot;

(d) That no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Residence from liability for any assessment thereafter assessed;

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

#### **4.02 Purpose of Assessments**

The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance

and equipping of the Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

#### **4.03 Accumulation of Funds Permitted**

The Association shall not be obligated to spend during any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

#### **4.04 Annual Assessment**

Beginning on the date on which the first Residence is sold to a Third party other than the Declarant or the Builder of such Residence, each Lot or Residence shall be subject to an annual assessment of one hundred (\$100.00) Dollars per Lot or Residence. Commencing January, 1992, and for each calendar year thereafter, the Association, acting through its Board, may establish such annual assessment at an amount deemed appropriate to fund the budget for the Association.

#### **HOA Provision – Destruction of Physical Payment Checks Recordkeeping and Destruction of Physical Payment Checks**

(a) **Purpose.**

This provision is adopted to ensure accurate financial recordkeeping, protect member information, prevent fraud, and comply with generally accepted accounting and record retention practices.

(b) **Recording of Payments.**

All physical checks received by the Association for assessments, fines, fees, or other charges shall be promptly recorded in the Association's official financial records, including the payer's name, amount, check number, date received, and date deposited.

(c) **Deposit Requirement.**

All physical checks shall be deposited into the Association's designated bank account in a timely manner and in accordance with the Association's financial policies.

(d) **Destruction of Physical Checks.**

After a payment check has been:

1. Properly recorded in the Association's financial records;
2. Successfully deposited and cleared by the Association's financial institution; and
3. Digitally imaged or otherwise preserved through bank records or accounting software;

The Association is authorized to **destroy the physical check.**

(e) **Method of Destruction.**

All physical checks shall be destroyed in a secure manner, including shredding or other methods that render the check unreadable and unusable, to protect confidential and financial information.

(f) **Retention of Records.**

Electronic records, bank images, deposit confirmations, and accounting entries related to the payment shall be retained in accordance with the Association's document retention policy and applicable law.

(g) **No Obligation to Retain Physical Instruments.**

The Association shall have no obligation to retain original physical payment instruments once the requirements of this Section have been satisfied.

(h) **Authority.**

This provision shall be enforceable pursuant to Article VIII of the Declaration and any applicable rules or resolutions adopted by the Board of Directors.

#### **4.05 Special Assessments**

In addition to the annual assessments authorized by this Article IV, the Association may levy with such frequency as the Board shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction reconstruction repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the board in any calendar year without the approval of the Members, which special assessments in the aggregate do not exceed an amount equal to one-half (1/2) of the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of the Members duly held in accordance with the provisions of the By-Laws or the Association and this Declaration

#### **4.05 Assessment Procedure**

(a) The Board shall establish the annual assessment for each calendar year and shall also establish the date on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property. The Board shall send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later.

(b) All Members of the Association shall be given notice by the Board not less than ten (10) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to this Article IV.

#### **4.07 Uniform Rate of Assessment**

Both annual and special assessments must be fixed at a uniform rate for all Lots and Residences.

#### **4.08 Exempt Property**

Until conveyed to an owner or Builder other than Declarant, each Lot or Residence shall be exempt from the assessments charges and liens created herein while owned by Declarant. All Common Property, including any Lot or Residence which may be designated for use as such by Declarant, shall be exempt from the assessments, charges and liens created herein.

#### **4.09 Effect of Nonpayment of Assessments**

Any assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish in the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion, together with interest and costs of collection including reasonable

attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot or Residence enforceable in accordance with the provisions of this Declaration.

#### **4.10 Certificate of Payment**

Upon written request by an Owner, the Association shall issue and furnish to such Owner a written certificate stating that all assessments have been paid with respect to any Lot or Residence owned by said Owner, as of the date of such certificate. The Association may levy a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

#### **4.11 Approval by Declarant**

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

### **Article V:**

#### **Architectural Control**

##### **5.01 Architectural Control Committee – Creation and Composition**

(a) An Architectural Control Committee the ("ACC") shall be established consisting of not less than three (3) or more than five (5) Owners, provided however that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained therein, Declarant shall have the right, but not the obligation to appoint all members of the ACC until the plans for ninety-five (95%) percent of the Residences for all of the Lots in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC shall be borne by the Association.

