

STATE OF GEORGIA  
COUNTY OF COBB

DECLARATION OF PROTECTIVE COVENANTS

AND PERMANENT MEMBERSHIP FOR JOHNSON'S LANDING

WHEREAS, the lot owners at Johnson's Landing subdivision in Cobb County, Georgia, whose Consents are attached hereto as Exhibit "A" and "A-1" and incorporated herein by reference, are the owners of that certain real property described in such Consents (the "Property") and desire to subject the Property to the terms and provisions of this Declaration of Additional Protective Covenants and Permanent Membership for Johnson's Landing ("Declaration") and to hereby subject the Property to permanent mandatory membership or civic membership in the Johnson's Landing Racquet & Swim Club Association, Inc. ("Association") ; and WHEREAS, the undersigned officers of the Association desire to approve this Declaration and permanent mandatory membership and civic membership in the Association on behalf of the Association;

NOW, THEREFORE, the undersigned officers of the Association, and all lot owners whose Consents are attached hereto as Exhibit "A" and "A-1", hereby declare that all of the Property described in Exhibit "A" and "A-1" shall be held, sold and conveyed subject to this Declaration, which is for the purpose of enhancing and protecting the desirability and attractiveness of, and which shall run with, the Property, and be binding on all parties having any right, title or interest in the Property or any part thereof, and shall, subject to all limitations herein provided, inure to the benefit of each owner of any portion of the Property, his heirs, grantees, distributions, successors and assigns to the benefit of the Association:

DECLARATION OF ADDITIONAL PROTECTIVE COVENANTS  
AND PERMANENT MEMBERSHIP FOR JOHNSON'S LANDING

1. NAME AND LOCATION.

The name of the property is Johnson's Landing, which property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982). The property is located in Land Lots 689, 752 and 761 of the 16th District of Cobb County.

2. DEFINITIONS.

Generally, terms used in this Declaration, the By-Laws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration shall be defined as follows:

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

(b) Additional Property means all those Lots shown on the Johnson's Landing Plats, which are not submitted hereto by written consent recorded with this Declaration. Such Lots, upon execution and recording of a consent by the Lot Owner in accordance with the terms of this Declaration, shall become a portion of the Property.

(c) Association, means Johnson's Landing Racquet & Swim Club Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(d) Board or Board of Directors means the elected body responsible for management and operation of the Association.

(e) By-Laws mean the By-Laws of Johnson's Landing Racquet & Swim Club Association, Inc.

(f) Civic Member means a member of the Association who executes this Declaration, who is entitled to attend community social functions and rent the clubhouse for social functions, as more particularly provided in Paragraph 4.

(g) Common Expenses mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, improving, insuring, managing and operating the Common Property and Property and otherwise for the benefit of the Association and the Members.

(h) Common Property means all property owned, maintained or operated by the Association for the common benefit of the Members, including playground area, tennis courts, swimming pool, club house, parking areas, and facilities, shrubbery and landscaping associated with such areas.

(i) Eligible Mortgage Holder means a holder of a First Mortgage secured by a Lot, which Lot is a portion of the Property, who has requested notice of certain items as set forth herein.

(j) Lot means a portion of the Johnson's Landing Subdivision which is intended for ownership and use as a single-family dwelling site.

(k) Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

(l) Mortgagee or Mortgage Holder means the holder of any Mortgage.

(m) Non-Residential Member means a member of the Association who does not own a Lot, but who is a resident of Hunter's Bend Subdivision, Benthill Subdivision or Bayswater Subdivision and who is entitled to use the Johnson's Landing recreational facilities. The Association may admit members of other subdivisions to become Non-Residential Members if approved by resolution of the Board.

(n) Owner means the record title holder of a Lot within the Property, but shall not include a Mortgage Holder on the Lot.

(o) Permanent Member or Member means a Lot Owner whose Lot has been subjected to Permanent Membership in the Association by written consent recorded in the Cobb County, Georgia land records, as provided in Paragraph 3 hereof, and which Lot therefore is a portion of the Property.

(p) Permanent Member Lot means a Lot subjected to Permanent Membership in the Association hereunder.

(q) Permanent Membership means a membership in the Association which is permanent and mandatory and which cannot be separated from a Lot, but rather is appurtenant to and runs with title to a Lot by virtue of a written consent, recorded in the Cobb County, Georgia land records as provided in Paragraph 3 hereof.

(r) Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.

