

Deed Book 12472 Pg 141
Filed and Recorded May-07-1999 01:07pm
1999-0077252

Jay C. Stephenson

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.
I HEREBY DO HEREBY FILED AS DEED TO RECORD THE TRUE AND CORRECT COPY OF THE SAME FOR THE PEOPLE OF GEORGIA

This document was prepared by:
Anthony W. Oxley
HYATT & STUBBLEFIELD, P.C
1200 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, Georgia 30303

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

EAST PARK

<u>ARTICLE</u>	<u>SECTION</u>	<u>Page</u>
I.	DEFINITIONS	1
	1.1. Area of Common Responsibility	1
	1.2. Articles of Incorporation; Articles	2
	1.3. Association	2
	1.4. Board of Directors; Board	2
	1.5. By-Laws	2
	1.6. Class "B" Control Period	2
	1.7. Common Area	2
	1.8. Common Expenses	2
	1.9. Community	2
	1.10. Community-Wide Standard	2
	1.11. Declarant	2
	1.12. Exclusive Common Area	3
	1.13. General Assessment	3
	1.14. Governing Documents	3
	1.15. Land Plan	3
	1.16. Member	3
	1.17. Mortgage; Mortgagee	3
	1.18. Neighborhood	3
	1.19. Neighborhood Assessments	3
	1.20. Neighborhood Expenses	3
	1.21. Owner	4
	1.22. Person	4
	1.23. Public Records	4
	1.24. Special Assessment	4
	1.25. Specific Assessment	4
	1.26. Supplemental Declaration	4
	1.27. Unit	4
	1.28. Use Restrictions and Rules	4
II.	PROPERTY RIGHTS	4
	2.1. Common Area	4
	2.2. No Partition	5
	2.3. Condemnation	6
III	MEMBERSHIP AND VOTING RIGHTS	6
	3.1. Function of Association	6
	3.2. Membership	6

<u>ARTICLE</u>	<u>SECTION</u>	<u>Page</u>
	3.3. Voting	6
	3.4. Neighborhoods	7
IV.	RIGHTS AND OBLIGATIONS OF THE ASSOCIATION	7
	4.1. Common Area	7
	4.2. Personal Property and Real Property for Common Use	8
	4.3. Enforcement	8
	4.4. Implied Rights; Board Authority	8
	4.5. Governmental Interests	9
	4.6. Indemnification	10
	4.7. Dedication of Common Areas	10
	4.8. Security	10
	4.9. Emergency Service Providers	10
V.	MAINTENANCE	10
	5.1. Association's Responsibility	10
	5.2. Owner's Responsibility	12
	5.3. Maintenance of Neighborhood Property	12
	5.4. Standard of Performance	12
VI	INSURANCE AND CASUALTY LOSSES	12
	6.1. Association Insurance	12
	6.2. Owners' Insurance	14
VII	ANNEXATION AND WITHDRAWAL OF PROPERTY	14
	7.1. Annexation Without Approval of Membership	14
	7.2. Annexation With Approval of Membership	15
	7.3. Withdrawal of Property	15
	7.4. Additional Covenants and Easements	15
VIII.	ASSESSMENTS	16
	8.1. Creation of and Obligation for Assessments	16
	8.2. Declarant's Obligation for Assessments	17
	8.3. Computation of General Assessments	17
	8.4. Computation of Neighborhood Assessments	18
	8.5. Reserve Budget and Capital Contribution	18
	8.6. Special Assessments	19
	8.7. Specific Assessments	20
	8.8. Lien for Assessments	20

<u>ARTICLE</u>	<u>SECTION</u>	<u>Page</u>
	8.9. Date of Commencement of Assessments	20
	8.10. Failure to Assess	20
	8.11. Exempt Property	20
IX.	ARCHITECTURAL STANDARDS	21
	9.1. General	21
	9.2. Architectural Review	21
	9.3. Standards and Procedures	22
	9.4. No Waiver of Future Approvals	23
	9.5. Variance	23
	9.6. Limitation of Liability	23
	9.7. Enforcement	23
X.	USE RESTRICTIONS AND RULES	24
	10.1. Plan of Development; Applicability; Effect	24
	10.2. Authority to Promulgate Use Restrictions and Rules	24
	10.3. Owners' Acknowledgment	25
	10.4. Rights of Owners	25
	10.5. Dumping Restrictions and Protection of Environmentally-Sensitive Areas	27
XI.	EASEMENTS	27
	11.1. Easements of Encroachment	27
	11.2. Easements for Utilities, Etc.	27
	11.3. Easements for Maintenance and Flood Water	28
	11.4. Easements to Serve Additional Property	28
	11.5. Right of Entry	28
	11.6. Landscaping and Signage Easements	29
	11.7. Easement to Inspect and Right to Correct	29
XII.	EXCLUSIVE COMMON AREAS	29
	12.1. Purpose	29
	12.2. Designation	30
XIII.	MORTGAGEE PROVISIONS	30
	13.1. Notices of Action	30
	13.2. No Priority	30
	13.3. Notice to Association	30
	13.4. Failure of Mortgagee to Respond	30