(b) Each initial member of the ACC shall be appointed for a term expiring on December 31, 1994. Thereafter, each member of the ACC shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall, subject to the provisions of 5.01 (a), be filled by the Declarant (or the Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman.

Any member of the ACC may be removed at any time with or without cause by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC).

##### **5.02 Purpose Powers and Duties of the ACC**

The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications or any installation, construction or alteration of any Structure on any Lot.

##### **5.03 Operations of the ACC**

(a) Meetings.

The ACC shall hold regular meetings as often as may be established by the ACC. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time

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

(b) Activities.

The ACC shall adopt and promulgate the Design Standards described in Section 5.04 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

#### **5.04 Design Standards**

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

- (i) Governing the form, content and procedure for submission of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
- (ii) Establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and
- (iii) Assuring the conformity and harmony of external design and general quality of the Development.

#### **5.05 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 of Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC.

#### **5.06 Approval of Plans and Specifications**

Approval of any such plans and specifications relating to any Lot or Structure 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.

#### **5.07 Disapproval of Plans and Specifications**

The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

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

(b) The failure of such plans or specifications to comply with this Declaration or the Design Standards:

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

#### **5.08 Obligation to Act**

The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Failure by the ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

#### **5.09 Inspection Rights**

The ACC or any agent of the Association may, after reasonable notice, at any reasonable time enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration.

#### **5.10 Violations**

If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, replacement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall provide written notice to the Owner, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the delivery of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

#### **HOA Covenant Provision – Repeated Violations**

- (a) If an Owner cures a violation within the designated days remedy period but commits the substantially same violation again within six (6) months of the initial notice, the violation shall be deemed a 'Continuing and Repeated Violation.' In such events, each day that the violation continues or is repeated after initial notification from the Board shall constitute a separate and distinct violation, subject to independent daily and higher fines and separate enforcement actions.

#### **5.11 Fees**

The AGO may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and of inspections, the fee shall be established from time to time by the ACC and published in the Design Standards. Provided, however, that Builders of Residences shall be exempt from said review fee.

#### **5.12 Nondiscrimination by ACC**

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

#### **5.13 Disclaimer as to ACC Approval**

Plans and specifications are not reviewed for engineering or structural design on quality of materials, and

by approving such plans and specifications neither the ACC, the Board, the members thereof, nor the Association assumes liability on responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable for damages to anyone submitting plans and specifications to any of them, for approval, or to any Owner of property affected by these Restrictions by reason of a mistake, ill judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications, Every person who submits plans on specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

## **Article VI: General Covenants and Restrictions**

### **6.01 Application**

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

### **6.02 Restriction of Use**

Lots may be used for single-family residences only and for no other purpose, provided that the Declarant may operate a sales office and/or model home on a Lot or Lots designated by Declarant. No business, fraternal, civic, historic or religious institution or organization may establish headquarters or hold regular meetings on a Lot. No more than one family shall reside on a Lot.

### **6.03 Resubdivision of Property**

No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. Notwithstanding the foregoing, nothing herein shall prevent the Owner of any Lot from combining two or more Lots into one Lot for construction of a single Residence thereon: provided, however, that such combined Lot may not be subdivided thereafter; and, provided further, that the Owner of the Residence on such Lot shall be responsible for annual and special assessments based upon the number of Lots combined into one Lot.

### **6.04 Erosion Control**

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

### **6.05 Landscaping**

All front yards of all Lots shall be sodded with Bermuda sod (or an equivalent substitute sod) from the street frontage up to a minimum of the front building set-back line.

### **6.06 Trees**

Guidelines relating to the preservation of trees and other natural resources upon the Property may be included in the Design Standards of the ACC. Builders shall plant at least two (2) hardwood trees (oaks, maples, etc.) with a minimum of two (2) inch caliper in the front yard of each lot if the Builder is unable to save existing trees.

### **6.07 Temporary Buildings**

No temporary buildings, trailers, garages or buildings under construction shall be used, temporarily or permanently, as a Residence of any Lot. Only one (1) Residence shall be permitted to be placed on a Lot.

### **6.08 Signs**

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

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

(ii) Not more than one "For Sale" sign, such sign having a maximum face area of four square feet; provided that such sign tray only be displayed in the front yard of a Lot; and, provided, further, that if, at the time of any desired use of such sign, the Association is making "For Sale"

signs available for the use of Owners the signs made available by the Association must be used:

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

(iv) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC,

(v) No streamers or banners shall be permitted in conjunction with any marketing program.

