

ARTICLE I: DEFINITIONS

Unless the context shall prohibit, certain words used in this Declaration shall have the definitional meaning set forth in Exhibit "A" attached hereto and by reference made a part hereof.

ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Hereby Subjected to this Declaration.

The real property which is, by the recording of this Declaration, subjected to the covenants, conditions, restrictions, easements, assessments and liens hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B" attached hereto and by reference made a part hereof.

Section 2. Other Property.

Only the real property described in Section I of this Article II is hereby made subject to this Declaration; provided, however, by one or more supplementary declarations, Declarant and the Association shall have the right to subject other real property to this Declaration as hereinafter provided.

ARTICLE III: PROPERTY RIGHTS, EASEMENTS AND USE RESTRICTIONS

Section 1. Easements of use and Enjoyment.

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

- (a) the right of the Association to suspend the voting rights and right to use of the recreation facilities, if any, now or hereafter situated upon the Common Property title to which is vested in the Association by a Lot Owner for any period during which any assessment against such Lot which is herein provided for remains unpaid and for a reasonable period of time for infraction of the Association's published rules and regulations;
- (b) the right of the Association to borrow money for the purposes of improving the Common Property, or any portion thereof, or for constructing, repairing or improving any facilities located or to be located thereon, or for constructing, maintaining, repairing or replacing utility systems and facilities, and, upon the assent of Declarant (if Declarant then has the unexpired option to annex additional property to the terms of this Declaration and/or the right to control the Association as herein elsewhere provided) and the requisite assent of other Lot Owners or

mortgages as provided in Section 6(d)(1) of Article XIII hereof, give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Property title to which is vested in the Association; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interest, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Development. Any provision in this Declaration or in any such mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not abrogate, diminish, modify, change, alter, rescind, cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner encumbering any lot or other property located within the Development.

(c) the right of the Association to limit the use and enjoyment of any recreational facilities now or hereafter situated upon the Common Property to the Owners of Lot and their respective families, tenants and guests; the right of the Association to limit the number of guests of Lot Owners and tenants; the right of the Association to charge reasonable fees for the actual use of or participation in a particular recreational facility or activity now or hereafter situated or provided upon the Common Property (which charges and fees, unless paid separately, shall be added to and become part of the assessment or portion thereof next coming due to which the Lot Owner is subject);

(d) the right of the Association to dedicate or transfer all or any portion of the Common Property title of which is vested in the association to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved in accordance with the provisions of Section 6(d)(1) of Article XIII hereof and by Declarant if Declarant then has the unexpired option to annex additional property to the terms of this Declaration and/or has the right to control the Association as herein elsewhere provided;

(e) the rights easements and licenses, together with the right of the Association to grant easements, licenses and permits as provided in this Article III;

(f) the rights and obligations of the Association to maintain, repair and replace the Common Property;

(g) the rights reserved to the Association as provided in Article X hereof.

(h) the rights reserved to Declarant and the Association in Article XI hereof.

Section 2. Access to Common Property.

The Association shall have an easement of access, ingress and egress over the Lots subjected to this Declaration as shall be reasonably necessary to permit the access, ingress and egress to and from portions of the Common Property of persons and equipment employed or used by the Association in the performance of its duties hereunder. This easement shall be exercised in such a manner as not to materially interfere with the use, occupancy or enjoyment of the property servient to this easement.

Section 3. Delegation of Use.

Any Lot Owner may delegate, in accordance with and subject to the by-laws and rules and

regulations of the Association, his right of use and enjoyment in and to the Common Property, and facilities located thereon to the members of his family, his tenants and guests, or contract purchasers who reside in the Development.

Section 4. Utilities, etc.

Declarant, as to any Lot owned by Declarant, and the Association, upon a majority vote of its Board of Directors, as to the Common Property title to which is vested in the Association, is hereby authorized and empowered to grant such licenses, easements and permits as either of them shall deem necessary and appropriate upon, across, above and under any such Lot or the Common Property, as the case may be, for access, ingress, egress, installation, repairing, replacing and maintaining all utilities serving the Development or any portion thereof including, but not limited to gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system or security system, which the Association might decide to have installed to serve the Development. It shall be expressly permissible for the Declarant or the Association, as the case may be, to install, repair, replace and maintain or to authorize the installation, repairing, replacing and maintaining of such poles, wires, conduits, cables or other equipment related to the providing of any such utility or service. Should any party furnishing any utility or service request a specific license, easement or permit by separate recordable document, Declarant, or the Association, as the case may be, shall have the right to execute and deliver such written document and every grantee of any interest in any property located within the Development consents thereto and further hereby agrees to give his specific written consent thereto in recordable form if requested by Declarant or the Board of Directors of the Association. Any license, easement or permit granted pursuant hereto by the Declarant or the Association shall be and remain in full force and effect perpetually or for such shorter period of time as may be specified in the particular instrument creating the same. Further, each Lot or any Common Property now or hereafter subjected to this Declaration shall also be subject to those licenses, easements and other matters, if any, shown or set forth on any recorded plat thereof or of the Development.

Section 5. Storm Drainage and Sanitary Sewer Systems.