<u>ARTICLE</u>	<u>SECTION</u>	<u>Page</u>
XIV.	DECLARANT'S RIGHTS	31
XV.	DISPUTE RESOLUTION AND LIMITATION ON LITIGATION	32
	15.1. Agreement to Avoid Litigation	32
	15.2. Claims	32
	15.3. Mandatory Procedures	33
	15.4. Allocation of Costs of Resolving Claims	34
	15.5. Enforcement of Resolution	34
XVI.	GENERAL PROVISIONS	35
	16.1. Duration	35
	16.2. Amendment	35
	16.3. Severability	36
	16.4. Litigation	36
	16.5. Cumulative Effect; Conflict	36
	16.6. Compliance	36
	16.7. Notice of Sale or Transfer of Title	36
	16.8. Exhibits	36

- TABLE OF EXHIBITS -

<u>Exhibit</u>	<u>Subject Matter</u>	<u>Page First Appearing</u>
"A"	Land Initially Submitted	1
"B"	Land Subject to Annexation	3
"C"	Initial Use Restrictions and Rules	4
"D"	Rules of Arbitration	34
"E"	By-Laws of East Park Community Association, Inc.	2
"F"	Immunity and Indemnification of Municipal Emergency Service Providers	10

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

EAST PARK

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of East Park Community Association, Inc., as filed with the Secretary of State of the State of Georgia.

1.3. "Association": East Park Community Association, Inc., a Georgia non-profit corporation, its successors or assigns.

1.4. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Georgia corporate law.

1.5. "By-Laws": The By-Laws of East Park Community Association, Inc., attached as Exhibit "E," as they may be amended.

1.6. "Class "B" Control Period": The period of time during which the Class "B" Member appoints a majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.

1.7. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.8. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate.

1.9. "Community": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article VII.

1.10. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Community as initially established by the Declarant. After the Class "B" Control Period terminates, such standard may be more specifically determined by the Board of Directors.

1.11. "Declarant": East Park Development, Inc., a Georgia corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant. Except in case of foreclosure, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign shall be designated as the "Declarant" by the grantor of such conveyance, which grantor shall be the "Declarant" at the time of such conveyance. Upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" at any one time.

1.12. "Exclusive Common Area": A portion of the Common Area benefiting one or more, but less than all, Neighborhoods, as more particularly described in Article XII.

1.13. "General Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.

1.14. "Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, any architectural or design standards as provided herein, and the Use Restrictions and Rules, as they may be amended.

1.15. "Land Plan": The land use plan for the development of East Park prepared by J. Lancaster Associates, Inc. and approved by Cobb County, as it may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B" that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Land Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Land Plan bar its later annexation in accordance with Article VII.

1.16. "Member": A Person subject to membership in the Association pursuant to Section 3.2.

1.17. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. A "Mortgagee" is a beneficiary or holder of a Mortgage.

1.18. "Neighborhood": A group of Units designated as a separate Neighborhood for purposes of sharing Exclusive Common Areas or receiving other benefits or services from the Association which are not provided to all Units. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property. If the Association provides benefits or services to less than all Units within a particular Neighborhood, then the benefited Units shall constitute a sub-Neighborhood for purposes of determining and levying Neighborhood Assessments for such benefits or services.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 3.4.

1.19. "Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood to fund Neighborhood Expenses, as described in Section 8.4.

1.20. "Neighborhood Expenses": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood, which may include a reasonable reserve for capital repairs and replacements and

a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s).

1.21. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.22. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.23. "Public Records": The Office of the Clerk of Superior Court, Cobb County, Georgia.

1.24. "Special Assessment": Assessments levied in accordance with Section 8.6.

1.25. "Specific Assessment": Assessments levied in accordance with Section 8.7.

1.26. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.27. "Unit": A portion of the Community, whether improved or unimproved, which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Public Records with respect to any portion of the Community, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common Areas or property dedicated to the public.

In the case of a portion of the Community intended and suitable for subdivision into single-family lots but as to which no subdivision plat has been filed, such property shall be deemed to be a single Unit until such time as a subdivision plat is filed of record with respect to all or a portion of the property. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not platted shall continue to be treated as a single Unit.

1.28. "Use Restrictions and Rules": Those use restrictions and rules affecting the Community, which may be adopted, modified and repealed as set forth in Article X. The initial Use Restrictions and Rules are set forth in Exhibit "C."

Article II

PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board and the membership to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of or prohibiting the use by guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to Section 3.24 of the By-Laws;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facilities situated upon the Common Area;
- (g) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of such use fees as the Board may establish;
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (i) The right of the Declarant to use such property without payment or charge for such purposes as Declarant, in its sole discretion, deem necessary and proper; and
- (j) The right of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as described in Article XII.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and

Laws, and it may exercise additional rights as are specified elsewhere in the Governing Documents. The Class "B" membership shall terminate at the earlier of: (i) when 100% of the property described on Exhibits "A" and "B" have been developed and conveyed to Owners for residential occupancy; (b) December 31, 2006; or (c) when Declarant voluntarily terminates such membership earlier by filing a written notice of termination in the Public Records.