(s) Property means that real estate which is submitted to the provisions of this Declaration, as described in Exhibit "A" and "A-1" attached hereto and incorporated herein by reference, or which is submitted to the terms hereof after the recording of this Declaration by a recorded written Owner consent, in accordance with the terms of this Declaration. By recordation of this Declaration, the Common Property is hereby submitted to this Declaration and the Act and shall be deemed a part of the Property.

(t) Johnson's Landing Subdivision means that property described on those plats ("Plats") for Johnson's Landing recorded in Plat Book 57, Pages 170 and 171, less and except Lots 8 and 9 of Block F, Cobb County, Georgia records, as may be amended or supplemented from time to time. The plats are incorporated herein by this reference.

### 3. EFFECTIVE DATE.

Owners may submit their Lots to the terms of this Declaration without payment of an initiation fee during the Enrollment Period, which period shall close April 30, 1997. This Declaration shall not be effective, whether or not it is recorded, until and unless: (a) at least sixty (60) Owners have executed one or more written consents, which consents are substantially in the form of the Consent attached hereto as Exhibit "B" and incorporated herein by this reference, (b) this Declaration and such Consents have been recorded in the Cobb County, Georgia land records, which shall be no later than ninety (90) days after the end of the Enrollment Period, and (c) two Association officers have executed the final page hereof

certifying that the minimum number of required Consents have been obtained. Additional Consents, by Owners of Lots within the Additional Property, may be recorded at any time subsequent to the recording of this Declaration, subject to the terms of this Declaration. Consents shall be valid only if executed by at least one officer of the Association and recorded by the Association.

4.. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

(a) Membership.

i) Permanent Members. Each Person who is the record owner of a fee or undivided fee interest in any Lot subject to this Declaration, and whose Lot is submitted to Permanent Membership in the Association by written consent recorded in the Cobb County, Georgia land records, shall be a Permanent Member of the Association and shall be entitled to use of all Common Property of the Association and shall be entitled to vote as set forth herein and in the By-Laws of the Association. Permanent Membership shall be appurtenant to and may not be separated from ownership of any such Permanent Membership Lot.

ii) Civic Members. Each person who is a record Owner of a fee or undivided fee interest in any Lot subject to this Declaration, and whose Lot is submitted to Civic Membership in the Association by written consent recorded in the Cobb County, Georgia land records shall be a Civic Member and shall be entitled to attend community social functions and rent the clubhouse for social functions. A Civic Member may convert to Permanent Membership by execution of a consent in the form attached hereto as Exhibit "B" and shall not be subject to payment of an initiation fee. UPON CONVEYANCE OR TRANSFER OF A LOT WHOSE CURRENT OWNER HAS EXECUTED THIS DECLARATION, SUCH LOT SHALL AUTOMATICALLY CONVERT TO PERMANENT MEMBERSHIP AS SHALL BE SUBJECT TO THE RIGHTS AND OBLIGATIONS OF PERMANENT MEMBERSHIP.

iii) Non-Residential Members. Membership or yearly use passes for the recreational facilities also may be offered in the discretion of the Board to residents of Hunter's Bend Subdivision, Benthill Subdivision and Bayswater Subdivision. The Board, in its discretion, may allow Non-Residential members from other subdivisions. Non-Residential Membership or use passes shall be contingent upon payment of dues established by the Board and compliance with the Declaration, By-Laws and rules and regulations of the Association.

The foregoing definitions of membership are not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided

in this Declaration and in the By-Laws. Any rights and privileges of membership, including the right to vote and to hold office, may be exercised by a Member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

(b) Voting. All Permanent Members in good standing shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

## 5. ASSESSMENTS.

(a) General. The Association shall have the power to levy assessments or dues against all Members as provided herein and in the By-Laws. The assessments for Common Expenses provided for herein shall be used for the general purposes of maintaining, repairing, replacing, insuring, managing, operating and, in the Board's discretion, improving the Common Property, otherwise operating the Property, enforcing this Declaration and other covenants upon the Property, paying for utility services serving the Common Property, maintaining a reserve fund for future Common Property maintenance, repairs or improvements, and promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots in the Property and the Members, as may be more specifically authorized from time to time by the Board. Except as otherwise provided herein, each Permanent Member Lot is hereby allocated equal liability for Common Expenses, which need not be equal with that of Civic or Non-Residential Members.

(b) Permanent Members; Creation of the Lien and Personal Obligation For Assessments. Each Owner of a Permanent Member Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments (dues) or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration.

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

the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include acceleration of any unpaid portion of any annual or special assessment for delinquent Owners upon ten (10) days written notice.

The lien provided for herein shall have priority as set forth in the Act. The sale or transfer of any Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments as to payments coming due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter coming due or from the lien thereof. No Permanent Member may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever.