Storm drainage systems and sanitary sewer systems may be located over, across, upon or under certain Lots and other portions of the Development. Except with respect to any systems dedicated to, or owned, operated or maintained by a governmental authority, any such storm drainage and sanitary sewer systems shall be maintained in good order and repair by the Association up to the point where said sanitary sewer system intersects the Lot line of the Lots running along the right-of-way line of ADAMS CROSSING. All storm drainage and sanitary sewer systems located within the boundary lines of the Lots shall be maintained in good order and repair by the Owners of the Lots. If any Lot Owner fails to maintain or repair such systems as aforesaid, the Association shall have the right, but not the obligation, to maintain or repair such systems and assess the defaulting Owner for the cost thereto pursuant to Article IX hereof. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Lot for the Purposes of providing connection of that Lot with the storm drainage system and sanitary sewer system most convenient thereto. Each Lot and the Common Property title to which is vested in the Association shall be subject to easements in favor of all the other Lots providing for the passage through any portion of such Lot of Common Property of necessary

storm drainage systems and sanitary sewer systems. Declarant hereby specifically reserves and establishes for the benefit of the Association an easement to inspect, repair, replace and maintain any private (undedicated) storm drainage and sanitary sewer system constructed or installed in the Development. This easement shall include the right of the Association to add to and supplement any existing storm drainage or sanitary sewer system, and also the right of access, ingress and egress to carry out the functions authorized by this easement. All of the foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not materially interfere with the use, occupancy or enjoyment of all or any part of the Lots or the Common Property servient to such easements or to which such easements are appurtenant.

Section 6. Water Lines and Water Service.

Any water line that serves any part of the Development which is located within the Common Property title to which is vested in the Association, if not owned, operated and maintained by the governmental authority providing water service to the Development, shall be maintained in good order and repair by the Association as part of the Common Property up to the point where said line intersects the lot line of the lots running along the right-of-way line of Darlington Commons. All water lines located within the boundaries of the Lots shall be maintained in good order and repair by the Lot Owners. If any Lot Owner fails to maintain or repair such water lines, the Association shall have the right, but not the obligation, to maintain or repair the water lines and assess the defaulting Owner for the cost thereof pursuant to Article IX hereof. The Owner of each Lot hereby expressly gives, grants and conveys, to the Association the right, title and privilege of any easement to inspect, repair, replace and maintain such portions of said water lines and related facilities the responsibility for the maintenance and repair of which is the Association's hereunder. This easement shall include the right of the Association to add to and supplement any such system and also the right of access, ingress and egress to carry out the functions authorized by this easement.

Section 7. Encroachments.

If any portion of the Common Property encroaches upon any Lot or residence, or if any residence encroached upon any other Lot or residence or if any portion of the Common Property, as a result of construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Development, a valid easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. In the event any building, any residence, any adjoining residence, or any adjoining Common Property, shall be partially or totally damaged or destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and then repaired or reconstructed, minor encroachments or portions of the Common Property upon any Lot or residence, or of any residence upon any other Lot or residence or upon any portion of the Common Property, due to such repair or encroachments and the maintenance, repair and replacement thereof shall exist. The foregoing provisions of the Section are included herein to provide for inadvertent encroachments which occur as a result of physical causes (such as, for example, shifting or settling), or by unintentional conduct on the part of the Association or a Lot Owner, or for encroachments resulting from and included as a part of the original construction (or reconstruction) of a residence (such as, for example, overhanging bay windows, chimneys or the like). Nothing herein shall, however, authorize or permit any Owner or the Association to willfully create encroachments on any Lot or the Common Property as the case may be in

derogation of the rights of the Owner thereof, and no easement for such encroachments shall exist. Each Owner hereby specifically acknowledges, however, that there are certain systems and/or improvements located wholly or partially on a Lot or Lots within the Development which, although not owned by the Association, are the Association's obligation to maintain and repair, including without limitation certain access ways, the detention facility serving the Development, and certain other improvements not designed to serve a specific Lot or Lots. Notwithstanding anything contained in this Section 7, a valid easement of the installation, maintenance and repair of all of such systems and/or improvements shall and does hereby exist for the benefit of the Association, together with any other easements or rights herein elsewhere provided with respect thereto.

Section 8. Exterior Maintenance.

The Association and each Lot Owner shall have an easement of use over the property adjoining such Owner's Lot as shall be reasonably necessary to enable the Association or such Owner, as the case may be, to perform required maintenance on his Lot and on the improvements located hereon. In the event of prolonged construction, reasonable notice thereof shall be given to any such adjoining Owner and such construction shall be done only during reasonable daylight hours. This easement shall be exercised in such a manner as not to materially interfere with the use, occupancy or enjoyment of all or any part of such adjoining property. Nothing contained in this Section 8 shall, however, abrogate, modify or diminish the rights accorded to the Declarant (or builders if other than Declarant) in Section 15 of Exhibit "D" hereof.

Section 9. Common Driveways and Access Ways.

To the extent that there are common driveways and access ways within the Development serving more than one Lot, each Owner of a Lot served thereby, and the tenants, guest and invitees of each such Owner, shall have a non-exclusive easement and right of pedestrian and motor vehicular access, ingress and egress over, through and across such driveway or access way to the extent reasonable necessary to provide access to such Owner's Lot. No Owner, or any tenant, guest or invitee of an Owner, of a Lot served by or on which is located all or any part of a common driveway or access way shall block any such common driveway or access way or impair or otherwise impede in any manner the rights herein granted to the Owner of any other Lot served by such driveway or access way. Nothing contained herein shall, however, permit any Owner of a Lot served by a common driveway or access way to park any vehicle upon the Lot of any other Owner served by such common driveway or access way or on any portion of any such common driveway or access way necessary for the use by any other Owner of a Lot served thereby for the purposes herein provided. Said easement and right of access, ingress and egress shall be a benefit to and burden upon each Lot served by or on which is located all or any part of a common driveway or access way and shall be perpetual and run with and bind the land and shall not be altered, amended, abrogated, modified, rescinded or terminated with respect to any such Lot unless all of the Owners of the Lots served by such driveway or access way, as well as the holders of any mortgages affected thereby, specifically consent thereto by an instrument duly recorded in the office of the Clerk of the Superior Court of the County in which the Development is located. In furtherance of the provisions of Section 3 of Article VIII hereof and not in limitation thereof, included within the Association's right to adopt reasonable rules and regulations regarding the use of such common driveways or access ways shall be the right to adopt reasonable penalties and sanctions for any Owner violating the provisions of this Section

or any rules and regulations regarding the same, in addition to and not in lieu of any other rights or remedies herein elsewhere provided.