If the Declarant voluntarily terminates its Class "B" membership prior to the sale of all of the property described on Exhibits "A" and "B," the Declarant shall become a Class "A" Member entitled to one Class "A" vote for each Unit which it owns. If the Declarant voluntarily terminates the Class "B" Control Period prior to the termination of the Class "B" membership, the Class "B"¹¹ Member shall have a right to disapprove actions of the Board and all committees as provided in Section 3.19 of the By-Laws.

3.4. Neighborhoods. Any group of Units within East Park may be designated as a Neighborhood for purposes of sharing Exclusive Common Areas or receiving other benefits or services which the Association does not provide to all Units within East Park. Neighborhood designations shall be made in Exhibit "A" to this Declaration, by Recorded plat, or in any Supplemental Declaration. The cost of any service, benefit, or activity provided by the Association to a Neighborhood pursuant to a Supplemental Declaration shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.

Any Neighborhood, acting through a Neighborhood Committee elected as provided in the By-Laws, may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Neighborhood, and the consent of the Board, the Association shall provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.

Article IV
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, landscaping, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under the Governing Documents, the cost of which shall be a Common Expense. Maintenance, repair, and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed to the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association "as is" and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements whatsoever to the property conveyed to the Association, including, without limitation, dredging or removing silt from lakes or ponds. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Community originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

4.3. Enforcement. The Association may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with Section 3.24(d) of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit local governments to enforce their ordinances within the Community for the benefit of the Association and its Members.

4.4. Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. For so long as the Declarant owns any property described on Exhibits "A" or "B," the Declarant may designate sites within the Community for fire, police, and utility facilities, public schools and parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant.

4.6. Indemnification.

(a) The Association shall indemnify every officer, director, and committee member, including members of the committees established under Article IX, against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Georgia law.

(b) The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers¹ and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

(c) Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in Section 3.25 of the By-Laws.

(d) In addition to any other rights:

(i) Volunteer officers or directors of the Association shall not be personally liable in excess of any insurance coverage to any Person who suffers injury, including but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of his or her tortious act or omission as long as the volunteer officer or director meets the following requirements:

(A) the director's or officer's act or omission was performed within the scope of his or her duties;

(B) the director's or officer's act or omission was performed in good faith;
and

- (i) the Common Area, any recreational amenities which may be constructed, open space, and all landscaping, signage, lighting, irrigation systems and equipment, fences,

walls, and other structures and improvements, sidewalks, paths and trails, situated upon the Common Area;

(ii) landscaping and signage within public rights-of-way within the Community;

(iii) any lakes, ponds, streams and/or wetlands located within the Community and all drainage systems, storm water retention or detention systems for the Community, including any retaining walls, bulkheads or dams (earthen or otherwise);

(iv) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

(v) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and to be maintained by the Association unless and until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) There are hereby reserved to the Association easements over the Community as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and improvements within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(c) Except as otherwise provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair, and replacement of Exclusive Common Area or a Neighborhood Expense pursuant to this Declaration or a Supplemental Declaration shall be a Neighborhood Assessment.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard, unless such maintenance responsibilities are assigned to the Association pursuant to a Supplemental Declaration. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and levy a Specific Assessment of all costs incurred by the Association against the Unit and the Owner. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Maintenance of Neighborhood Property. Owners, within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining, and insuring the Exclusive Common Area assigned to such Neighborhood and certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood as specified by the terms of a Supplemental Declaration. This may include, without limitation, the costs of maintaining gates, signage, entry features, right-of-way, parking areas, and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and ponds or wetlands within the Neighborhood, regardless of ownership. All Neighborhoods which are similarly situated shall be treated the same.

All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.4. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

Article VI
INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverage's. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage's as are reasonably available:

(i) Blanket property insurance covering the full replacement cost of all insurable improvements from "risks of direct physical loss" for the Common Area and on other portions of the Area of Common Responsibility to the extent that the Association has

responsibility for maintenance, repair and/or replacement in the event of a casualty, regardless of ownership.

(ii) Commercial general liability insurance with such limits and terms as the board may determine reasonable;

(iii) Such other insurance such as workers compensation, directors and officers liability coverage, and fidelity insurance as the Board, in the exercise of its business judgment, determines advisable.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Neighborhood, obtain and maintain property insurance on the insurable improvements within such Neighborhood. Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (1) premiums for property insurance on Units within a Neighborhood shall be a Neighborhood Expense; and (2) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Expenses of the Neighborhood(s) to which such Exclusive Common Areas are assigned, unless the Board reasonably determines that other treatment of the premiums is more appropriate. The Association shall include such premiums in the assessments it levies.

(b) Policy Requirements. The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may levy a Specific Assessment of the full amount of such deductible against such Owner(s) and their Units.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners within the Neighborhood and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually.

In addition, the Board shall be vested with exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Community covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Any damage to or destruction of the improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 67% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide not to repair or reconstruct. If the Association determines that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members' levy a Special Assessment to cover the shortfall.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

6.2. Owners¹ Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Article VII

ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation Without Approval of Membership. Until all property described on Exhibit "B" has been subjected to this Declaration or ten years after the recording of this

Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant shall not be liable for payment of assessments as provided in Section 8.9. However, Declarant may annually elect to contribute to the Association the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year (a "Subsidy"). After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units subject to assessment in accordance with Section 8.9 in the same manner as any other Owner.

