

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

FOR THE TERRACES AT WILLOW SPRINGS

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR THE TERRACES AT WILLOW SPRINGS is made as of this 12th day of July, 1985, by (i) PG/PL J.V. NO. 2, a Georgia Joint Venture, whose sole joint venture partners are Pan Gulf Developments (Dunwoody), Inc., a Georgia corporation, and The Patton-LeCraw Company, Inc., a Georgia corporation and (ii) Pan Gulf Developments (USA), INC., a Georgia corporation.

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real property in Fulton County, Georgia, which is more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property");

WHEREAS, Declarant intends to develop on the real property described above a development to be known as The Terraces at Willow Springs;

WHEREAS, Declarant intends that the Property be an integral but distinct part of the larger surrounding community development known as Willow Springs;

WHEREAS, Declarant desires to subject the Property to the provisions of this Declaration and to construct on the Property, a residential community of single-family detached housing, and to provide a flexible and reasonable method for the administration and maintenance of such property for the present and for the future;

WHEREAS, Declarant intends that the Property be in all ways subject to this Declaration of Protective Covenants and Restrictions as well as (i) that certain Declaration of Covenants, Restrictions and Easements for Willow Springs dated December 28, 1978 and recorded in Deed Book 7138, Page 248 in the Office of the Clerk of the Superior Court of Fulton County, Georgia as such declaration may be now or hereafter amended, and (ii) that certain Declaration of Covenants, Restrictions and Grant of Easement dated January 2, 1985, recorded in Deed Book 9327, Page 94, aforesaid records;

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NOTWITHSTANDING THE ESTABLISHMENT OF THE TERRACES AT WILLOW SPRINGS HOMEOWNERS ASSOCIATION, INC. AND THE SUBMISSION OF THE PROPERTY TO THE TERMS AND CONDITIONS OF THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE TERRACES, THE TERRACES IS NOT A CONDOMINIUM AS DEFINED IN THE GEORGIA CONDOMINIUM ACT (O.C.G.A. 44-3-70 et. seq.)

NOW, THEREFORE, Declarant hereby declares that all of the property described in said Exhibit A shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions and the Master Declaration as herein defined, all of which are for the purpose of protecting the value and desirability of, and which shall run with, the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the property described in said Exhibit A or any portion thereof, their heirs, successors, successors-in-title and assigns, and which shall inure to the benefit of each and every owner thereof.

## ARTICLE I

### DEFINITIONS

1.1 Definitions. When used in this Declaration, unless the context shall specifically prohibit or otherwise require, the following words shall have all the following meanings, whether or not capitalized, and all definitions shall be applicable to the singular and plural forms of such terms:

(a) “Architectural Control Committee” shall mean and refer to a Committee whose members which shall be appointed by the Association’s Board of Directors to approve exterior and structural improvements, additions and changes within the Development as provided in Article X hereof.

(b) “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of The Terraces at Willow Springs Homeowners Association, Inc., as amended from time to time.

(c) “Assessment” shall mean and refer to an Owner’s share of the common expenses from time to time assessed against an Owner by the Association in the manner herein provided.

(d) “Association” shall mean and refer to The Terraces at Willow Springs Homeowners Association, Inc., a Georgia nonprofit corporation.

(e) “Board of Directors” or “Board” shall mean and refer to the Board of Directors of the Association, which shall be the governing body of the Association.

(f) “By-Laws of the Association” or the “By-Laws” shall mean and refer to those By-Laws of The Terraces at Willow Springs Homeowners Association, Inc., which shall govern the administration and operation of the Association, as said By-Laws may be amended from time to time.

(g) “Cluster Home” shall mean and refer to an individual Cluster Home dwelling unit constructed by Declarant on a Lot.

(h) "Common Area" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot (as a Lot is hereinafter defined) is that portion of the parcel of land shown on Exhibit "A", less and except the Lots and public streets.

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

(j) "Declarant" shall mean and refer to the parties who have executed this Declaration and any successors-in-title to the entire interest of such party with respect to the real property described in said Exhibit A at the time of such transfer to said successor-in-title, or any party which acquires said party's entire interest with respect to the real property described in said Exhibit A at the time of such acquisition, whether pursuant to foreclosure of a deed to secure debt or other security instrument encumbering said party's interest in the real property described in said Exhibit A or pursuant to the delivery of a deed in lieu of such foreclosure,

(k) "Declaration" shall mean and refer to this Declaration of Protective Covenants and Restrictions for The Terraces at Willow Springs, together with any and all amendments thereof which have been or will be filed for record in the Clerk's Records of the Superior Court of Fulton County, Georgia.

(l) "Development" shall, unless the context should otherwise require, mean and refer to the Property (as defined at 1.01(z-1) of this Article I) and all improvements located or constructed thereon.

(m) "Director" shall mean and refer to a member of the Board of Directors.

(n) "Foreclosure" shall mean and refer to, without limitation, the judicial or non-judicial foreclosure of a mortgage or the exercise of a power of sale contained in any mortgage, as provided by the laws of the State of Georgia.

(o) "Lease" shall mean and refer to any lease, sublease or rental contract of any Lot or portion thereof, whether oral or written permitted hereunder, and by the Master Declaration.

(p) "Lot" shall mean and refer to those portions of the Property upon which Declarant proposes to construct a Cluster Home for sale, use and occupancy as a single-family residential dwelling in conformity with the terms of this Declaration, as such Lot is shown on the Site Plan,

(q) "MAACC" shall mean the Architectural Control Committee for the Master Association.

(r) “Master Association” means Willow Springs Homeowners’ Association, Inc. (a non-profit corporation organized under the Georgia Non-Profit Corporation Code), its successors and assigns.

(s) “Master Declaration” means the Declaration of Covenants, Restrictions and Easements for Willow Springs dated December 28, 1978 recorded in Deed Book 7138, Page 248 in the Office of the Clerk of the Superior Court of Fulton County, Georgia as the same has been and is from time to time revised or amended.

(t) “Mortgage” shall mean and refer to any mortgage, security deed, deed to secure debt or similar other security instrument granting, creating or conveying a lien upon, a security interest in or security title to a Lot or Lots and any improvements thereon.

(u) “Mortgagee” shall mean and refer to the holder of a Mortgage.

(v) “Occupant” shall mean and refer to any person, including without limitation any guest, invitee, lessee or family member of an Owner (as defined at 1.01(t) of this Article I), occupying or otherwise using a Lot.

(w) “Officer” shall mean and refer to an officer of the Association.

(x) “Owner” shall, unless the context shall otherwise require, mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot and the improvements thereon, excluding, however, those persons having such an interest under a Mortgage.