(c) Delinquent Assessments. All assessments and related charges not paid on or before the due date established by the Board shall be delinquent, and the Member shall be in default.

i) If the annual assessments or any part or installment thereof is not paid in full within thirty (30) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid may be imposed without further notice or warning to the delinquent Member, and interest at the highest rate permitted under the Act shall accrue from the due date.

ii) For Owners whose Lots are subjected to Permanent Membership in the Association, the Association, acting through the Board, may suspend the Owner's right to use the Common Property if the amounts remain unpaid for more than thirty (30) days, and institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, and the Act, if the amounts remain unpaid for more than sixty (60) days.

iii) For Owners whose Lots are subject to Civic Membership in the Association, if assessments or other charges, or any part thereof, remain unpaid more than thirty (30) days, the Association may suspend such Owner's right to attend social functions or rent the clubhouse,

iv) For Non-Residential Members, if assessments or other charges, or any part thereof, remain unpaid more than thirty (30) days, the Association may revoke such Member's membership in the Association upon ten (10) days written notice.

v) If part payment of assessments and related charges is made, the amount received shall be applied first to costs and attorneys fees, as applicable, and then, in order, to late charges, interest, delinquent assessments, and current assessments.

(d) Maximum Assessments; Computation of Operating Budget and Assessment.

i) Permanent Member Assessment. The annual assessment shall be established pursuant to a budget created and adopted by the Board, covering the estimated costs of maintaining and operating the Common Property during the coming year. The budget and notice of assessment shall be sent or delivered to each Member at least thirty (30) days prior to the due date of the annual assessment. The budget shall include amounts to cover anticipated Common Expenses of operating, maintaining, repairing, improving and managing all of the Common Property, including insurance, legal, accounting and other professional fees, landscaping costs, and a reserve or capital contribution related to maintenance, repair, improvement and operation of the Common Property. The budget may reflect anticipated income to be received from Civic and Non-Residential Members, and the Permanent Member assessment shall be determined from the budget prepared by the Board. The maximum annual assessment for Permanent Members shall not exceed \$300.00 for the first year after the recording of this Declaration, and shall not increase by more than ten (10%) percent per year above the previous year's annual assessment without the approval of a majority of the eligible Members who are voting in person or by proxy at a duly called Association meeting, or by ballot. Notwithstanding anything to the contrary herein, if a Permanent Member transfers a Lot to another Permanent Member, there shall be no refund of the annual assessment and the purchaser and seller may allocate the annual assessment among themselves in a manner which they shall determine.

If the Board proposes a budget with an annual assessment more than ten (10%) percent greater than the previous year's assessment, and the Membership disapproves the proposed budget, or if the Board fails for any reason so to determine the budget for the succeeding year, then, until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. However, the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the Members in accordance with the procedure set forth here.

The Board of Directors shall not spend ten percent (10%) more than the budget without approval of a majority of the eligible Members present in person or by proxy at a duly called meeting.

ii) Civic and Non-Residential Member Assessment. The Board also shall establish the annual assessment chargeable to Civic and Non-Residential Members, which shall contribute to the Common Expenses of the Association. The maximum annual assessment for Civic Members shall not exceed \$75.00 for the first year after recording of this Declaration and shall not increase more than five percent (5%) per year above the previous year's assessment without approval of a majority of the eligible Civic Members who are voting in person or by proxy at a duly called Association meeting, or by ballot. The maximum annual assessment for Non-Residential Members shall not exceed \$350.00 for the first year after recording this Declaration. The

annual assessment for Non-Residential Members shall be set by the Board. The Board shall cause the budget and notice of the assessments to be levied against each Civic and Non-Residential Member for the following year to be delivered to each Civic and Non-Residential Member as provided in subparagraph (d)(i) above. Each Civic and Non-Residential Member shall be personally liable for all assessments, as well as for any Common Expenses occasioned by the conduct of such Member or such Member's guests or invitees.

(e) Initiation Fee. Subsequent to the Enrollment Period, the Board, in its discretion, may require a non-refundable initiation fee in order to become a Permanent Member, not to exceed \$2,000.00; provided, however, the successor-in-title to a Lot owned by a Civic Member shall not be obligated to pay the initiation fee and Civic Members who convert to Permanent Membership shall not be obligated to pay an initiation fee. Any person who was a member of the Johnson's Landing Racquet & Swim Club, Inc. prior to December 31, 1986 and who paid an initiation fee may request a refund of the initiation fee if they convey title to their property. Any initiation fees paid pursuant to the terms of this paragraph shall be nonrefundable and nontransferable, except that if a Permanent Member leases his or her Lot, the tenant shall not be obligated to pay an initiation fee.