The Declarant may, but shall not be obligated to, make any Subsidy. Any such Subsidy may be treated in the Declarant's discretion as either: a voluntary contribution; an advance against future assessments (if any); or a loan by the Declarant to the Association. Any such advances may be evidenced by promissory notes from the Association in favor of the Declarant or the Declarant may cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. Any such Subsidy shall be disclosed as a line item in the Common Expense budget and the treatment of such Subsidy shall be made known to the membership. The payment of such Subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such Subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

8.3. Computation of General Assessments. At least 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a capital contribution to establish a reserve fund. General Assessments shall be fixed at a uniform rate for all Units subject to assessment under Section 8.9. Such assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units.

The Board shall send a copy of the final budget and notice of the amount of the General Assessment for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by at least 67% of the Class "A" Members and by the Class "B" Member, if such exists. There shall be no obligation to call such a meeting unless a petition for a special meeting is presented to the Board within 10 days of the delivery of the notice of assessment.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Computation of Neighborhood Assessments. At least 30 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Each Neighborhood budget shall include any contributions to be made to a reserve fund for the Neighborhood for repair and replacement of capital assets, based on a separate reserve budget which takes into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost.

Each Neighborhood budget also shall include any costs for additional services or a higher level of services which the Owners in such Neighborhood have approved pursuant to Section 3.4. The budget also shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount required to be generated through the levy of Neighborhood and Special Assessments against the Units in such Neighborhood. The Association is hereby authorized to levy Neighborhood Assessments equally against all Units in the Neighborhood which are subject to assessment under Section 8.9 to fund Neighborhood Expenses.

The Board shall send to each Owner, at least 30 days prior to the effective date of the budget for the Neighborhood in which the Owner's Unit is located, a summary of such budget, together with notice of the amount of the Neighborhood Assessment to be levied against each Unit in the Neighborhood pursuant to such budget. The Neighborhood budget and assessment automatically shall become effective unless disapproved at a meeting by Owners representing at least 67% of the total votes in the Neighborhood. There shall be no obligation to call such a meeting unless a petition for a special meeting is presented to the Board within 10 days of the delivery of the notice of Neighborhood Assessment.

If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements and the right of the Owners in the affected Neighborhood to disapprove the revised budget as set forth above.

8.5. Reserve Budget and Capital Contribution. The Board may prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. If established, the Board shall include as a line item in the Common Expense budget capital contribution in an amount sufficient to permit meeting the projected needs of the Association over the budget period. There shall be no obligation to establish a reserve budget and make such

assessments. If reserves are not established or are insufficient for the repair or replacement of any capital asset, Special Assessments may be levied.

Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant, a contribution in the amount of two hundred dollars (\$200.00) shall be made by or on behalf of the purchaser to the capital reserve account of the Association. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of any assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in owning and maintaining the capital assets of the Association.

8.6. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Any Special Assessment which would exceed the amount of the General Assessment in any fiscal year shall require the affirmative vote or written consent of a majority of the total Class "A" votes in the Association, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Except as otherwise provided in Section 8.9, Special Assessments shall be levied equally on all Units.

8.7. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.24 of the By-Laws before levying any Specific Assessment under this subsection (b).

The Association also may levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided that the Board gives prior written notice to the Owners in the Neighborhood and an opportunity for such Owners to be heard before levying any such assessment.

8.8. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges, costs of collection, and attorneys fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Georgia law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.9, including such acquirer, its successors and assigns.

8.9. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Board shall establish the Common Expense budget and levy assessments, or (b) date upon which the Unit is conveyed or transferred from the Declarant to an Owner for residential occupancy, whichever is later. The first annual General Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.10. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections. Notwithstanding any provision to the contrary, notice of the first year's assessment for each Unit shall be established in the agreement to purchase such Unit from the Declarant.

8.11. Exempt Property. The following property shall be exempt from payment of assessments:

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.
- (c)

Article IX

ARCHITECTURAL STANDARDS

9.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, other site work, exterior alteration of existing improvements, painting or modifying fences, and planting or removal of landscaping materials) shall take place except in compliance with this Article. Any Owner may remodel, paint or redecorate the interior of structures on his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant or the Association.

9.2. Architectural Review.

- (a) New Construction. Until 100% of the Community have been developed and conveyed to Owners other than the Declarant, the Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for original construction within the Community. There shall be no surrender of this right prior to that time except in a written instrument assigning such right in recordable form executed by Declarant.
- (b) Modifications. Upon the expiration or assignment of the Declarant's authority to control architectural review for all or a portion of the Community, the Board shall create and appoint an Architectural Review Committee ("ARC"). The ARC shall consist of at least three, but not more than five, persons who shall serve and may be removed in the Board's discretion; provided, however as long as the Declarant owns any property described on Exhibits "A" or "B," it shall be entitled to appoint one member. The ARC shall have no rights or authority until the Declarant's authority expires or is assigned. At such time, the ARC shall have authority over modifications, additions, or alterations made on or to existing structures on Units. At any time during the review process, the Declarant shall have the right to veto any action taken by the ARC so long as it owns any property described in Exhibit "A."