(y) “Person” shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(z) “Plans” shall mean and refer to those certain plans and specifications prepared by Architects, Norris & Lynch, Inc., Atlanta, Georgia, Plans A, B, C, D & E, Job Number 8414, on file at the offices of Declarant at 1950 North Park Place, Suite 350, Atlanta, Georgia 30339, which, together with the Site Plan, depict the dimensions of the Lots and improvements to be located thereon, and shall include any revisions thereof and supplements thereto from time to time made in the sole discretion of Declarant.

(z-1) “Property” shall, unless the context should otherwise require, mean and refer to that tract or parcel or land described in said Exhibit A, together with all improvements thereon,

(z-2) “Site Plan” shall mean and refer to that certain recorded Plat of Survey entitled “Final Plat of Willow Springs Subdivision — Unit 24” of The Terraces, dated August 14, 1984, last revised December 12, 1984, and prepared by Mayes, Sudderth & Etheridge, a copy of which survey is attached hereto as Exhibit B and incorporated by

reference herein, which survey shall be superceded by an “as built” survey by Mayes, Sudderth & Etheridge, Inc. or other surveyor acceptable to Declarant to be recorded upon completion of construction of the Development, together with any future revisions thereof as may be recorded from time to time in the Clerk’s Records of the Superior Court of Fulton County, Georgia.

## ARTICLE II

### PLAN OF DEVELOPMENT

2.01 Plan of Development of Property. The Property shall contain approximately Thirty-Nine (39) Lots. The general area and location of the Cluster Homes (39) other improvements on the Property and the dimensions of the Lots are shown on the Site Plan and in the Plans. The Lots shall be restricted exclusively to single-family residential use in accordance with the provisions of this Declaration. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot primarily for the purpose of sale to make improvements and changes to all Common Areas and to all Lots owned by Declarant (except that Declarant shall not be permitted to materially change the location of the boundaries of the Lots) including, without limitation (i) installation of any utility systems and facilities, and (ii) work relating to Cluster Home exteriors and roofs.

2.02 Interest Subject to Plan of Development. Every purchaser of a Lot shall purchase such Lot and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant’s plan of development as herein set forth.

## ARTICLE III

### PROPERTY RIGHTS

3.01 Fee Simple Ownership of Lots. Each Lot shall for all purposes constitute real property which shall be owned by each Owner in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred and encumbered by the Owner thereof. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto (whether or not separately described) all of the right, title and interest of an Owner in the Common Area as established hereunder, which interest shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as such Owner’s ownership ceases for any reason, at which time such membership in the Association shall automatically pass to such Owner’s successor-in-title to the Lot. No Lot shall be subdivided, and the boundaries between Lots shall remain as established in accordance with the as-built survey which constitutes a part of the Site Plan, unless the relocation of such boundaries is made with the consent of at least two-thirds (2/3) of the Owners and of Declarant, so long as Declarant owns a Lot primarily for the purpose of sale,

3.02 Owner's Easement of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) Subject to the provisions of Section 11.03 hereof, the right of the Board of Directors to suspend an Owner's voting rights, and for any infraction by an Owner of this Declaration, the By-Laws or the Association's published rules and regulations for the duration of the infraction and for an additional period thereafter not to exceed thirty (30) days.

(b) The right of the Association, if its Board votes to do so, to borrow money solely (i) for the purpose of improving the Common Area, or any portion thereof, (ii) for acquiring, if desirable at any time in the future, additional Common Area, or (iii) for constructing, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area; provided, however, that the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot.

(c) The rights and easements reserved to Declarant in Section 3.06 and 3.09 hereof, and, for so long as Declarant owns any Lot primarily for the purpose of sale, Declarant shall also have the right to grant easements in and to the Common Area to any public agency, authority or utility for such purposes as benefit the Development and the Lots therein.

(d) The right of the Association to grant and accept easements as provided in Section 3.07 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by a majority of the members of the Association. No such dedication or transfer of fee simple title shall be effective unless an instrument agreeing to such dedication or transfer has been signed (i) by Owners having at least a majority of the votes of the Association and (ii) by the Declarant so long as Declarant owns any Lot primarily for the purpose of sale.

(e) The rights and easements reserved in Section 3.08 hereof for the benefit of the Association, its directors, officers, agents and employees.

(f) The rights and easements reserved by Arvida of Georgia, Inc., pursuant to that certain Declaration of Covenants, Restrictions and Grant of Easement dated the 2nd day of January, 1985, and recorded in Deed Book 9327, Page 94, Fulton County, Georgia Records.

3.03 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws and the published rules and regulations of the Association, such Owner's right of enjoyment to

the Common Areas and facilities therein to the members of such Owner's family or such Owner's guests and invitees or tenants.

3.04 Demolition and Lateral Support. Every portion of the Common Area or of a Lot, or any improvement which contributes to the lateral support of another portion of the Common Area or of another Lot, or other improvements thereon shall be burdened with an easement for lateral support, and each Lot shall also have the right to lateral support which shall be appurtenant to and pass with title to such Lot. No Owner shall be permitted to demolish any Cluster Home except to the extent that such demolition may be required (i) as a result of condemnation or eminent domain proceedings, (ii) as a result of repairing or rebuilding such Cluster Home as provided in Article VI hereof when the same has been partially or totally destroyed, or (iii) when the Association decides not to rebuild or restore in the event of casualty or condemnation as provided in Sections 6.03 and 7.01 hereof.

3.05 Encroachments. If any Lot, or improvement thereon encroaches upon any other Lot or upon any portion of the Common Area as a result of construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Development or any improvements therein, a valid easement for the encroachment and for the maintenance, repair and replacement thereof shall exist for so long as the encroachment exists, such encroachments to include, without limitation, encroachments for roofs, eaves, attics, chimneys, shutters, window boxes, awnings, gutters and downspouts, lights and light fixtures, doorsteps, porches (screened, enclosed, or open), balconies, decks, patios and any other structural improvements. In the event that any Cluster Home or other structure shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then repaired or reconstructed, encroachments of portions of the Common Area upon a Lot, or of any Lot, Cluster Home or other improvement upon any other Lot or upon any portion of the Common Area, due to such repair or reconstruction, shall be permitted and valid easements for such encroachments and the maintenance, repair and replacement thereof shall exist.