Section 10. Private Roadway.

The Lots in the Development may be serviced by a Private Roadway (the "Roadway") as shown on the Plat for the Development recorded in the Superior Court of the County in which the Development is located. Title to the Roadway is vested in the Lot Owners in that each Lot serviced by the Roadway runs to the centerline of the Roadway. Each Owner of a Lot served by the Roadway, and the tenants, guests and invitees of each such Owner, shall have a non-exclusive easement and right of pedestrian and motor vehicular access, ingress and egress over, through and across such Roadway to the extent reasonably necessary to provide access to such Owner' Lot. Declarant, for itself and for each individual Lot Owner, herein grants to all of the other Lot Owners a non-exclusive easement of ingress and egress over, through and across the Roadway for purposes of pedestrian and motor vehicular access to each of the Lots. Said easement and right of access, ingress and egress shall be a benefit to and burden upon each Lot served by or on which is located such Roadway and shall be perpetual and shall run with and bind the land and shall not be altered, amended, abrogated, modified, rescinded or terminated with respect to any Lot unless all the Owners of the Lots served by such Roadway, as well as the holders of any mortgages affected thereby, specifically consent thereto by an instrument in writing duly recorded in the Office of Clerk of Superior Court of the County in which the Development is located. Nothing contained herein shall permit any Owner of a Lot served by such Roadway to park a vehicle upon the Lot of any other Owner served by such Roadway. No Owner, or any tenant, guest or invitee of an Owner, of a Lot served by the Roadway shall block or in any way impair or impede in any manner the Roadway or the rights herein granted to the Owner of any Lot served by the Roadway. In furtherance of the provisions of Section 3 of Article VIII hereof and not in limitation thereof, included within the Association's right to adopt reasonable rules and regulations regarding the use of the Roadway shall be the right to adopt reasonable penalties and sanctions for any Owner violating the provisions of this Section or any rules and regulations regarding the same, in addition to and not in lieu of any other rights or remedies herein elsewhere provided.

ARTICLE IV: ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership.

Every Owner of a Lot in the Development shall be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be members. Membership shall be appurtenant to the Lot to which it appertains and shall be transferred automatically by conveyance of that Lot. Membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

Section 2. Voting.

The Association shall have one class of voting membership which shall consist of all Owners of Lots located in the Development. Owners shall be entitled to one vote for each Lot owned. If the same Owners own more than one Lot, such Owner shall have membership privileges and pay

assessments with respect to each Lot so owned. When more than one person owns a Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of a disagreement among such persons and an attempt by two or more of them to cast such vote or votes, such persons shall not be recognized and such vote or votes shall not be counted. All voting rights shall be subject to the restrictions and limitations provided herein (including but not limited to Section 1 of Article XIII hereof) and in the Article of Incorporation and by-laws of the Association.

Section 3. Meetings.

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

Section 4. Casting of Votes.

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

Section 5. Amplification.

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

ARTICLE V

MAINTENANCE, REPAIR AND REPLACEMENT

Section 1. Lot Owner's Responsibility.

All Lots, together with all improvements located thereon, shall be maintained in a neat, attractive and safe condition by their respective Owners in compliance with all applicable governmental rules and regulations and all rules and regulations set or prescribed from time to time by the Board of Directors of the Association of the Architectural Control Committee, as herein elsewhere more fully provided. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and caring for roofs, gutters downspouts, building surfaces, driveways, trees, grass, shrubs, walks and all other exterior improvements, systems and facilities exclusive of those matters which are the responsibility of the Association. It shall be the responsibility of the Lot Owner to perform said maintenance in such manner so as not to unreasonably disturb other Owners. To the extent that there are common driveways and access ways within the Development serving more than one Lot, the maintenance and repair of such common driveways or access ways shall be allocated as follows:

(a) If the repair and/or maintenance is needed at the entrance area of the common driveways or access way leading to all of the Lots served by such common driveway or

access way, Owners of all of such Lots served by said common driveway or access way, the maintenance and/or repair shall be the responsibility of the Owners of all of such Lots served by said common driveway or access way, with the cost thereof divided equally among the Owners so served.

(b) If the repair and/or maintenance is needed at a point in the common driveway or access way that only leads to or serves certain Lots, the maintenance and/or repair shall be the responsibility of the Owners of the Lots so served, with the cost thereof being divided equally between said Owners. If any Lot Owners fails or refuses to maintain and/or repair the common driveways or access ways as aforesaid, the Association shall have the right, but not the obligation, to perform such maintenance or repair and assess the defaulting Owner for the cost thereof pursuant to Article IX hereof. In the event a dispute arises as to the responsibility or cost of such maintenance and repair, the Association shall have the absolute right, in its sole discretion, to make the decision as to who is responsible for such maintenance and repair, and the cost thereof, which decision shall be binding upon all of the Lot Owners affected thereby.

Section 2. Association's Responsibility.

(a) The Association shall be responsible for the maintenance and repair of the Common Property including, but not limited to, the detention facility serving the Development, and any decorative structure not designed to serve a specific Lot or Lots. Additionally, and subject to the terms hereof, the Association shall be responsible for the maintenance, repair and replacement of those utility lines, systems and facilities or portions thereof which pursuant to the terms hereof, are the responsibility of the Association to maintain, repair and replace, located on the Common Property title to which is vested in the Association.