(f) Special Assessments. In addition to the annual assessment provided for above, the Board may at any time levy a special assessment for any purpose against all Members, notice of which shall be sent to all Members; provided, however, prior to becoming effective, any special assessment first shall be approved by the affirmative vote of at least two-thirds (2/3) of eligible Members present or represented by proxy at a duly called meeting, notice of which shall specify that purpose, or by ballot specifying that purpose.

(g) Capital Budget and Reserve Contribution. As part of the annual budget and assessment, the Board may fix and establish an annual reserve or capital contribution, in an amount sufficient to permit meeting the projected capital and future needs of the Association.

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

(i) Specific Assessments. In the discretion of the Board, any Association Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots, including but not limited to reasonable attorneys fees actually incurred by the Association, may be specially assessed against such Lot or Lots. Failure of the Board to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph.

## 6. MORTGAGEE'S RIGHTS

(a) Mortgagee Approval of Actions. Unless at least two-thirds (2/3) of either the holders of first Mortgages on Permanent Member Lots or the Permanent Member Lot Owners give their consent, the Association shall not:

i) by act or omission seek to abandon or terminate the Property or the Association;

ii) change the pro rata interest or obligations of any individual Permanent Member Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

iii) partition or subdivide any Lot;

iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility or public easements or rights-of-way shall not be deemed a transfer within the meaning of this provision); or

v) use hazard insurance proceeds for losses to any portion of the Common Property for other than the repair, replacement, or reconstruction of such portion of the Common Property.

This provision shall not apply to prevent Owners from partitioning, subdividing or relocating boundaries of their Lots, if done in compliance with all recorded restrictions or covenants affecting the Lots and with applicable Cobb County, Georgia zoning and other requirements.

(b) Mortgagee Assessments Upon Foreclosure of Permanent Member Lot. Where the Mortgagee holding a first Mortgage of record on a Permanent Member Lot or other purchaser of a Permanent Member Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the

Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Permanent Member Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Mortgagee Notices. Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder of a Permanent Member Lot will be entitled to timely written notice of:

i) any condemnation loss or any casualty loss which affects a material portion of the Common Property or any Lot on which there is a first Mortgage held by such Eligible Mortgage Holder;

ii) any delinquency in the payment of assessments or charges owed by an Owner of a Permanent Member Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Declaration or By-Laws which is not cured within sixty (60) days;

iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) Any holder of a first Mortgage on a Permanent Member Lot shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

## 7. ASSOCIATION RIGHTS AND RESTRICTIONS.

The Association, acting through its Board of Directors, shall have the right and authority, in addition to all other rights it may have:

(a) to make and to enforce reasonable rules and regulations governing the use of the Property and Common Property;

(b) to enforce the provision of this Declaration and the By-Laws and rules and regulations concerning the Property and Common Property, and to enforce the

Declaration of Protective Covenants for Johnson's Landing, recorded in Deed Book 1575, Page 862, p\_t msg., Cobb County, Georgia records (which covenants have been extended by that instrument recorded on , 19\_, in Deed Book , Page ), by imposing reasonable monetary fines, suspending use and voting privileges of Permanent Members (as provided herein and in Section 44-3-223 of the Act), suspending use privileges of Civic Members and suspending or revoking Memberships of Non-Residential Members, using any other legal or equitable means, including self-help, and any other available legal or equitable means. These powers, however, shall not limit any other legal means of enforcing the Declaration, Bylaws and rules and regulations by either the Association or, in an appropriate case, by an aggrieved Owner. Any fines imposed against a Permanent Member shall be considered an assessment against a Permanent Member's Lot;

(c) to grant permits, licenses, utility easements, and other easements, permits, public rights-of-way or licenses necessary for the proper maintenance or operation of the Common Property under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Common Property;

(d) to control, manage, operate, maintain, replace and, in the Board's discretion, improve all portions of the Common Property in accordance with the Declaration and By-Laws;

(e) to deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(f) to represent the Members in dealing with governmental entities including the Common Property;

(g) to acquire, hold and dispose of tangible and intangible personal property and real property.

## 8. INSURANCE.

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

(b) The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its Members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

(c) Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(d) All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the benefit of the Association and its members.

(e) The Board, in its reasonable discretion, also may maintain as a Common Expense a fidelity bond or similar coverage on directors, officers, employees or other Persons handling or responsible for the Association's funds, in an amount determined in the Board's business judgment.