3.06 Easements for Declarant. During the period that Declarant owns any Lot primarily for the purpose of sale, Declarant and its duly authorized representatives, agents and employees shall have a transferable right and easement on, over, through, under and across the Common Area and Lots for the purpose of constructing Cluster Homes on the Lots and making such other improvements to the Property as are contemplated by this Declaration as Declarant, in its sole discretion, desires, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purposes of installing, replacing and maintaining all Cluster Homes and other improvements within the Development, as well as utilities serving the Property or any portion thereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

3.07 Easements for Utilities. The Board of Directors has the power to grant and accept easements upon, over, under and across all of the Common Area and Lots for ingress, egress, installing, replacing, repairing and maintaining master television antenna and cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and

electrical, gas, telephone, water and sewer lines; provided, however, that for so long as Declarant owns any Lot primarily for the purpose of sale, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. In addition, the Board of Directors has the power to grant and accept such easements upon, over, under and across all of the Common Area and Lots as may be reasonably necessary or desirable for the improvement of any portion of the Property provided, however, that, for so long as Declarant owns any Lot primarily for the purpose of sale, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements.

3.08 Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including, but not limited to, any manager employed by the Association, to enter upon the Property or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or occupant of the Lot, directly affected thereby.

3.09 Sales Office. Notwithstanding any provisions or restrictions herein to the contrary, Declarant and its duly authorized agents, representatives and employees shall have an easement for the maintenance of signs, a sales office, a construction office, a business office and model Cluster Homes on the Property, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots, for so long as Declarant owns any Lot primarily for the purpose of sale.

3.10 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

## ARTICLE IV

### MEMBERSHIP

4.01 Membership. Every person who is the record Owner of a fee or undivided fee interest in any Lot which is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and ownership of a Lot shall be the sole qualification for such membership. The foregoing is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as follows: the rights and privileges of membership, including the right to vote and to hold an office in the Association may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast nor more than one office held for each Lot, when more than one person holds an interest in any Lot, the vote for such Lot shall be

exercised as those Owners of such Lot themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote for such Lot shall be suspended in the event more than one person seeks to exercise it.

The voting weight appurtenant to each Lot is equal and each Lot shall have one vote.

## ARTICLE V

### MAINTENANCE

5.01 Owner's Responsibility. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of a Lot, together with all improvements thereon, shall be the responsibility of the Owner of such Lot and the Owner shall keep such Lot and improvements in a state of good repair and appearance.

The responsibility of each Owner of a Lot shall include the maintenance, repair and replacement of all fixtures, equipment and appliances (including, without limitation, the heating and air-conditioning system for such Owner's Cluster Home) and all chutes, flues, ducts, conduits, wires, pipes, plumbing or other apparatus which are deemed to be a part of such Lot. The responsibility of the Owner of a Lot shall also include the maintenance, repair and replacement of all glass, lights and light fixtures (exterior and interior), awnings, window boxes, window screens and all screens or glass enclosing porches, balconies, patios, driveways, walkways or decks which are a part of such Lot.

Each Owner shall be responsible for the repair, maintenance and replacement of all improvements located on each Lot including the Cluster Home, from the outside of the exterior walls, inward, decks, driveways, walkways, patios, heating, plumbing, ventilation and air-conditioning systems whether or not such systems are on the exterior of improvements and all glass, lights, light fixtures (exterior or interior) awnings, window boxes and window screens. Each Owner shall also be responsible for maintaining, repairing and replacing the landscaping, grass and shrubs in the areas designated as Owner's responsibility on the Plans.

As provided in Section 5.02(b) hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing or cleaning any item which is the responsibility of the Owner, but which responsibility such Owner fails or refuses to discharge.

#### No Owner shall:

- (i) decorate, change or otherwise alter the appearance of any portion of the exterior of such Owner's Cluster Home unless such decoration, change or alteration is first approved, in writing, by the Association's Board of Directors or the Architectural Control Committee and the MAACC as provided in Article X hereof, or
- (ii) do any work which, in the reasonable opinion of the Board of Directors or the Architectural Control Committee, would jeopardize the soundness and safety of the

Development or any Cluster Home therein, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Board of Directors or the Architectural Control Committee, the Owners and mortgagees of the Lots directly affected thereby or benefiting from such easement or hereditament and the MAACC.

5.02 Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Area and that portion of each Lot which Owner is not obligated to maintain. The Association's responsibilities with respect to the Common Area shall be deemed to include the maintenance, repair and replacement of (i) all roads, driveways, walks parking areas and other Improvements situated within the Common Area, (ii) such utility lines, pipes, wires, conduits and systems which are a part of the Common Area or any Lot exterior to the Cluster Home located thereon, (to the extent that such utility lines, etc., are owned by the Association) and (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area. The Association shall also maintain such lawns, trees, shrubs, hedges, grass or other landscaping comprising the front and side yard portions of each Lot, but not any rear yard, patio or deck areas of any Lot. The maintenance of rear yards, patios, and decks shall be the responsibility of the Owner. In addition to the maintenance and repair of the Common Area, the Association shall also be responsible for providing the following exterior maintenance to all Cluster Homes; to paint, stain, repair, replace and care for, as the case may be, all exterior building surfaces, all gutters and downspouts, all shutters, all fences, all windows (excluding the glass therein) and door frames and hardware and all exterior building surfaces, with the exception of glass, screens and screening, awnings, window boxes and lights and light fixtures, the repair, replacement and maintenance of all of which excepted items are the responsibility of the Owners of the Lots to which they are attached or appurtenant as provided in Section 5.01 hereabove. Should the exterior maintenance to a Cluster Home for which the Association is responsible, be required as a result of a casualty, whether or not insured, and not as a result of natural wear and tear, the responsibility for such maintenance shall remain with the Owner as provided in 5.01; it being the intention of this Declaration that the Owner will provide insurance for such casualties and the Association will not. The Association shall not be liable for injury or damage to any person or property (i) caused by the elements or by an Owner or any other person, or (ii) caused by any breakage or other fault or damage to any pipe, plumbing, drain, conduit, appliance, equipment or utility line or facility, the responsibility for the maintenance assessments is that of the Association. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

(b) In the event that the Board of Directors of the Association determines that: (i) any Owner has failed or refused to discharge properly such Owner's obligations with regard to the

maintenance, cleaning, repair or replacement of items for which such Owner is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or such Owner's family, tenants, guests or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at Owner's sole cost and expense, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, the Owner shall have fifteen (15) days within which to complete said maintenance, cleaning, repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed toward completion of said maintenance, cleaning, repair or replacement in a good and workmanlike manner. In the event of emergency situations, or the failure of any Owner to comply with the provisions hereof after such notice, the Association shall have the right to provide any such maintenance, cleaning, repair or replacement at Owner's sole cost and expense without notice, and said cost shall be added to and become a part of the assessment to which such Owner and such Owner's Lot are subject and shall become a lien against such Lot.