All new construction or modifications shall be reviewed, and the reviewing body may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable

costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

9.3. Standards and Procedures.

(a) Standards. The Declarant may prepare architectural standards or design guidelines ("Standards") which shall apply to all construction activities within the Community. The Declarant shall have sole and full authority to amend the Standards as long as it owns any portion of the Community. Thereafter, the ARC shall have the authority to amend the Standards with the consent of the Board. The Standards are intended to provide guidance to Owners regarding matters of particular concern in considering applications, and all structures and improvements shall be constructed in strict compliance with the Standards, unless the reviewing body has granted a variance in writing.

(b) Procedures. Prior to commencing any activity subject to review, an Owner shall submit an application for approval of the proposed work to the appropriate reviewing body. Such application shall be in the form required by the reviewing body and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor and other features of proposed construction, as applicable. Before the Owner may begin the proposed activity, the application must be approved in accordance with the procedures described below.

In reviewing each submission, the reviewing body may consider whatever factors it deems relevant, including visual and harmony of external design with surrounding structures and environment. The reviewing body may require relocation of native plants within the construction site, screening and landscaping as a condition of approval of any submission.

The reviewing body shall respond in writing to an application within 30 days at an address specified by such party at the time of submission. The response may (i) approve the application, (ii) approve a portion of, segments or features of the Plans, and disapprove other portions, or (iii) disapprove an application which is deemed to be inconsistent or not in conformity with this Declaration and/or the Standards. The reviewing body may, but shall not be obligated to, set forth the reasons for such finding, and it may make suggestions to cure objections to an application. In the event the reviewing body fails to respond in a timely manner, approval shall be deemed to have been given; provided, however, no construction which is inconsistent with the Standards shall be deemed approved unless a written variance has been issued. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

If construction does not commence on a project which has been approved within 120 days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval. If construction is not completed on a project for which plans

have been approved within the period set forth in the Standards or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

9.4. No Waiver of Future Approvals. Each Owner acknowledges that the members of the reviewing body will change from time to time and that interpretation, application and enforcement of the Standards may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5. Variance. A reviewing body may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental consideration, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance.

9.6. Limitation of Liability. The requirements and procedures established by this Article are intended to enhance the overall aesthetics of the Community and shall not create any duty to any Person. A reviewing body shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring the appropriateness of soils, drainage and general site work. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, a reviewing body and their members shall be defended and indemnified by the Association.

9.7. Enforcement. Any structure or improvement placed or made in violation of this Article or the Standards shall be deemed to be nonconforming, unless a variance has been granted. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant or the Board shall have the right to record a notice of violation in the Public Records and to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the Owner and Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by a reviewing body granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and

diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with By-Laws Section 3.24, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Standards may be excluded by the Board from the Community, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the reviewing bodies.

Article X

USE RESTRICTIONS AND RULES

10.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Community in order to enhance all Owners¹ quality of life and collective interests, the aesthetics and environment within the Community, and the vitality of and sense of community, all subject to the Board's and the Members¹ ability to respond to changes in technology, needs and desires and to regulate and control the Area of Common Responsibility. The initial Use Restrictions and Rules attached as Exhibit "C," establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration. Additional Use Restrictions and Rules applicable to a Neighborhood may be set forth in the Supplemental Declaration for such Neighborhood. All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

10.2. Authority to Promulgate Use Restrictions and Rules. The initial Use Restrictions and Rules may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions and Rules. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Members representing at least 51% of the total Class "A" votes and by the Class "B" Member, if any. The

Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing at least 51% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the new Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) The foregoing procedures shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation, speed limits, or landscaping on the Common Area. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such administrative rules and regulations.

(e) The foregoing procedures shall not restrict amendments to this Declaration and Use Restrictions and Rules enacted under Section 16.2.

10.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules may change from time to time.

10.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment), neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly; provided, Rules and Regulations may vary by Neighborhood.

(b) Signs. No signs, banners, symbols, or displays of any kind shall be displayed upon any Unit other than one sign identifying the name of the contractor during construction of a dwelling or the developer of the Community, or one "for sale"¹¹ sign not to exceed eight (8) square feet in surface area. Any such sign must satisfy the design criteria of the reviewing body under Section 9.2. Notwithstanding the foregoing restriction, a Mortgagee taking title to a Unit pursuant to the terms of a Mortgage, or any Person acting pursuant to a law or ordinance may place a sign on a Unit, provided that the design, color and size of any such sign is approved by the reviewing body.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(g) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Community.

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

11.2. Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Community (but not through a structure) to the extent reasonably

necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; wetlands and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plats of the Community.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A"¹¹ or "B" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."¹¹

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.3. Easements for Maintenance and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement over the Community for access, ingress and egress to lakes, creeks, streams, and wetlands located within the Area of Common Responsibility and for (a) installing, keeping, maintaining, repairing, and replacing pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) constructing, maintaining, and repairing any bulkhead, retaining wall, levee, or other structure retaining water; and (c) removing trash and other debris therefrom. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant, the Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

11.4. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of this easement.