#### **6.09. Setbacks**

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

#### **6.10. Construction of Residences**

The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk storage and basement) all Residences shall contain not less than 1,600 square feet. No Residence shall be constructed exceeding three (3) stories in height on any Lot. Where possible, plumbing vents and heating vents shall not be placed on the street side of any roof of any Residence, and any such vent shall be painted the same color as the roof on which it is placed. No window air conditioning unit may be located in any part of a Residence, and all exterior compressor units shall be ground mounted and screened by fencing or plants of a density or height to hide the unit effectively. No exposed above-ground tanks for the storage of fuel or water or any other substance shall be located on any Lot. Concrete or cinder block shall not be used as a building material for the exposed exterior surface of any Residence.

#### **6.11 Fences**

No fence or wall of my kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications on such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC. All fences shall be constructed of treated cedar, cypress or such other wood material as may be approved by the ACC. Woven, metal or chain link fences shall not be used.

#### **6.12 Roads, Sidewalks and Driveways**

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

#### **6.12 Antennae, Etc.**

No exterior television or radio antennae or satellite dish or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without the prior written consent of the ACC.

#### **6.14 Clotheslines, Garbage Cans, Etc.**

All clotheslines, equipment, garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring Lots and streets, and may be maintained only in the real yard.

#### **6.15 Mailboxes**

Only one (1) mailbox shall be located on any Lot. All mailboxes shall be constructed of either brick or stucco, whichever is consistent with the quality and design of the Residence.

#### **6.16 Maintenance**

Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping

located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting of all structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of street traffic. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice, then the Association shall have the right of Abatement as provided in Section, 8.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

### **6.17 Commercial and Recreational Vehicles and Trailers**

No commercial vehicle, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an, enclosed space and is concealed from view by neighboring Residences and streets.

### **6.18 Recreational Equipment**

Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC. Basketball goals may be placed adjacent to a driveway, but shall be painted to match the house.

### **6.19 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 person because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding this covenant shall run with the land and shall remain in effect without any limitation in time.

### **6.20 Animals**

No agricultural animals may be kept on any Lot and no animals may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless approved by the ACC.

### **6.21 Solid Waste**

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

(b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property:

(c) No lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards;

(d) No rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pickup be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Design Standards.

### **6.22 Nuisances**

No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereof which

may be or may become any annoyance or nuisance to the community. No abandoned, inoperable or unlicensed vehicles shall be parked on any streets within the Development or in the front, rear or side yards on any Lot.

### **HOA Covenant Provision – Street Parking & Safety - Street Parking and Safety Regulations.**

**(a) Purpose and Intent.**

In order to promote the safety, welfare, and convenience of residents, pedestrians, emergency responders, school transportation, sanitation services, and other service vehicles, and pursuant to Sections 6.12, 6.16, 6.22, and Article VIII of this Declaration, the Association hereby establishes the following restrictions regarding parking on streets within the Development.

**(b) General Restriction.**

No vehicle shall be parked on any public or private street within the Development in a manner that:

1. Obstructs traffic flow;
2. Restricts or impedes access by emergency vehicles, school buses, delivery vehicles, or sanitation vehicles;
3. Creates a hazardous condition for pedestrians, cyclists, or motorists;
4. Blocks driveways, sidewalks, fire hydrants, mailboxes, or intersections; or
5. Violates any applicable local traffic or safety ordinance.

**(c) Driveway and Garage Use.**

All residents and occupants shall utilize their driveways and garages as the primary locations for vehicle parking. Street parking shall be limited to temporary or short-term use only and shall not be permitted on a regular, recurring, or overnight basis when such parking creates a safety concern or nuisance condition.

**(d) Prohibited Parking Conditions.**

Without limitation, the following conditions shall constitute a violation of this Section:

1. Parking on narrow streets where parked vehicles prevent safe two-way traffic flow;
2. Parking in locations that cause school buses or emergency vehicles to be unable to safely pass;
3. Parking in cul-de-sacs, curves, or intersections that restrict visibility or turning radius;
4. Repeated or habitual street parking that results in congestion or safety complaints.