## ARTICLE VI

### INSURANCE AND CASUALTY LOSSES

#### 6.01 Association's Insurance.

(a) The Board or its duly authorized agents shall have the obligation to obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements, if any, in and to the Common Area against loss or damage by fire or other hazards, including, without limitation, extended coverage and vandalism and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation) or any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board or its duly authorized agents shall be under the obligation to obtain and continue in effect a public liability policy covering all the Common Area and all damage or injury caused by the negligence of the Association, its members, its directors and officers of any of its agents or employees. Such public liability policy shall have limits of at least \$1,000,000.00 with respect to property damage.

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

(d) The Board of Directors may at its option, conduct at least once every two (2) years an insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all insurable improvements upon the Common Area, by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with housing construction and repair costs in the Atlanta, Georgia, area, All property insurance policies obtained by the Association may contain reasonable deductibles, and the amounts thereof shall be added to the face amounts of such policies in determining whether such property insurance coverage equals at least the full replacement and repair costs of such insured improvements.

(e) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association and costs of all such coverage shall be a common expense of the Association. Exclusive authority to adjust losses under policies obtained by the Association and hereafter In force with respect to the Development shall be vested in the Board of Directors; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in the State of Georgia and holding a rating of A-XI or better in the financial category as established by Best's Insurance Reports if such a company is available and, if not available, its equivalent rating or the best rating policy.

(ii) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days' prior written notice of such cancellation to the Association and to any mortgagee to which a mortgagee endorsement has been issued.

(iii) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, and their respective families, servants, agents, tenants, guests and invitees, including, without limitation, the Association's manager.

(iv) All policies shall contain a provision that no policy may be cancelled, invalidated or suspended on account of the conduct of one or more of the individual Owners, or their respective families, tenants, agents and guests, or on account of the acts of any director, officer, employee or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(v) All liability insurance shall contain (if needed) cross-liability endorsements to cover liability of the Association to an individual Owner.

6.02 Owner's Insurance. Each Owner shall keep his Cluster House insured to the maximum insurable replacement value, excluding foundation and excavation costs against loss or damage by fire or other hazards covered by standard extended coverage endorsement and such other risks as from time to time are customarily covered with respect to improvements similar in

construction, location and use as his Cluster Home. Each Owner shall provide the Association with a certificate of insurance within 15 days of the insurance of the policy and within 15 days of each renewal thereof. Failure of an Owner to carry the insurance required herein shall permit the Association, following ten (10) days notice to the Owner, to obtain the required insurance coverage and to specifically assess the Owner for the cost thereof, including a reasonable fee for placing the insurance. An Owner may join with other Owners of Cluster Homes to purchase one insurance policy covering the Cluster Homes or may authorize the Association to purchase insurance covering the Cluster Home and other Cluster Homes on the Property, provided however, nothing herein shall be deemed to require the Association to provide such service.

#### 6.03 Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of a Cluster Home, the Owner thereof shall immediately proceed with repairs or reconstruction. Repair or reconstruction, as used in this Section 6.03, means repairing or restoring such property to substantially the same condition in which it existed prior to the fire or other casualty with each structure on each lot having the same boundaries and location as before and all construction or reconstruction to be in substantial conformity with that which existed prior to the damage or destruction.

(b) Any such damage or destruction shall be repaired or reconstructed unless the Declarant, for so long as Declarant owns a Lot primarily for the purpose for sale, together with at least seventy-five percent (75%) of the total membership of the Association, and the Owners of each of the damaged Cluster Homes shall decide within sixty (60) days after the casualty not to repair or reconstruct.

(c) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed, then and in that event the Owner of the damaged Cluster Home shall restore the damaged portions of the Property as near as is practicable to its natural state, and such parcels shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area or as otherwise determined by the Association. In the event that any Cluster Homes or other improvements on the Lots are not repaired or reconstructed but rather are restored to their natural state as provided in this subsection (c), the Owners of such Lots shall convey to the Association by quitclaim deed their interests in such Lots or such portions thereof so that such parcels shall become part of the Common Area or as otherwise directed by the Association.

#### 6.04 Lots Owned by Declarant.

Any of the foregoing provisions of this Article VI to the contrary notwithstanding, with respect to any damaged Lot owned by Declarant, it shall be the responsibility of Declarant to perform the functions which are herein specified to be performed by either the Owner or the Association with respect to such Lot. That is, in the event of damage or destruction by fire or other casualty to any Lot owned by Declarant, and if the decision not to repair or to reconstruct any Such damaged Lot owned by Declarant is not made as provided in Section 6.03 hereof, then it shall be the responsibility of Declarant to repair or reconstruct such damaged portions of the

Lot or Lots.

## ARTICLE VII

### CONDEMNATION

7.01 Condemnation. Whenever all or any part of the Development shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the written direction of all Owners, then each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association as trustee for all Owners and shall be disbursed as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Common Area on which any improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, for so long as Declarant owns a Lot primarily for the purpose of sale, together with at least seventy-five percent (75%) of the total membership of the Association, shall agree otherwise, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining land included in the Common Area which is available therefor, in accordance with the plans approved by the Board of Directors and Declarant, for so long as Declarant owns a Lot primarily for the purpose of sale. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association and shall be placed in a capital improvements reserve account.

(b) If the taking or sale in lieu thereof does not involve any improvements to the Common Area, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds or net funds shall be retained by and for the benefit of the Association and shall be placed in a capital improvements reserve account.

(c) If the taking or sale in lieu thereof includes one or more Lots, or any portion or portions thereof, whether or not there is included in the taking part of the Common Area, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Owners so affected so as to give just compensation to the Owner of any Lot taken for such Owner's interest in such Lot; provided, however, such apportionment may instead be resolved by the agreement of (i) Owners to which more than fifty percent (50%) of the votes in the Association appertain, such majority to include the Owner or Owners of all Lots wholly or partially taken or sold, together with the mortgagee of each such Lot, and (ii) the Declarant, for so long as Declarant owns a Lot primarily for the purpose of sale.

7.02 Rights of Mortgagees. If the Common area or any portion thereof, or any Lot or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any mortgage will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or of any other document establishing or

relating to the Development will entitle any Owner or any other party to priority over such Owner's mortgagee with respect to the distribution of the proceeds of any award or settlement relating to such Owner's Lot.

## ARTICLE VIII

### ADMINISTRATION

8.01 Common Area. The Association, subject to the rights of the Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by the Georgia Nonprofit Corporation Code, this Declaration, the By-Laws, the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the Owners. As provided in Section 12.01 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Development, Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of seven (7) years after the date of the recording of this Declaration; (ii) the date on which four-fifths (4/5) of the Lots shall have been conveyed by Declarant to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 8.01 and by Section 12.01 hereof. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

8.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, this Declaration, the By-Laws and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, this Declaration, the By-Laws or the Articles of Incorporation, then the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, this Declaration, and the By-Laws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. Such powers of the Association shall include, but shall not be limited to, the power to purchase one or more Lots and to hold, lease, mortgage, sell and convey the same and to enter into Management Agreement with third parties for the performance and duties of the Association hereunder. Notwithstanding the

foregoing provisions of this Section 8.02 or any other provision of this Declaration to the contrary, so long as Declarant shall own any Lot primarily for the purpose of sale, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage or hypothecate all or any portion of the Common Area.