11.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance

pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, and all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.6. Landscaping and Signage Easements. The Declarant and the Association shall have perpetual, non-exclusive easements exercisable by their respective employees, agents and contractors over those portions of Units designated as "no access easement"¹¹ or "entry easements" on the recorded subdivision plats relating to the Community for the purpose of installation, maintenance, repair and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems and landscaping within the easement area. No fences, structures, driveways, plantings, swings, wood piles, dog runs or any other objects, temporary or permanent, shall be permitted in such areas without the Association's prior written approval, other than those initially installed by Declarant.

Nothing herein shall obligate the Declarant or the Association to exercise such easements or to construct or install any of the foregoing within any Landscaping and Signage Easement.

11.7. Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement or condition which may exist on any portion of the property within the Community, including Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

Article XII

EXCLUSIVE COMMON AREAS

12.1. Purpose. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, gates and perimeter fences, parking areas, landscaped medians, cul-de-sacs, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair,

replacement, and insurance of an Exclusive Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Exclusive Common Areas are assigned.

12.2. Designation. Any Exclusive Common Area shall be designated as such and assigned to particular Units in this Declaration or on the subdivision plat relating to such Exclusive Common Area, or in the deed conveying such Exclusive Common Area to the Association. Thereafter, any Exclusive Common Area may be reassigned, subject to the Board's prior approval and, as long as Declarant owns any portion of East Park or has the right to subject unilaterally property to the provisions of this Declaration under Section 7.1, Declarant's prior approval. Any such reassignment shall be effected by a Recorded assignment executed by the Owners of the Units between or among which the Exclusive Common Area is assigned and reassigned, or by an amendment to this Declaration executed by such Owners.

Article XIII
MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Community.

13.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

- (b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

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

13.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area,

13.3. Notice to Association. Upon request, each Owner shall be obligated to

furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

13.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30

days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Article XIV

DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records,

The Declarant and builders authorized by Declarant may maintain and carry on without fee or charge upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant and authorized builders shall have easements for access to and use of such facilities.

The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

No person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules, architectural standard, or design guideline made after termination of the Class "B" Control Period shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Community primarily for development and sale.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this

15.3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed remedy; and
4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) **Negotiation and Mediation.**

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of the Neighborhood Justice Center of Atlanta or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Cobb County area.

3. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the

Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

1. If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

2. This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Georgia. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Georgia.

15.4. Allocation of Costs of Resolving Claims.

(a) Subject to Section 15.4(b), each Party shall bear its own costs, including any attorneys fees incurred, and each Party shall share equally all charges rendered by the mediators) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

15.5. Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

Article XVI GENERAL PROVISIONS

16.1. Duration. Subject to the limitations of Georgia law, this Declaration shall have perpetual duration. If Georgia law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

16.2. Amendment. This Declaration may be amended as provided in this section. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(a) By Declarant. During the Class "B" Control Period, the Declarant may unilaterally amend this Declaration for any purpose. Thereafter, so long as Declarant owns any property described in Exhibit "A," it may unilaterally amend this Declaration to (i) bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) enable any title insurance company to issue title insurance coverage; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans; or (iv) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans; provided, however, any such amendment shall not adversely affect the title to any Owner's Unit unless any such Unit Owner shall consent thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Unit Owners hereunder, nor shall it adversely affect title to any Unit without the consent of the affected Unit Owner.

(b) By the Owners. This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Members representing at least two-thirds (2/3) of the Class "A" votes in the Association and the consent of Declarant (so long as the Declarant owns any of the property described in Exhibits "A" or "B").

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B"¹¹ Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

16.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

16.4. Litigation. Except as provided below, no judicial, administrative, or arbitration proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; or (d) counter-claims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XV, if applicable.

16.5. Cumulative Effect: Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Community from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

16.6. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, any applicable Supplemental Declaration, the By-Laws, and the Use Restrictions and Rules promulgated pursuant to Article X. Subject to the terms of Article XV, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

16.7. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days¹ prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

16.8. Exhibits. Exhibits "A," "B," "D," and "F" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the

provisions of Section 16.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

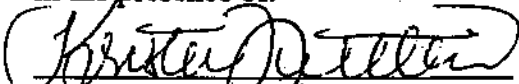
IN
WITNESS WHEREOF, the
undersigned Declarant has
executed this Declaration this
7th day April, 1999.

**DECLARANT: EAST PARK DEVELOPMENT, INC., a
Georgia corporation**

By:  [SEAL]
B. Wilmont Williams, President

Attest:  [SEAL]
Nancy Sparks, Assistant Treasurer

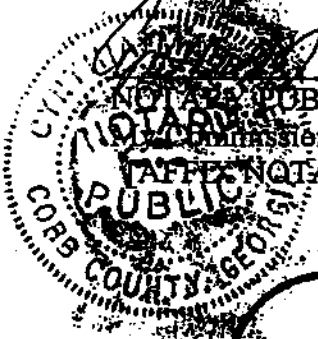
Signed, sealed, and delivered
this 7th day of April, 1999,
in the presence of:


WITNESS


NOTARY PUBLIC

Notary Public, Cobb County, Georgia.
My Commission Expires: Aug. 17, 2002.

[AFFIX NOTARY SEAL]



CONSENT OF LENDER

The Undersigned Lender hereby consents and subordinates its interests to the terms of this Declaration of Covenants, Conditions, and Restrictions for East Park.