(b) In the event that the Board of Directors of the Association determines that: (i) any Owner failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or (ii) that the need for maintenance, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his or her family, guests, lessees or invitees, and is not covered or paid for by insurance in whole or in part, then, in that event, after approval by a two-thirds (2/3) vote of the Board of Directors, the Association, except in the event of an emergency situation, shall give an Owner written notice of the Association's intent to provide such necessary maintenance repair or replacement, at the Owner's sole cost and expense, and setting forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. An Owner shall have thirty (30) days within which to complete said maintenance, repair or replacement, or in the event that such maintenance, repair or replacement is capable of completion within said thirty (30) day period, to commence said maintenance, repair or replacement within said period and diligently proceed to complete same. If any Owner does not comply with the provisions thereof, the Association may provide any such maintenance, repair or replacement at such Owner's sole cost and expense, and the Lot Owner shall be personally liable to the Association for such cost and expenses and the liability therefor shall be a permanent charge and lien against such Owner's lot enforceable by the

Association in the same manner as other liens for the improvement of real property or by any other appropriate proceeding at law or in equity.

ARTICLE VI: INSURANCE

Section 1. Insurance for the Association.

The Association's board of Directors or its duly authorized agent shall have the authority to obtain insurance for all insurable improvements constructed on the Common Property title to which is vested in the Association against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in the maximum insurable amount to cover the full replacement cost (or such other amount, if any at all, as the Board of Director determines to be appropriate under the circumstances) of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors of the Association or its manager shall also have the authority to obtain a public liability policy covering the Common Property and facilities hereon in such amounts and with such coverage as the Board of Directors shall from time to time deem prudent. Premiums for all such insurance shall be common expenses paid for by the Association. Such insurance shall be governed by the following provisions.

- (a) All policies shall be written with a company licensed to do business in the State of Georgia and holding a financial rating of Class VI, or better, by Best's Key Rating Guide.
- (b) Exclusive authority to negotiate and accept settlement under policies hereafter in force shall be vested in the Associations' Board of Directors.
- (c) The Association's Board of Directors or its manager shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all insurable improvements constructed on the Common Property title to which is vested in the Association.
- (d) The Association's Board of Directors or its manager shall be required to make every reasonable effort to secure insurance policies that will provide for the following: (1) a waiver of subrogation by the insurer as to any claims against the Association, its Board of Directors, its manager, or its members and their respective families, tenants, employees, agents and guests, with respect to property coverage, except for arson and fraud, and of any defenses based on co-insurance; (2) a waiver by the insurer of its right to repair or reconstruct instead of paying cash; (3) that the policies cannot be canceled, invalidated or suspended on account of the conduct of any one or more members or on account of the conduct of any director, officer or employee of the Association or its manager without prior demand in writing delivered to the association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its agent mortgagee or any member; and (4) that all liability insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Lot Owners. The Association shall not maintain any insurance policy which; (i) under the terms of the insurer's charter, by laws or the policy allows contributions or assessments to be made against the Association or any Lot Owner or such Owner's mortgagee; (ii) under the terms of the insurer's charter, by laws or the policy allows loss payments to be contingent upon action by the insurer's Board of Directors, policyholders or members; or (iii) includes any limiting clauses (other than insurance conditions) which could prevent any Lot Owner of such Owner's mortgagee from collecting insurance proceeds.

Section 2. Insurance Trustee.

All Casualty insurance policies purchased by the Association shall provide that proceeds covering property losses shall be paid to an insurance trustee, which shall be the Association, or a bank or other financial institution have trust powers with offices in Georgia, as may from time to time be approved by the Board of Directors of the Association, which insurance trustee is herein sometimes referred to as the "Depository".

Section 3. Insurance for the Lot Owner.

Each Lot Owner shall be responsible for procuring all insurance applicable to the residence and other improvements located on such Lot and all such other insurance for the Lot Owner as such Owner deems appropriate. The obligation to obtain such insurance and all costs thereof shall be the sole responsibility of the Lot Owner and not the Association.

ARTICLE VII: CONDEMNATION

Section 1. General.

Whenever any part of the Common Property title to which is vested in the Association shall be taken by any authority having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association, and unless otherwise provided by law at the time of such taking, any award made therefor shall be deposited by the Association with the Depository and disbursed for such purposes as the Board of Directors of the Association shall from time to time determine to be in the best interest of the Association.

ARTICLE VIII: RIGHTS OF THE ASSOCIATION

Section 1. Services.

The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. If the Association enters into a management agreement, such agreement shall be subject to the provisions of Section 2 of Article X hereof. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration.

Section 2. Personal Property and Real Property for Common Use.

The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property, and may, subject to the provisions of this Declaration, dispose of the same by sale or otherwise.

Section 3. Rules and Regulations.

Reasonable rules and regulations concerning the use of the Common Property and facilities located thereon may be made and amended from time to time by the Board of Directors of the Association; provided that copies of such regulations and amendments thereto shall be furnished by the Association to all Lot Owners and, upon request, shall be made available for inspection during the normal business hours or under other reasonable circumstances by the holder of any first mortgage on a Lot. Such regulations shall be binding upon the Lot Owners, their families, tenants, guests, invitees and agents, until and unless such regulation, rule or requirement be specifically overruled, canceled or modified in a regular or special meeting by the vote of members (other than Declarant) holding a majority of the total votes in the Association and by the vote of the Declarant so long as the Declarant shall have the unexpired option to annex additional property to the terms of herein elsewhere provided. Failure to abide by any such regulation, rule or requirement shall be grounds for an action to recover damages, or obtain injunctive and equitable relief or both, in addition to any other right or remedy provided in this Declaration.

Section 4. Implied Rights.