8.03 Agreements. Subject to the prior approval of Declarant for so long as Declarant owns a Lot primarily for the purpose of sale, all agreements and determinations lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development, and in performing its responsibilities hereunder, the Association through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. Any management agreement for the Development shall be terminable, without payment of any termination fee by the Association or such manager, with cause upon not more than thirty (30) days' written notice and without cause upon not more than ninety (90) days' written notice, and the original term of such management agreement shall not exceed one year, with renewals by agreement of the parties for successive one-year periods. During the period of Declarant's control of the Association, such management agreement shall also contain the provisions required in Section 12.01 hereof. All costs and expenses incident to the employment of a manager shall be common expenses of the Association. During the term of such management agreement, the manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, except any of the those powers or duties specifically and exclusively reserved to the directors, officers, or members of the Association by this Declaration or the By-Laws. The manager may be individual, corporation or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be an expense of the Association. In addition, the Association may pay for such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws or the published rules and regulations of the Association.

8.04 Personal Property and Real Property for Common Use. The Association through action of its Board of Directors may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held for the benefit of the Owners as herein provided and for the purposes herein stated. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot also transfers the membership in the Association which is an appurtenance to such Lot.

8.05 Rules and Regulations and Design Standards. As provided in Article XI hereof, the Association, through its Board of Directors, shall have the right to make and enforce reasonable rules and regulations governing the use of the Lots and of the Common Area, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Association through its Architectural Control Committee may also develop Design Standards for the exterior appearance of Lots and improvements thereon, subject to the provisions of Article X.

8.06 Liability. The officers and directors shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual, willful misfeasance or malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association) and the Association, as common expense of the Association, shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. In addition, each director and each officer of the Association shall be indemnified and held harmless by the Association, as a common expense of the Association, from any expense, loss, or liability by reason of having served as such director or as such officer and against all expenses and liability, including court costs and reasonable attorneys' fees, incurred by or imposed upon such director or such officer, whether or not such person is a director or officer at the time such expenses are incurred, except in cases wherein the expenses and liability arise from a proceeding in which malfeasance, misconduct or bad faith in the performance of the duties of the office so held. In the event of a settlement of any such proceeding, the indemnification provided hereby shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. To the extent available and economically feasible, the Association shall as a common expense maintain adequate general liability and officers' and directors' liability insurance to fund these obligations.

8.07 Compensation. No director or officer of the Association shall receive any fee or compensation for services performed by him unless such fee or compensation is first fixed by resolution adopted by a majority vote of the Owners present in person or by proxy at a meeting of the Association.

## ARTICLE IX

### ASSESSMENTS

9.01 Purpose of Assessments. The assessments for common expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Cluster Homes and the Lots, maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

9.02 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments, such assessments to be established and collected as provided in Section 9.03 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 9.04 hereof and (c) individual or specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such Lot in accordance with Article XI hereof. Any such assessment, together with late charges, interest at the highest rate allowable under the laws of the State of Georgia and court costs and attorneys' fees incurred to enforce such assessment, shall be an equitable charge and a continuing lien upon the Lot against which each such assessment is made. Each Owner shall be personally liable for such Owner's portion of each assessment coming due while such Owner is the Owner of a Lot, and such Owner's successor-in-title shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, but without prejudice to the rights of such successor-in-title to recover from the grantor in the deed to such successor-in-title the amounts paid therefor; provided, however, that the liability of such a successor-in-title for the unpaid assessments of its grantor shall not apply to the holder of any first priority mortgagee or any second priority purchase money mortgagee taking title to a Lot through foreclosure or by deed in lieu of foreclosure. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided by the Board, the annual assessments shall be paid in equal monthly installments due on the first day of each month.

9.03 Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated common expense of operating the Association during the forthcoming year, such budget to include a capital contribution or reserve account in accordance with the capital needs of the Association. The Board shall cause the budget and the proposed annual assessments to be levied against each Lot for the following year to be delivered to each Owner at least ten (10) days prior to such meeting. Except as otherwise provided in Section 9.09 hereof, the annual assessments shall be the same for each Lot. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Declarant, so long as Declarant has the authority to appoint and remove directors and officers of the Association, or (ii) a vote of two-thirds of the votes of the Owners who are voting in person or by proxy. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board fails for any

reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for approval of a special assessment as provided in Section 9.04 hereof. The common expenses of the Association to be funded by the annual assessments may include, but shall not be necessarily limited to, the following:

- (i) utility charges, if any, for utilities serving the Common Area and charges for

other common services for the Development;

(ii) the cost of any master or blanket policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire and other hazard coverage, public liability coverage and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;

(iii) the expenses of maintenance, operation, and repair of the Common Area, as well as any maintenance of the Lots and the improvements thereon which is the responsibility of the Association under the provisions of this Declaration;

(iv) ad valorem real and personal property taxes assessed against the Common Area;

(v) management fees and expenses of administration, including legal and accounting fees;

(vi) such other expenses as may be determined from time to time by the Board of Directors of the Association to be common expenses, including, without limitation, taxes and governmental charges not separately assessed against the Lots; and

(vii) the establishment and maintenance of a reasonable reserve fund or funds (a) for maintenance, repair and replacement of those portions of the Common Area and the Lots which are the responsibility of the Association and which must be replaced on a periodic basis, and (b) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

9.04 Special Assessments. In addition to the annual assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, special assessments for common expenses, applicable to that year only, provided that any such assessment shall be approved by (i) the Declarant, for so long as Declarant has the authority to appoint and remove directors and officers of the Association, and (ii) by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 9.06 hereof. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the Association's fiscal year in which adopted.

9.05 Individual Assessments. Any expense occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of the Owner of any Lot shall be specially assessed against the Lot or Lots, the conduct of the occupants (or their agents) of which occasioned such expenses. The individual assessments provided for in this Section 9.05, as well as the individual assessments provided for in Section 6.05 hereof, shall be levied by the Board of Directors and the amount and due date of such assessment so levied by the Board shall be as specified by the Board.