In Witness Whereof, the undersigned, acting through its duly authorized officers, has caused this Consent to be executed and sealed this 7th day of April, 1999.

LENDER: Fidelity National Bank [SEAL]

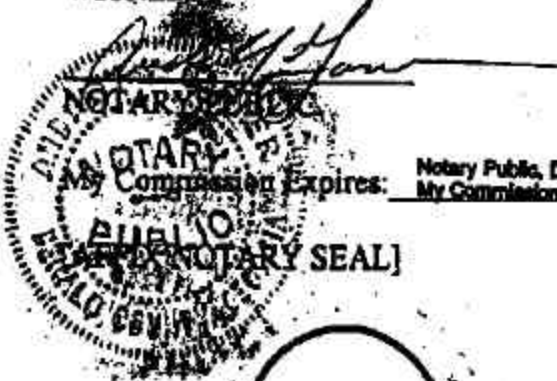
By: [Signature]
Senior V.P.

Attest: [Signature]
Vice President
[SEAL]



Signed, sealed, and delivered
this 7th day of April, 1999, in the presence of:

[Signature]
WITNESS



CONSENT OF LENDER

The Undersigned Lender hereby consents and subordinates its interests to the terms of this Declaration of Covenants, Conditions, and Restrictions for East Park.

In Witness Whereof, the undersigned, acting through its duly authorized officers, has caused this Consent to be executed and sealed this 7th day of April, 1999.

LENDER: Harry E. Smith [SEAL]

By: [Signature]

Attest: _____

[SEAL]

Signed, sealed, and delivered
this 7 day of April, 1999 in the presence of:

[Signature]
WITNESS

[Signature]
NOTARY PUBLIC

Notary Public, Cobb County, Georgia
My Commission Expires Feb. 26, 2003

My Commission Expires: _____

[AFFIX NOTARY SEAL]

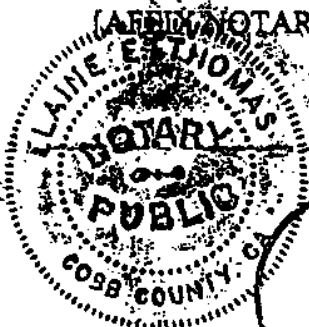


EXHIBIT "A"
PAGE ONE OF TWO

All that tract or parcel of land lying and being in Land Lots 846, 847, 848, 882, 883, and 919, 16th District, 2nd Section, Cobb County, as per plat prepared by J. Lancaster Associates, Inc. dated June 24, 1998, and being more particularly described as follows:

Beginning at an iron pin located at the intersection of the easterly right-of-way of Scufflegrit Road with the southerly right-of-way of Holcombe Lake Drive; thence running south $89^{\circ} 07' 36''$ east a distance of 520.02 feet to a 3/4 Inch open top pipe and corner thence running south or $12' 50''$ west a distance of 250.0 feet to a point; thence running south $01^{\circ} 19' 44''$ east for a distance of 225.46 feet to a point and corner, thence running south $89^{\circ} 13' 31''$ east for a distance of 621.32 feet to a point and corner; thence running north $01^{\circ} 34' 11''$ west a distance of 499.33 feet to a point, being the common corner of Land Lots 809, 810, 847, and 848, said district and section; thence running south $88^{\circ} 07' 28''$ east as measured along the northerly land lot line of Land Lot 847, said district and section, a distance of 1591.19 feet to a point, being the common corner of Land Lots 810, 811, 846, and 847, said district and section; thence running south $89^{\circ} 53' 33''$ east as measured along the northerly land lot line of Land Lot 811, said district and section, for a distance of 187.83 feet to a 1 inch open top pipe and corner, thence south $01^{\circ} 48' 35''$ west for a distance of 2592.38 feet to a 2 inch open top pipe located on the northwesterly right-of-way of Allgood Road; thence running southwesterly and westerly as measured along the northwesterly side of Allgood Road and following the curvature thereof the following courses and distances: Along an arc of a curve an arc distance of 190.30 feet (said arc being subtended by a chord bearing south $62^{\circ} 27' 58''$ west a chord distance of 187.97 feet and having a radius of 350.46 feet) to a point; thence running south $78^{\circ} 01' 19''$ west a distance of 112.13 feet to a point; thence along the arc of a curve an arc distance of 198.16 feet (said arc being subtended by a chord bearing south $83^{\circ} 03' 18''$ west a chord distance of 197.91 feet and having a radius of 1127.96 feet) to a point; thence running south $88^{\circ} 05' 17''$ west a distance of 131.18 feet to a point; thence along the arc of a curve an arc distance of 211.62 feet (said arc being subtended by a chord bearing north $89^{\circ} 49' 35''$ west a chord distance of 211.57 feet and having a radius of 2906.76 feet) to a point; thence running north $87^{\circ} 44' 27''$ west a distance of 651.89 feet to a point; thence along the arc of a curve an arc distance of 293.05 feet (said arc being subtended by a chord bearing north $86^{\circ} 47' 36''$ west and having a radius of 8862.61 feet) to an iron pin found and corner; thence running north $00^{\circ} 47' 21''$ east as measured along the westerly land lot line of Land Lots 882 and 919, said district and section, a distance of 1372.73 feet to an iron pin at the common corner of Land Lots 847, 848, 881, and 882, said district and section; thence running north $89^{\circ} 26' 28''$ west as measured along the southerly land lot line of Land Lot 848, said district, and section, a distance of 697.92 feet to an iron pin and corner, thence north $18^{\circ} 25' 45''$ east a distance of 200.0 feet to a point and corner, thence running south $88^{\circ} 34' 55''$ west a distance of 473.50 feet to an iron pin located on the easterly right-of-way of Scufflegrit Road; thence running northerly along the easterly right-of-way of Scufflegrit Road and following the curvature thereof the following courses and