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

ARTICLE IX: ASSESSMENTS

Section 1. Purpose of Assessments.

The assessments provided for herein shall be used for the purpose of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots in the Development and in particular, the common fund may be assessed to cover the following: (i) management fees and expenses of administering the Association; (ii) common utility bills and charges for other common services; (iii) cost of any policies of insurance purchased by the Association, including fire and other hazard coverage for the Common Property, public liability coverage for the Association, including its officers and directors, and such other insurance coverage as the Board of Directors determines to be in the interest of the Association and Lot Owners; (iv) construction, maintenance, repair, replacement and operation of the detention facility serving the Development; (v) acquisition, improvement, maintenance, repair, replacement and operation of properties, services and facilities devoted to such purposes and related to the Common Property, and including but not limited to the payment of repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervisions thereof; (vi) the addition to and maintenance, repair and replacement of all utility lines, systems and facilities, or portions thereof, and other improvements and systems which pursuant to the terms hereof are the responsibility of the Association to maintain, repair and replace; and (vii) the establishment and maintenance of one or more reasonable reserve funds for such purposes as to cover the repair and replacement of Common Property and common systems and facilities, unforeseen contingencies or deficiencies, or for emergency expenditures or such other matters as may be authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments.

Each Owner of any Lot within the Development. Any acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association assessments which shall be fixed, established and collected from time to time as herein provided. Such assessments, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on and a continuing lien upon the Lot against which each such assessment is made. The lien for unpaid assessments shall lapse and be of no further effect as to assessments or installments thereof, together with interest applicable thereto, if a claim of lien therefore is not filed in the office of the Clerk of Superior Court of the County in which the Lot is located within one (1) year after the date upon which the assessment, or installment thereof, first became due and payable. The claim of lien shall be substantially in the form attached hereto as Exhibit "C" and by this reference made a part hereof. Such a claim of lien shall also secure all assessments or portions thereof, together with interest applicable thereto, which come due thereafter until the claim of lien is canceled of record. Also, irrespective of whether the lien therefore shall be valid or enforceable, each Owner shall be personally liable for the portion of any assessment coming due while he is the Owner of the Lot and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor; provided, however, that if such grantor or grantee shall request a statement from the Association in accordance with the provisions of Section 7(c) of this Article IX, such grantee, his successors, successors-in-title and assigns shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against such grantor in excess of the amount set forth in such written statement, if any. Any person who becomes the Owner of a Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage on the Lot, or pursuant to any proceeding in lieu of the foreclosure of such mortgage, shall be liable only for assessments coming due after the date such person so acquires title to the Lot. Further, it is hereby specifically provided that any first mortgagee who obtains title to the Lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage (or deed in lieu thereof) shall not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee.

Section 3. Regular Annual Assessments.

It shall be the duty of the Board of Directors of the Association at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated costs of operating the Association during the coming year. Such budget (and the assessments levied to satisfy the same) shall make provision for the buildup and maintenance of inadequate reserve fund for repair and replacement of those portions of the Common Property and utility lines, systems and facilities that must be repaired or replaced on a periodic basis. This provision is for the benefit of, and is intended to be relied upon by all mortgagees holding first mortgages on any Lot in the Development. The Board shall cause the budget, and the assessments to be levied against each Lot Owner for the following year, to be delivered to each Lot Owner at least fifteen (15) days prior to the annual meeting. The budget and the assessments therefor shall become effective unless (i) the proposed budget for the ensuing calendar year exceeds the immediately preceding annual budget by a percentage greater than the percentage increase in the Cost of Living during the twelve (12) month period next preceding the date upon which the Board of Directors shall so determine the budget for the ensuing calendar year and, (ii) such proposed budget is disapproved

at the annual meeting by a vote of members of the Association representing at least a majority (more than 50%) of the total votes of the entire membership. In the event the proposed budget is not approved as aforesaid or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall be determined at a subsequent special meeting called pursuant to the provisions of Section 5 below, the budget in effect for the then current year shall continue for the succeeding year. Each Lot Owner shall pay an initial funding fee of \$500.00 and a regular annual assessment of \$250.00 per year payable in accordance with Article IX, Section 7 hereof. Subsequent homeowners will not be responsible for the payment of a funding fee but will be responsible for the payment of the annual assessment as stated above.

Section 4. Special Assessments.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, provided that any such special assessment shall have the assent of members of the Association representing at least a majority (more than 50%) of the votes of the entire membership other than Declarant and by Declarant so long as Declarant shall have the unexpired option to annex additional property to the terms of this Declaration and/or right to control the Association as herein elsewhere provided.

Section 5. Notice of Meetings.

Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be given to all members not less than fifteen (15) days or more than sixty (60) days in advance of the meeting. Such notice shall be given by personally delivering the same to any individual designated by a member to the Secretary of the Association, or by mailing a copy thereof by U. S. Certified Mail, postage prepaid, return receipt requested, to the last known place of residence or to such other address as may be furnished by such member to the Secretary of the Association. Notice shall be considered given when personally delivered to any such designated individual or when delivered by mail at such address, as the case may be. Any member may waive notice of the meeting by doing so in writing before or after the meeting. Attendance at a meeting, either in person or by proxy, shall of itself constitute a waiver of notice.

Section 6. Uniform Rate of Assessment.

Except as otherwise provided in Section II of this Article IX, both annual and special assessments must be fixed at a uniform rate for all Lots.

Section 7. Assessment: Due Dates.

(a) The annual assessment payable to the Association, as provided for in this Article IX, shall commence as to each Lot on the date upon which the Lot is conveyed to an Owner (other than Declarant) (such date being hereinafter sometimes referred to as "the commencement date"). There shall be no proration of the first annual assessment payable to the Association regardless of the number of days remaining in the calendar year as of the commencement date. Unless, otherwise provided by the Association's Board of Directors, the annual assessment for each Lot shall become due and payable in full to the Association on the first day of January of each calendar year and shall be paid to the Association when due without further notice from the Association.