9.06 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 9.03 and 9.04 hereof, shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast over fifty percent (50%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no meeting shall be held with less than one-fourth (1/4) of the total membership of the Association constituting a quorum. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.07 Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with court Costs, reasonable attorneys' fees, late charges and interest as provided herein, shall be secured by an equitable charge and continuing lien on such lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot except for:

- (i) Liens of ad valorem taxes; and
- (ii) A lien for all sums unpaid on a first priority mortgage, on any secondary purchase money mortgage, or on any mortgage to Declarant, and all amounts advanced pursuant to any such mortgage and secured thereby in accordance with the terms of such instrument.

All persons (other than the mortgagees described hereinabove in this Section 9.07) acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

9.08 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or any portions thereof which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as may be determined by the Board from time to time, and the Board shall cause a written notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. A lien and equitable charge as herein provided for each assessment shall attach simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days after the giving of such written notice, the entire unpaid balance of the assessment may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment shall include the late charge established by the Board of Directors, interest on the principal amount due at the maximum rate allowable under the laws of the State of Georgia, all costs of collection (including reasonable attorneys' fees and court costs) and any other amounts provided or permitted hereunder or by law. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association shall have the right, as the Board shall determine, to institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien

provided for in this Article IX shall be in favor of the Association and shall be for the benefit of all other Owners, and each Owner, by such Owner's acceptance of a deed to a Lot, vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens involving property may be foreclosed under the laws of the State of Georgia. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure or sheriff's or marshal's sale and to acquire, hold, lease, mortgage and convey the same. No Owner shall have the right to waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Area or abandonment of such Owner's Lot or Cluster Home.

9.09 Date of Commencement of Annual Assessments. The annual assessments provided for in this Article IX shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association by the Declarant and shall be due and payable in such manner and on such a schedule as the Board of Directors shall provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year of the Association. Anything contained in this Article IX to the contrary notwithstanding, Declarant, on behalf of itself and its successors and assigns, covenants and agrees to pay the annual assessment, in monthly installments, for each Lot owned by Declarant and containing a Cluster Home; provided, however, the Declarant shall not be responsible for assessments on Lots which do not have a Cluster Home constructed thereon for which a Certificate of Occupancy has been issued. The Declarant shall, however, fund any deficit which may exist between assessments and the actual annual operating expenses (but not reserves) for so long as Declarant has the authority to appoint and remove Directors and Officers of the Association.

## ARTICLE X

### ARCHITECTURAL CONTROLS AND USE RESTRICTIONS

10.01 Purpose. To assure a community of congenial Owners and to protect the value of the Development, the Lots and all improvements located thereon shall be subject to the restrictions set forth in this Article X. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article X.

10.02 Permitted Improvements. No improvements of any nature whatsoever shall be constructed, altered, added to or maintained upon any part of the Development, except (2) for Cluster Homes and other improvements which are constructed by the Declarant, (b) such improvements as are approved by the Board of Directors or the Architectural Control Committee in accordance with Section 10.3 hereof, or (c) improvements which pursuant to Section 10.3 hereof do not require the consent of the Board of Directors or the Architectural Control Committee. Only Cluster Homes can be built on Lots unless such Lots become Common Areas.

10.03 Architectural Approval. To preserve the architectural appearance of the Development, no construction of improvements of any nature whatsoever shall be commenced or

maintained by any Owner, other than Declarant, with respect to the exterior of any Cluster Home or any other portion of the Development, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface) unless and until a plan showing the nature, color, type, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Board of Directors or by the Architectural Control Committee appointed by the Board of Directors as to the harmony of external design, location and appearance of such proposed addition, change or alteration in relation to surrounding structures and topography. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within such Owner's Cluster Home; provided, however, that no Owner shall make any structural alterations in or to such Cluster Home, remove any portion thereof, make any additions thereto or do anything which would or might jeopardize or impair the safety, soundness or structural integrity of such Cluster Home, or of any other Cluster Home or other improvement, without first submitting the plan for such additions, removals or other such work and obtaining the prior written consent of the Board of Directors or the Architectural Control Committee and the Owners and mortgagees of the Lots, Cluster Homes or other improvements whose safety, soundness, or structural integrity is or may be directly affected thereby, nor shall any Owner make any alterations or additions which impair any easements without first obtaining written consent of the Board of Directors or the Architectural Control Committee and of the Owners and their mortgagees for whose benefit such easement exists. The Board (or the Architectural Control Committee, if then established) shall have the sole discretion to determine whether such plan submitted for approval are acceptable to the Association, and the Board shall be entitled and empowered to enjoin or remove any construction undertaken pursuant to the plan which have not been expressly approved in writing by the Board or the Architectural Control Committee, if such approval is required under this Article X. Following approval of any plans by the Board or the Architectural Committee, representatives of the Board or of the Architectural Control Committee shall have the right during reasonable hours to enter upon and inspect any Lot, Cluster Home or other improvements with respect to which construction is underway to determine whether or not the plan therefor have been approved and are not being complied with, the Board shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plan. In the event the Board or the Architectural Control Committee fails to approve or disapprove in writing any proposed plan within forty-five (45) days after such plan shall have been submitted to the Board or the Architectural Control Committee, such plan shall be deemed to have been expressly approved, and no further approval under this Article X shall be required with respect thereto, unless such plan are materially altered or changed.

Any approval required by this 10.03 from the Architectural Control Committee or Board must also be approved by the MAACC, and should a dispute arise between the Board or Architectural Control Committee and the MAACC, the approval or disapproval of the MAACC shall be determinative.

10.04 Use of Lots. Except as permitted by Section 3.09 and Section 10.12 hereof, each Lot shall be used for single-family residential purposes only, and no trade or business of any kind may be carried on therein. Lease or rental of a Lot or any Cluster Home thereon for residential purposes shall not be considered to be a violation of this covenant so long as the lease (i) is in compliance with the provision of the Master Declaration, (ii) is for not less than the

entire Lot and all the improvements thereon and appurtenant thereto, (iii) is for a term of at least one (1) year and (iv) is otherwise in compliance with rules and regulations as may be promulgated, published and from time to time amended by the Board of Directors. All leases shall be required to be in writing and, prior to the commencement of any such lease, the Owner shall provide the Secretary of the Association and the managing agent of the Association, if any, with copies of such lease. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration and all rules and regulations adopted hereunder.

10.05 Exterior Appearance. To provide a neat, attractive, and harmonious appearance throughout the Development, no awnings, shades or window boxes shall be attached to, or hung or used on the exterior of, any window or door of a Cluster Home without the prior written consent of the Board of Directors or the Architectural Control Committee. Further, no foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or other purpose nor shall any window-mounted heating or air-conditioning units be permitted. All shades, drapery linings and other window treatments visible from the exterior of the Cluster Home on any window or door shall be white or off-white. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained upon any portion of the Development, nor shall any clothing, rugs or other item be hung on any railing, fence, hedge or wall.