EXHIBIT "B"

Land Subject to Annexation

Any property adjacent to or located within one mile of the property described on Exhibit "A."

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

- (f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;
- (g) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit;
- (h) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;
- (i) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; or alteration of the natural flow of any body of water within the Community;
- (j) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Public Records, except that the Declarant shall be permitted to subdivide or replat Units which it owns;
- (k) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the structure located on the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve excessive visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Community; and (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Community or its use of any Units which it owns within the Community.

- (1) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without the prior approval of the appropriate committee pursuant to Article IX; and

(m) Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article DC of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; hedges, walls, dog runs, animal pens, or fences of any kind; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures.

3. Prohibited Conditions. The following shall be prohibited within the Community:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community;

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, wetlands, or other ground or surface waters within the Community, except that Declarant and the Association shall have the right to draw water from such sources; and

(d) Satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of East Park; and (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices"¹¹) shall be permitted, provided that any such Permitted Device is placed in the least conspicuous location on the Unit (generally being the rear yard) at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property or is screened from the view of adjacent Units and the street in a manner consistent with the Community-Wide Standard and the standards, unless such screening unreasonably interferes with the use of such Permitted Device.

4. Leasing of Units. "Leasing," for purposes of this paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. Leases shall have a minimum initial term of not less than one year. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Use Restrictions and Rules.

EXHIBIT "D"
Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice").
2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all the Claimants shall agree upon one Party Appointed Arbitrator, and all the Respondents shall agree upon one Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three arbitrators.
3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any party may notify the Atlanta Chapter of the Community Associations Institute, for any dispute arising under the Governing Documents, or Construction Arbitration Associates, Ltd., for any dispute relating to the design or construction of improvements on the Community, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.
5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Community unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.
6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.
7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine any relevant legal issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.

8. There shall be no stenographic record of the proceedings. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

9. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator.

10. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete. There will be no post hearing briefs.

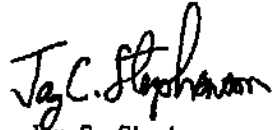
12. The Award shall be rendered at the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

13. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

14. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

Deed Book 13342 Pg 1516
Filed and Recorded Mar-21-2001 10:46am
2001-0040760

Prepared by and returned to:
Amy H. Bray
Hyatt & Stubblefield, P.C.
225 Peachtree Street, N.E., Suite 1200
Atlanta, Georgia 30303


Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.
I HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS FILED IN MY OFFICE

STATE OF GEORGIA

Cross Reference: Deed Book 12472
Page 141

COUNTY OF COBB

**FIRST AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR EAST PARK**

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR EAST PARK ("Amendment") is made as of the date set forth below by East Park Development, Inc., a Georgia corporation ("Declarant").

W I T N E S S E T H:

WHEREAS, on May 7, 1999, Declarant caused to be recorded that certain Declaration of Covenants, Conditions, and Restrictions for East Park ("Declaration") in Deed Book 12472 at Page 141, et seq., in the Office of the Clerk of Superior Court of Cobb County, Georgia; and

WHEREAS, pursuant to the terms of Section 16.2(a) of the Declaration, during the Class "B" Control Period Declarant may unilaterally amend the Declaration for any purpose; and

WHEREAS, the Class "B" Control Period has not expired; and

WHEREAS, Declarant desires to amend the Declaration to increase the amount of the initial capital contribution to be paid by the first Owner of each Unit, other than the Declarant. NOW, THEREFORE, pursuant to the powers retained by the Declarant under Section 16.2 of the Declaration, Declarant hereby amends Section 8.5 of the Declaration by striking the second paragraph of Section 8.5 in its entirety and inserting the following paragraph in its place:

Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant, a contribution in the amount of two hundred and fifty dollars (\$250.00) shall be made by or on behalf of the purchaser to the capital reserve account of the Association. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of any assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in owning and maintaining the

capital assets of the Association.

IN WITNESS WHEREOF, the undersigned Declarant has caused this Amendment to be executed by its authorized representatives, this 19TH day of March, 2001.

DECLARANT: EAST PARK DEVELOPMENT INC., a Georgia corporation

By: 

B. Wilmont Williams, President

Attest: 

Its: 

[CORPORATE SEAL]

Signed, sealed, and delivered this 19th
day of March, 2001,
in the presence of:


Witness


Notary Public

N.P.
SEAL

CORPORATE
SEAL

My Commission Expires:

Notary Public, Cobb County, Georgia.
My Commission Expires Aug. 17, 2002.

[NOTARY SEAL]