(b) The special assessments payable to the Association, as provided for in this Article IX, shall be due on the date(s) specified by the Association's Board of Directors.

(c) The Association shall, upon demand at any time, furnish to any Owner liable for any such assessment a certificate in writing signed by either the President or Treasurer of the Association, or by the manager of the Association, if any, setting forth whether the same has been paid. A reasonable charge, as determined by the Association, may be made for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(d) The Board of Directors of the Association shall have the right to waive all or any portion of any annual assessment, and, except as otherwise provided in Section 9 of this Article IX, such waiver shall be uniform as to all Lots.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association.

Any assessment, or portion thereof, not paid when due shall be delinquent. If the same is not paid within five (5) days after the due date, then a late charge equal to the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment thereof not paid when due shall also be due and payable to the Association. If any assessment or portion thereof is delinquent for a period of more than five (5) days, then, if not paid within ten (10) days after written notice is given to the Lot Owner to make such payment, the entire unpaid balance of the assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full. Any assessment or portion thereof not paid when due shall bear interest from the date of delinquency until paid at the maximum legal rate. The Board of Directors of the Association may suspend the voting rights of the Lot Owner and right to use the recreational facilities, if any, situated on the Common Property during the period in which any assessment or portion thereof remains unpaid and may bring an action at law against the Lot Owner or Owners personally obligated to pay the same or foreclose its lien against such Owner's Lot, in which event interest, costs and reasonable attorney's fees may be added to the amount of such assessment or portion thereof which is past due. All payments on account shall be applied first to interest, and then to the assessment lien first due. All interest collected shall be credited to the common expense fund. Each Lot Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien against his Lot in the same manner as other liens for the improvements of real property. The lien provided for in this Article IX shall be in favor of the Association and shall be for the benefit of all Lot Owners. The Association shall have the power to bid in the Lot at any judicial or foreclosure sale and to acquire, hold, lease, encumber, and convey the same. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property and facilities located thereon or abandonment of this Lot.

Section 9. Priority of Lien.

The lien of the assessments provided for in this Article IX shall be prior and superior to all other liens except only (a) ad valorem taxes and (b) all sums unpaid on a first mortgage, on the Lot, if any. The sale or transfer of any Lot which is subject to a first mortgage pursuant to the judicial sale or foreclosure thereof, or pursuant to any proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to the payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve the acquirer of title, and the successors-in-title and assigns thereof from liability for any assessment thereafter becoming due on the Lot or from the lien thereof. Provided, however, the Association may at any time, either before or after a first

mortgage is placed on a Lot, waive, relinquish or quit-claim in whole or in part the right of the Association to assessments provided for herein with respect to such Lot coming due during the period while such Lot is or may be held for liquidation by the first mortgagee pursuant to such sale or transfer.

Section 10. Lots Owned by Declarant.

With respect to Lots owned by Declarant which have occupied residences located thereon, Declarant shall pay annual and special assessments, if any, on the same basis as other Owners of Lots in the Development. With respect to Lots owned by Declarant which are unimproved or have partially completed and/or have unoccupied, completed residences located thereon, Declarant shall pay no assessments, whether annual or special.

Section 11. Exempt Property.

The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein; (i) all properties dedicated to and accepted by any governmental authority; and (ii) the Common Property title to which is vested in the Association; and (iii) Lots owned by Declarant except as expressly provided in the first sentence of the immediately preceding Section. No land or improvements devoted to dwelling use shall be exempt from said assessments, charges and liens except as expressly provided in Section 10 above.

ARTICLE X: ADMINISTRATION

Section 1. Responsibility for Administration.

The maintenance, repair, replacement and operation of the Common Property and facilities located thereon, as well as the maintenance, repair and replacement of utility systems and facilities and other improvements as herein provided, shall be the responsibility of the Association. Such administration shall be governed by this Declaration and the Articles of Incorporation and by-laws of the Association, as amended from time to time. The powers and duties of the Association shall be those set forth in said documents, together with those reasonably implied to effect their respective purposes, and shall be exercised in the manner provided therein.

Section 2. Management Agreements.

The Association's Board of Directors may enter into such professional management agreements as it may deem necessary or advisable for the Association's jurisdiction. Provided, however, that so long as Declarant has the right to appoint and remove members of the Board of Directors and Officers of the Association, any professional management agreement (or any other contract, or lease, including any contract providing for services by the Declarant) must provide that the same is terminable by either party for cause upon thirty (30) days written notice thereof and without cause or payment of a termination fee on ninety (90) days or less written notice; such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. This provision is for the benefit of, and is intended to be relied upon by all mortgagees holding first mortgages on any Lot in the Development. All costs and expenses incident to the employment of a manager shall be common expenses of the Association payable from the

common expense fund. Any such management agreement may provide that, during his tenure, the person with whom the association contracts for such administration and operation (hereinafter sometimes referred to as the "manager") shall be authorized and responsible for exercising all powers and performing all duties of the Association, excepting only those powers and duties specifically and exclusively assigned or reserved to the officers, directors or members of the Association by this Declaration and the Association's Articles of Incorporation or by-laws. The Board of Directors may require that such managers be bonded. Each Lot Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into as hereinabove provided.

Section 3. Limitation of Liability; Indemnification.