10.06 Use of Common Areas. The use and enjoyment of the Common Area by Owners, their families, tenants, visitors, guests, servants and agents, shall be subject to such reasonable rules and regulations as may be made and amended by the Board of Directors from time to time in accordance with Article XI hereof.

10.07 Signs. Except as may be required by legal proceedings, no signs or advertising posters of any kind shall be maintained or permitted on any portion of the Development without the express written permission of the Board of Directors or the Architectural Control Committee. The approval of any signs and posters, including without limitation name and address signs, shall be upon such conditions as may be from time to time determined by the Board of Directors or the Architectural Control Committee and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 10.07 shall not apply to Declarant, its agents, representatives and employees, during the period that Declarant has any Lot for sale or is developing any portion of the Development nor to any mortgagee which becomes the Owner of a Lot as a result of a foreclosure or a deed in lieu of foreclosure. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Area.

10.08. Pets. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept by any Owner upon any portion of the Development, provided that no more than a total of two (2) generally recognized house pets may be kept in any Cluster Home, subject to the rules and regulations adopted and from time to time amended by the Association through its Board of Directors, provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Area, unless the same shall be approved in

advance in writing by the Board of Directors or the Architectural Control Committee. Pets shall be under leash at all times when walked or exercised on any portion of the Common Area, no pet shall be permitted to leave its droppings on any portion of the Common Area, and the Owner of such pet shall immediately remove the same. Upon the written request of any Owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 10.08, a particular pet is generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from the Development if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Directors shall have the further right, subject to the provisions of Section 11.03 hereof, to fine any Owner for the violation of these pet restrictions by such Owner or an occupant of such Owner's Lot, and an Owner shall be liable to the Association for the cost of repair of any damage to the Common Area caused by the pet of such Owner or of an occupant of such Owner's Lot. Any such fine or cost of repair shall be added to and become a part of that portion of any assessment next coming due to which such Lot and Owner are subject. Notwithstanding any of the foregoing to the contrary, the Board of Directors shall retain the absolute power at any time to prohibit any and all pets from being kept within the Development, including inside any Cluster Home constructed thereon. The Board may from time to time at its discretion delegate to the Architectural Control Committee the right to make determinations under this paragraph.

10.09 Antennas. No antenna or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic radiation shall be erected, used or maintained outdoors on any portion of the Development, whether attached to a Cluster Home or any other structure without the prior written consent of both the Board and the Master Association. If approved by the Board and the Master Association, such approved antenna or other device shall not be visible from any location on (i) any adjacent public right-of-way; (ii) any common area, or (iii) any point on the golf course property lying adjacent to and at the rear of certain Lots. Declarant and the Association shall have the right but not the obligation, however, to erect, construct and maintain such antennas or other devices for the benefit of the entire Development, subject to approval by the Master Association.

10.10 Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Development, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying any other portions of the Development. Noxious or offensive activities shall not be allowed on any Lot or in any Cluster Home or in any part of the Common Area, and each Owner, and such Owner's family, tenants, visitors, guests, servants and agents shall refrain from and shall not allow any act or use of a Lot or of the Common Area which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other Lots, or which could result in a cancellation of any insurance of any Lot or any portion of the Common Area which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed within the Development. Any Owner, or such Owner's family, servants, agents, guests or tenants, who dumps or places trash or debris upon

any portion of the Development shall be liable to the Association for the actual costs of removal thereof or such fine as may be imposed by the Board of Directors subject to the provisions of Section 11.03 hereof, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which the Owner and such Owner's Lot are subject.

10.11 Motor Vehicles, Trailers, Boats, Recreational Equipment. There shall be no outside storage or parking upon any Lot or any portion of the Common Area of any automobile, mobile home, trailer (either with or without wheels), motor home, tractor, truck, camper, camper-trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart or any other transportation device of any kind, except (i) for no more than one automobile, motorcycle or passenger minivan which may be parked in the driveway portion of each developed Lot; and (ii) within the parking spaces, if any, assigned by the Board of Directors to and for such storage; and (iii) for guests temporarily parking in spaces designated by the Board and in accordance with all rules and regulations promulgated by the Board. All garage doors shall be kept closed at all times except when being used for entry or exit of a vehicle. Further, although not expressly prohibited hereby, the Board of Directors may at any time prohibit mobile homes, motor homes, truck campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts and other similar vehicles, or any of them, from being kept, placed, stored, maintained, or operated upon any portion of the Development if in the opinion of the Board of Directors such prohibition shall be in the best interests of the Development. No Owners or occupants of any portion of the Development shall repair or restore any vehicle of any kind upon any Lot or upon any portion of the Common Area, except for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. There shall be no basketball backboards, soccer goals, or other similar recreational equipment installed upon any Lot or Common Area without the prior written consent of the Board of Directors.

10.12 Sale. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant, its agents, representatives and employees to maintain and carry on, for so long as Declarant owns any Lot primarily for the purpose of sale, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots, including, without limitation, a business office, a construction office, a sales office, signs and a model Cluster Home. The right to maintain and carry on such facilities and activities shall include specifically the right (i) to use the parking facilities (other than parking facilities contained within any garage not owned by Declarant) within the Development for such purposes, (ii) to use a Cluster Home owned by Declarant as a model residence and (iii) to use a Cluster Home owned by Declarant as an office for the sale of Lots and for related activities.

## ARTICLE XI

### RULE MAKING

11.01 Rules and Regulations. The Board of Directors may establish and from time to time alter, add to and amend reasonable rules and regulations concerning the use of individual

Lots and of the Common Area and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon all Owners, their families, tenants, guests, invitees, servants and agents, unless and until any such rule or regulation is specifically overruled, cancelled or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant for so long as Declarant owns one Lot primarily for sale.

11.02. Authority and Enforcement. The Association shall be used only for those uses and purposes set out in this Declaration, the By-Laws and the Articles of Incorporation. As provided in Section 11.01 hereof, the Board of Directors shall have the authority to make, amend and enforce reasonable rules and regulations governing the conduct, use and enjoyment of individual Lots and the Common Area, provided that copies of all such rules and regulations and amendments are furnished to all Owners. Subject to the provisions of Section 11.03 hereof, upon the violation of this Declaration, the By-Laws or any rules and regulations duly adopted hereunder, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute a lien upon the Lot, the occupants of which are guilty of such violation, (ii) to suspend an Owner's right to use recreational facilities within the Common Area or (iii) to suspend an Owner's right to vote in the Association; the Board shall have the power to impose all or any combination of these sanctions. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter not to exceed thirty (30) days.