**(e) Nuisance Declaration.**

Any vehicle parked in violation of this Section shall be deemed a **nuisance** under Section 6.22 of this Declaration and subject to enforcement action.

**(f) Enforcement and Penalties.**

Violations of this Section shall be subject to enforcement pursuant to **Article VIII (Enforcement)** and may include:

1. Written notice of violation;
2. Fines as established by the Board of Directors;
3. Towing of offending vehicles at the owner's expense where permitted by law; and

4. Any other remedy allowed under the Declaration, Georgia law, or the Association's governing documents.

**(g) Emergency Authority.**

In the event a vehicle presents an immediate safety hazard or blocks emergency access, the Association shall have the right to take immediate corrective action, including towing, without prior notice, at the vehicle owner's expense.

**(h) No Waiver.**

Failure of the Association to enforce this restriction in any instance shall not be deemed a waiver of the right to enforce this provision thereafter.

## **6.23 Marketing**

For so long as the Declarant has the right to appoint officers and directors of the Association. Declarant shall have the right to appoint the real estate marketing firm to handle the marketing and sale of all new Lots and Residences located within the Development.

## **Article VII:**

### **Easements, Zoning and other Restrictions**

#### **7.01 Easements**

(a) Declarant hereby expressly reserves to the Declarant, Gwinnett County, or such other municipality or political subdivision as may have jurisdiction thereof, and for utility companies as may from time to time serve the Development, their respective successors and assigns forever the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

(i) The erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities

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

(iii) Slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct a, retard drainage flow; and

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

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

(c) The easement restrictions set forth herein shall not be considered an obligation of Declarant to provide or maintain any such utilities, drainage facilities or services.

#### **7.02 Easement Area**

The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement, this Declaration, or on only other recorded map or plat relating thereto.

#### **7.03 Entry**

The Declarant and its employees, agents, successors and assigns shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass, provided the same is done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in

an Easement Area pursuant to the provisions of Section 7.02.

#### **7.04 Zoning and Private Restrictions**

None of the covenants restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, if any, 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 Declaration, the most restrictive provisions shall govern and control.

### **Article VIII: Enforcement**

#### **8.01 Right of Enforcement**

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

#### **8.02 Right of Abatement**

(a) In the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Sections 5.10 and 6.14 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection including reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by law or 18%, to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable in law, pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

#### **8.03 Specific Performance**

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

#### **8.04 Collection of Assessments and Enforcement of Lien**

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the

Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorney's fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney to sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Gwinnett County, Georgia, to the highest bidder for cash, after advertising this time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Gwinnett County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and any attorney in fact of each, Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or its assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen (15) per centum of the aggregate amount due for attorney's fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by

death or otherwise and are granted as cumulative to the remedies or collection of said indebtedness by Law

(c) Waiver.

Each Owner, by acceptance of a deed conveying a lot subject to this declaration, waives any right which Owners may have under the constitution or the laws of the State of Georgia or the Constitution or the laws of the United States of America to notice or to a judicial hearing prior to the exercise of any right or remedy provided by this declaration and Owner waives owner's rights, if any, to set aside or invalidate any sale duly consummated in accordance with the provisions of this declaration on the ground (if such be the case) that the sale was consummated without a prior judicial hearing. All waivers by Owner in this paragraph have been made voluntarily, intelligently, and knowingly, after owner has first been allowed the opportunity to consult legal counsel with respect to Owner's possible rights.

### **8.05 No Waiver**

The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any restrictions herein contained shall in no event be considered a waiver or the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

## **Article IX:**

### **Duration and Amendment**

#### **t9.01 Duration**

This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Gwinnett County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument

executed by the proper Association officers and recorded in the office of the Clerk of the Superior Court of Gwinnett County.

Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of those Class A Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

### **9.02 Amendments by Declarant**

During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Office of the Superior Court of Gwinnett County, Georgia, without the approval of any Member or mortgagee; provided, however that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members 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

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

### **9.03 Amendments by Association**

Amendments to this Declaration, other than those authorized by Section 9.02 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 two-thirds (2/3) of the total votes in the Association provided however, (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment or in the alternative, and provided that Declarant does not have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the Agreement of the required parties was lawfully obtained. Any

such amendment of his Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

**Article X:  
Annexation**

**10.1 Annexation**

For so long as Declarant has authority to appoint and remove directors and officers of the Association, additional real property may be annexed to the Property by the Declarant without the consent of the Class A Members. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Gwinnett County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or filing an amendment to the Declaration which has been consented to by the owners of the real property to be annexed if such real property is owned by someone other than Declarant. At the expiration of Declarant's right to appoint and remove directors and officers of the Association, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

**Article XI:  
Miscellaneous**

**11.01 No Reverter**

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

**11.02 Severability**

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

**11.03 Headings**

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

**11.04 Gender**

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

**11.05 Notices**

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

(a) Declarant:  
Twin Brooks, Inc.  
3100 Cumberland Circle  
Suite 1550  
Atlanta, Georgia 30339

(b) Owners:  
Twin Brooks, Inc.  
3100 Cumberland Circle  
Suite 1550  
Atlanta, Georgia 30339

Each Owners address as registered with the Association.

Any written communication transmitted in accordance with this Section 11.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

#### **11.06 No Liability**

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

#### **11.07 Insurance**

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board as appropriate for the type of recreational activities which shall be allowed on the Common Property. Any such policies of insurance shall require that fire certificate holders and insured be given thirty (30) days prior written notice of any cancellation of such policies.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damages or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty. Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the total Association vote entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove directors, the Declarant, otherwise agree. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association. In the event that it should be determined by the Association in the manner described above, that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Development in a neat and attractive condition.

(c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

(d) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time, by either the Veterans Administration or Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.

#### **11.08 Indemnification**

The Association shall indemnify every officer and director against any and all expenses, including counsel fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of

Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled.

Declarant, otherwise agree. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Development in a neat and attractive condition.

## **Article XII: Mortgagee Provisions**

The following provisions are for the benefit of holders of first mortgages on Residences in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained herein.

### **12.01 Notice 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, guarantor and the Residence number, therefore becoming 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 Development or which affects any Residence on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Residence subject to the mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days: provided, however, notwithstanding this provision, any holder of a first mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residence of every 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 eligible mortgagees.

### **12.02 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 at least two-thirds (2/3) of the total Members of the Association entitled to vote thereon consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall 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 or a Residence:

(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 Residences and of the Common Property (the issuance and amendment of architectural standards, procedures, rules and regulations, or use of restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Property losses other than the repair, replacement, or reconstruction of such property. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

### **12.03 No Priority**

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

### **12.04 Notice to Association**

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

### **12.05 Amendment by Board**

Should the Veterans 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 the Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

### **12.06 Veterans Administration Approval**

As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article X, the following actions shall require the prior approval of the Veterans Administration so long as the Veterans Administration is guaranteeing any mortgage in The Development: Annexation of additional property to the Development, except for annexation by Declarant in accordance with Article X, pursuant to a plan of annexation previously approved by the Veterans Administration; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation of the Association.

### **12.07 Applicability of Article XII**

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

### **12.08 Failure of Mortgagee to Respond**

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

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

Signed, sealed and delivered in the presence of

(To see actual signatures and notaries, please review your personal copy)

The Association, by the execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Associations obligations under this Declaration of Covenants, Restrictions and Easements.

IN WITNESS WHEREOF, the Association, acting through its duly authorized officers, has caused This Declaration to be executed and sealed this 16th day of June, 1993.

Signed sealed and delivered in the presence of:

(To see actual signatures and notaries, please review your personal copy)

#### Acknowledgement and Consent by Lender

The undersigned Homebanc ('Lender'), is the owner and holder of that certain Deed to Secure Debt and Security Agreement (the "Security Deed"), dated April 14, 1992 from Twin Brooks, Inc., a Georgia corporation, in favor of Homebanc, recorded in Deed Book 8701, page 130, Gwinnett County, Georgia, records. As required by the Security Deed, Lender executes this consent and approval for the limited purpose of approving the execution and recording of the Declaration of

Covenants, Restrictions and Easements for TWIN BROOKS (the "Declaration") to which this Acknowledgment is attached, but the lien, encumbrance and effect of the Security Deed shall not be and is not hereby made subject and subordinate to the Declaration.

IN WITNESS WHEREOF, Homebanc, has caused this instrument to be executed and its seal affixed hereunto by its duly authorized officers for the purposes described hereinabove as of this 18th day of June, 1993.

Signed, sealed and delivered in the presence of:

(To see actual signatures and notaries, please review your personal copy)