#### 9. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Common Property as a result of fire or other casualty, unless eighty (80%) percent of the Members vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, Eligible Mortgage Holders on a Permanent Member Lot shall be entitled to written notice of the damage.

(a) Cost estimates. Immediately after a fire or other casualty causing damage to the Common Property, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures thereon to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Permanent Members without the necessity of a vote of the Permanent Members or compliance with Paragraph 5(f) above. Special assessments chargeable to Non-Residential Members shall be one hundred and fifty (150%) percent of the special assessment chargeable to Permanent Members. If

after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Common Property was originally constructed, except where changes are necessary to comply with current applicable building codes.

(d) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Members on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

#### 10. USE RESTRICTIONS.

Any covenants, conditions or restrictions, including, but not limited to those use restrictions which existed prior to the recording of this Declaration and the ability to enforce such restrictions, by any Person, shall not be altered, amended or affected by this Declaration. All Persons entitled to enforce such restrictions shall be entitled to continue to do so.

Each Member shall be responsible for ensuring that the Owner's family, guests, tenants and occupants comply with all provisions of this Declaration, the By-Laws and the rules and regulations of the Association. In addition to any rights the Association may have against the Member's family, guests, tenants or occupants, the Association may take action under this Declaration against the Member as if the Member committed the violation in conjunction with the Member's family, guests, tenants or occupants. Use restrictions regarding use of the Property and Common Property are as follows and also as may be adopted by the Board in rules and regulations and as specified in the By-Laws:

(a) Use of Common Property. There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without prior written Board consent, except as specifically provided herein or in the Association's rules and regulations.

With prior written Board approval, and subject to any restrictions imposed by the Board, a Member or Members may reserve portions of the Common Property for use for a period of time as set by the Board. Any such Member or Members who reserve a portion of the Common Property hereunder shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks

associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

(b) Prohibition of Damage. Nuisance and Noise. Noxious, destructive or offensive activity shall not be carried on upon the Property or Common Property. Each Member shall refrain from any act or use of the Property or Common Property which could reasonably cause embarrassment, discomfort, nuisance or annoyance to other Members or their guests, tenants or invitees. No Member may use or allow the use of the Property or Common Property in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Members, their guests, tenants or invitees or in such a way as to constitute, in the Board's sole opinion, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Member to proceed individually for relief from interference with his or her property or personal rights.

11. SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

12. DURATION.

The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act. Notwithstanding anything to the contrary herein, neither the foreclosure of Mortgages on one or more Permanent Member Lots subsequent to the recording of this Declaration, nor the fact that, as a result of such foreclosure(s), there are less than one sixty (60) Permanent Members at any time, shall affect the validity and enforceability of this Declaration as to all other Lots submitted hereto.

13. AMENDMENT.

This Declaration may be amended with the affirmative vote, written consent, or any combination thereof, of the Permanent Members holding at least two-thirds (2/3) of the total eligible vote of the Association. Notice of a meeting, if any, for consideration of any amendment hereto shall state the fact of consideration and subject matter of such proposed amendment. Any such amendment shall be certified by the President and Secretary of the Association and recorded in the Cobb County, Georgia land records.

14. RESTRICTIVE COVENANTS.

A Declaration of Covenants and Conditions for the Property, recorded on December 27, 1974, in Deed Book 1575, Page 862, et mg., Cobb County, Georgia Records, sets forth

certain restrictive covenants applicable to the Property, which Declaration was extended by that instrument recorded in , 19 in Deed Book , Page , II sea., Cobb County, Georgia Records. Such covenants shall run to the benefit of, and be enforceable by the Association, and, in an appropriate case, an aggrieved Lot Owner.

15. MAINTENANCE.

The Association shall maintain, keep in good repair and, in the Board's discretion, improve the Cannon Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all structures, landscaping grass areas, paving and other improvements situated on the Common Property. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

16. GENERAL PROVISIONS.

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

(b) No Discrimination. No action shall be taken by the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

(c) Indemnification. The Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's 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 such officer or director 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 commitments 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. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

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

EXHIBIT "A"

Property Initially Submitted

Consents

The property initially submitted to the terms and conditions of the Declaration shall be:

(1) those Lots, as defined in the Declaration, for which the Owner of the Lot has executed a Consent Form consenting to and submitting the Lot to Permanent Membership; (2) those Lots, as defined in the Declaration, for which the Owner of the Lot has executed a Consent Form consenting to and submitting the Lot to Civic Membership; and (3) the Common Property, more particularly described in Exhibit "A-2" attached hereto and incorporated herein by reference. The Consent Forms executed by Owners submitting their Lots to the Declaration are attached hereto and incorporated herein by reference.