11.03 Procedure. Notwithstanding any provisions of this Declaration to the contrary, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner or other occupant of the Development for violations of the Declaration, the By-Laws or any rules and regulations of the Association unless and until the following procedure is followed:

(a) Written demand to cease and desist from an alleged violation is served upon the alleged violation specifying:

(i) The nature of the alleged violation;

(ii) The action required to abate the violation; and

(iii) A time period of not less than ten (10) days during which the violator shall have the right to abate the violation without further sanction, if such violation is a continuing one; or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws or of the — rules and regulations of the Association may result in the imposition of sanction after notice and hearing.

(b) Within twelve (12) months following such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation

subsequently again occurs, the Board shall serve the violator with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

- (i) The nature of the alleged violation;
- (ii) The time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice;
- (iii) An invitation to attend the hearing and produce any statement, evidence and witnesses on behalf of the violator; and imposed.

(c) The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall afford the violator reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or other individual who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

## ARTICLE XII

### GENERAL PROVISIONS

12.01 Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association as provided by and for the term set forth in Section 8.01 hereof. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the provisions of Section 8.01 hereof and of this Section 12.01. upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 8.01 and this Section 12.01, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver the books, accounts and records, if any, which Declarant has kept on behalf of the Association during the period off Declarant's right to control the Association shall be subject to cancellation and termination at any time during the twelve (12) months next immediately following the expiration of such period of control by the affirmative vote of the Owners to whom a majority of the votes in the Association appertain, unless the Owners by a like majority shall have theretofore, following the expiration of such period, expressly ratified and approved the same.

12.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Fulton County, Georgia, without the approval of any Owner or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Area as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 12.02 shall be certified by Declarant as having been duly approved by Declarant, and such Owners and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a tot, agrees to be bound by such amendments as are permitted by this Section 12.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination Which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title Insurance Company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

12.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 12.02 hereof, shall be proposed and adopted in the following manner:

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

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or any members of the Association. Such amendment must be approved by Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

12.04 Enforcement. Each Owner shall comply strictly with the By-Laws and with the published rules and regulations and amendments thereto of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to such Owner's Lot, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or for instituting an action to recover sums due, for damages or for injunctive relief, such actions to be maintainable by Declarant, the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any owner of a Lot or occupant of a Cluster Home, of the provisions of this Declaration, the By-Laws or any rules and regulations of the Association, however long continued.

12.05 Duration. The provisions of this Declaration shall run with and bind title to the Property and all of the Lots, shall be binding upon and inure to the benefit of all Owners and mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect perpetually to the extent permitted by the laws of the State of Georgia; provided, however, that so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind title to the Property and each and every Lot so long as permitted

by law, and it shall be the duty of the Board of Directors of the Association to cause this Declaration to be amended of record when necessary by filing a document bearing the signatures of Owners having a majority of the voting interest in the Association reaffirming and newly adopting such provisions in order that the same may continue to be covenants running with title to the Property and each and every Lot. Such adoption by a majority shall be binding upon all the Owners. Every purchaser or grantee of any interest in any property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property and each and every Lot as provided hereby.

12.06 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue in effect only until the twentieth anniversary of the date of execution of this Declaration by Declarant.

12.07 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The effective date of this Declaration shall be the date of its filing for record on the Land Records of the Superior Court of Fulton County, Georgia. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Georgia.

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

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

12.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Owners and their mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the provisions of Sections 12.12 and 12.13 hereof and the rights of Declarant and mortgagees as herein provided, the Owners shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration

without the consent, permission or approval of any adjoining owner or third party.

12.11 Notice of Sale, Lease or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or any improvements thereon, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee or transferee.

12.12 Mortgage Provision. (a) It is the Declarant's intention that the Development qualify for the possible sale of the first priority mortgages on the Lots within the Development to the Federal Home Loan Mortgage Corporation (hereinafter referred to as the "Mortgage Corporation"). The requirements contained in this Section 12.12 are to effectuate that purpose. Should the Mortgage Corporation subsequently delete any of its requirements which necessitate the provisions of this Section or make any such requirements less stringent, this Section 12.12 shall automatically be amended to reflect such changes.

(b) Notwithstanding any provisions to the contrary herein provided, unless the holders of at least seventy-five percent (75%) of the first priority mortgages on Lots within the Development have consented in writing, the Declarant and the Association shall not do any of the following:

(i) seek to abandon, partition, subdivide, encumber, sell or transfer the Association's property, except as provided in Sections 3.02(c), 3.02(f), 3.02(g), 3.06, 3.07 and 8.02 hereof;

(ii) change the method contained in this Declaration for determining financial obligations of members;

(iii) change, waive or abandon the process for regulation and enforcement contained in this Declaration for architectural standards, design and maintenance of Lots and the Common Area; or

(iv) use the proceeds of property insurance on any Common Area for any purpose other than repair, replacement or reconstruction, except as may be provided in this Declaration for the use of excess proceeds and proceeds upon dissolution.

Upon written request, the Association shall provide notice in a reasonable manner to any first priority mortgagee of any default under this Declaration, the By-Laws or the rules and regulations of the Association by the Owner of the Lot which is encumbered by such mortgage if the default is not cured within sixty (60) days from the time it occurs.

12.13 Exercise of Declarant's Rights. Notwithstanding any provision to the contrary hereinbefore contained in this Declaration, Declarant shall neither exercise, from time to time, nor surrender, from time to time, any right granted, reserved or otherwise given or appertaining to Declarant under this Declaration without the prior written consent of any mortgagee holding a mortgage of first lien priority with respect to the interest then held by Declarant in the real property described in Exhibit 'A' attached hereto, including, without limitation, the giving of any consent or approval or disapproval and the exercise of any option or election or power by

Declarant, and the exercise by Declarant of any of such right without such prior written consent shall be void and of no force or effect. This provision shall not be amended without the prior written consent of the aforesaid mortgagee, notwithstanding any other provision to the contrary hereinbefore contained in this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has caused this Declaration to be executed in its name and on its behalf and its seal to be affixed hereunto by duly authorized officers thereof, the day and year first above written.

DECLARANT:

PG/PL J.V. NO. 2, a Georgia Joint Venture,  
acting by and through its sole joint venture  
partners

Signed, sealed and delivered  
this \_\_\_\_\_ day of \_\_\_\_\_,  
1985 in the presence of:

BY: PAN GULF DEVELOPMENTS  
(DUNWOODY), INC., a Georgia  
corporation, joint venture

\_\_\_\_\_  
Witness

BY: \_\_\_\_\_  
Vice President

\_\_\_\_\_  
Notary Public (affix seal and  
date of expiration of commission

Attest: \_\_\_\_\_  
Secretary

[AFFIX CORPORATE SEAL]

ETC. (Barbara, do you need all the signature blocks?)