Notwithstanding the duty of the Association to maintain, repair and replace the Common Property and facilities thereon as well as the utility systems and facilities and other improvements as herein provided, the Association shall not be liable for injury or damage caused by any latent condition of such property and facilities nor for injury or damage caused by the elements, its members or other persons, nor shall any officer or director of the Association be liable to any of its members for injury or damage caused by such officer or director in the performance of his duties due to any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith. Each officer or director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may be a party, or in which he may become involved, by reason of his being or having been such an officer or director, whether or not he is such an officer or director at the time such expenses and liabilities are incurred, except in such cases wherein the officer or director is adjudged guilty of willful misconduct or bad faith in the performance of his duties.

Section 4. Disclosure of Financial Records.

Upon request, the Association shall be required to make available for inspection by Lot Owners and any holder of a first mortgage on a Lot during normal business hours or under other reasonable circumstances, current copies of the Declaration, Articles of Incorporation and by-laws of the Association and any amendments thereto, and the books, records and financial statements of the Association. Any holder of a first mortgage, upon written request to the Association, will be entitled to receive a financial statement of the Association for the immediately preceding fiscal year.

ARTICLE XI

ARCHITECTURAL CONTROL AND USE RESTRICTIONS

To assure a community of congenial Owners and thus protect the value of the Lots, the Lots which are subjected to this Declaration shall be subject to the architectural control and use restrictions set forth in Exhibit "D" attached hereto and by reference made a part hereof. Every grantee of any interest in any property located within the Development, by acceptance of a deed or other conveyance of such interest, agrees that such architectural control and use restrictions may be enforced in accordance with the provisions of this Declaration, or as otherwise provided by law.

ARTICLE XII

ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation without Membership Approval.

(a) As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option from time to time and at any time until all the real property described in Exhibit "E" has been subjected by Declarant to this Declaration or until that date which is five (5) years from the date this Declaration is filed for record in the office of the Clerk of the Superior Court of the County in which the Development is located, whichever first occurs, to subject all or any portion of the real property described in said Exhibit "E" attached hereto to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the office of the Clerk of the Superior Court of the County in which the Development is located a supplementary declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such supplementary declaration unless otherwise provided therein.

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

Section 2. Annexation with Membership Approval.

Subject to the consent of the owner thereof, upon the assent of members of the Association representing at least seventy-five (75%) percent of the votes of the entire membership, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the office of the Clerk of the Superior Court of the County in which the Development is located a supplementary declaration in respect to the property being annexed. Any such supplementary declaration shall be signed by the President and Secretary of the Association and, subject to the provisions of Section 6(c) Article XIII hereof, any such annexation shall be effective upon the filing for record of such supplementary declaration unless otherwise provided therein. Provided, however, any of the foregoing provisions of this Section, which may be construed to the contrary notwithstanding, if Declarant has the unexpired option to annex additional property to the terms of this Declaration and/or the right to control the Association, no such annexation of other real property so approved by members of the Association shall be effective unless the supplementary declaration annexing such other real property shall also be signed or consented to in writing by Declarant.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Control by Declarant.

NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY in this Declaration or in the Articles of Incorporation or by-laws of the Association, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association. By an express written instrument to that effect, but not by implication, Declarant may relinquish such right in whole or in part at any time and from time to time. Further, the Declarant's authority so to appoint and remove members of the Board of Directors and officers of the Association shall in no event extend beyond and shall in all cases expire upon, the first of the following to occur:

- (a) Unless Declarant at that time has an unexpired option to annex additional property to the terms of this Declaration pursuant to Section 1 of Article XII hereof, the date as of which one hundred percent (100%) of all Lots in the Development shall have been conveyed by Declarant to Lot Owners other than a person or persons constituting the Declarant; or
- (b) The expiration of five (5) years after the recording of this Declaration; or
- (c) The surrender by Declarant of the authority to appoint and remove members of the Board of Directors and officers of the Association by document executed and recorded by Declarant; or
- (d) Upon the expiration of the period of the Declarant's right to control the Association pursuant to the foregoing provisions to the Lot Owners (including Declarant if Declarant then owns one or more Lots in the Development).

Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that the Declarant shall have the authority to appoint and remove members of the Board of Directors and officers of the Association in accordance with the foregoing provisions of this Section.

Section 2. Enforcement.

Each Lot Owner shall comply strictly with this Declaration, the by-laws and rules and regulations of the Association, as any of the same may be amended from time to time, and with the covenants and restrictions set forth in this Declaration. In the event of a violation or breach, or threatened violation or breach, of any of the same, Declarant, the Association or any aggrieved Lot Owner, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to present a threatened violation or breach thereof. Should the Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the violating Lot Owner. In as much as the enforcement of the provisions of this Declaration and the by-laws and such rules and regulations is essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Lot Owners, it is hereby declared that any breach thereof, cannot be adequately compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Lot Owner, in addition to all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. No delay, failure or omission on the part of

Declarant, the Association or any aggrieved Lot Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence therein nor shall be deemed to be a waiver of the right to exercise such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its exercise or enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action or on account of any violation or breach, or threatened violation or breach of the provisions of this Declaration, or the by-laws, or such rules and regulations, however, long continued, or for imposing provisions which may be unenforceable.

Section 3. Rights of Third Parties.

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

Section 4. Duration.

The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Georgia law limits to twenty (20) years, the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land for a period of twenty (20) years from the date this Declaration is filed for record in the office of the Clerk of the Superior Court of the County in which the Development is located, after which time such provisions shall be automatically extended, if permitted by law, for successive periods of ten (10) years, unless an instrument, signed by at least seventy-five (75%) percent of the then Owners (other than Declarant) of record of Lots within the Development and their first mortgagees and by Declarant if Declarant is then the Owner of one or more Lots within the Development, has been recorded in the office of the Clerk of said Court agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, hereby agrees that the provisions of this Declaration may be extended and renewed as provided in this section.

Section 5. Amendment.

This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of

mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration, or (iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private insurance company to insure mortgage loans on the Loan is subject to this Declaration, provided any such amendment shall not adversely affect the title to any Owner's Lot or materially alter or change any Lot Owner's right to use and enjoyment of the Common Property as set forth herein unless any such Lot Owner so affected hereby shall consent thereto in writing. Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least two-thirds (2/3) of the Owners of record of Lots within the Development; provided, however, that during such time as there is property subject to the terms of this Declaration in accordance with Section 1 of Article XII hereof and/or the Declarant has the right to control the Association pursuant to Section 1 of this Article XIII, such amendment shall require the agreement of Declarant and Lot Owners to which two-thirds (2/3) of the votes of the Association appertain, exclusive of any vote of votes appertaining to any Lot or Lots then owned by Declarant. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot or Common Property affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the office of the Clerk of said court. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or other conveyance therefor, hereby agrees that this Declaration may be amended as provided in this Section.

Section 6. Obligations to Mortgagees.

The following provisions are established for the benefit of the holder of mortgages encumbering any Lots now or hereafter located within the Development. In the event of any conflict between other provisions in any of the PUD constituent Documents and the following provisions, that latter shall control:

(a) Each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any first mortgage encumbering such Owner's Lot and the Association shall be obligated to notify the holder of any such first mortgage, upon written request therefore; of any default by such Owner in the performance of any of such Owner's obligations (including failure to pay assessments as and when due) under the PUD Constituent Documents which is not cured within sixty (60) days from the date of any such default. Each Lot Owner hereby consents to such notification to any such mortgagee.

(b) The holder of any first mortgage on a Lot will, upon written request to the Association, be entitled to written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings. Further, upon written request to the Association, any holder of a first mortgage on a lot will be entitled to timely written notice of any proposed action pursuant to this Declaration the Articles of Incorporation or by-laws of the Association which requires the consent of a specified percentage of mortgage holders.

(c) Notwithstanding the provisions of Section 2 of Article XII hereof, the Association shall not annex additional lands to this Declaration and to the jurisdiction of the Association without the written consent of at least a majority of the holders of all first mortgages encumbering any of the Lots located within the Development.

(d) Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than Declarant) of the individual Lots in the Development have given their prior written approval, the Association shall not be entitled to:

by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by the Association for the benefit of the Lots in the Development. The granting of easements, licenses and permits for public utilities or for other public purposes consistent with the intended use of the Common Property by the Association and its members shall not be deemed a transfer within the meaning of this clause;

change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;

by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Common Property, party walks or common fences and driveways, or the upkeep of lawns and planting in the Development;

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

use hazard insurance proceeds for losses to any Common Property title to which is vested in the Association for other than the repair, replacement or reconstruction of such Common Property.

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

(f) No provision of the PUD Constituent Documents shall be construed to give a Lot Owner or any other party, priority over any rights of first mortgagees of Lots in the Development pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Property. Upon written request to the Association, the holder of any first mortgage on a Lot will be entitled to timely written notice of any condemnation or casualty loss affecting such Lot or a material portion of the Development.

(g) Upon written request to the Association, the holder of any first mortgage on a Lot will be entitled to timely written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(h) The rights, privileges and benefits granted and accorded to first mortgagees under the provisions of this Section shall be in amplification and not in limitation of any rights, privileges or benefits granted or accorded to first mortgagees under any other provisions of the PUD Constituent Documents. Also, notwithstanding any provision of any of the PUD Constituent Documents which may be construed to the contrary, the provisions of this Section shall control in the event of any conflict between any of the provisions of the Section and any other provisions in any of the PUD Constituent Documents. Further, notwithstanding any provision in any of the PUD Constituent Documents which may be construed to the contrary, no amendment to any of the PUD Constituent Documents shall alter, modify, change or rescind any right, privilege or benefit granted or accorded thereunder to any mortgagee holding a first mortgage on any Lot in the Development unless such first mortgagee shall consent thereto in writing. Provided, however, to the extent that the consent of Declarant is required for any action to be taken pursuant hereto, then such consent shall be in addition to and not in lieu of any other consent required by this Section.

Section 7. Mergers or Consolidations.

Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association pursuant to a merger. The surviving or consolidated association may then administer the covenants, conditions and restrictions established by this Declaration, including, any supplementary declaration hereto, as well as any other covenants, conditions and restrictions which were then being administered by any other association involved in such merger or consolidation.

Section 8. Sale or Easement of Association Property.

In consideration of Declarant's provision to the Association of property and property rights the following shall prevail if the Association agrees to the sale or easement of any of the real property controlled by the Association: a. Declarant shall have the first right of refusal in the sale or easement of any Association property. b. All proceeds from the sale or easement of Association property shall be divided with Declarant who shall receive 80% of the sale or easement amount.

Section 9. Access Points.

Declarant shall have the absolute right to acquire access points from Association property to adjoining property. This right shall not be diminished or in any other way affected by the application or the failure to apply the provisions of Article XII.

Section 10. Interpretation.

In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development set forth herein. The provisions hereof shall be liberally interpreted

and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

Section 11. Gender and Grammar.

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

Section 12. Severability.

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

Section 13. Captions.

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

IN WITNESS WHEREOF, the Declarant herein has caused this instrument to be executed, under seal, as of the 18th day of August 1999.

Signed, sealed and delivered

in the presence of:

Unofficial Witness

Marietta ROAD I, LLC

BY:

Steve Brock, Manager

Joya Marlene Stavotens, Notary Public

Attest: Mente E. Jack

Kielvin E. Brock, Secretary

N.P.

SEAL

CORP SEAL

My Commission Expires:

(SEAL)

MY COMMISSION EXPIRE

On June 23, 2001