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DECLARATION OF PROTECTIVE COVENANTS

FOR

MILFORD WOODS

COBB SUPERIOR COURT CLERK

Jay C. Stephenson

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FILED AND RECORDED

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-TABLE OF EXHIBITS-

<u>Exhibit</u>	<u>Name</u>
A	Property Submitted
B	Additional Property Which May Unilaterally Be Submitted By Declarant
C	Bylaws of Milford Woods Community Association, Inc.

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DECLARATION OF PROTECTIVE COVENANTS

FOR

MILFORD WOODS

THIS DECLARATION is made on the date hereinafter set forth by Torrey/Cobb, L.P., a Georgia limited partnership ("Declarant");

W I T N E S S E T H

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" of this Declaration (or, if not the owner, Declarant has the written consent of the owner to subject such property to the provisions of this Declaration); and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration. Such real property, together with such portions of the real property described on Exhibit "B" which may be submitted to this Declaration by Declarant as provided in Article IX, shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject to this Declaration. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

Article I DEFINITIONS

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

1.1. "Area of Common Responsibility": The Common Property, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration, any Supplementary Declaration, recorded plat, or other applicable covenants, contract, or agreement.

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1.2. "Association" shall mean Milford Woods Community Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.3. "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Georgia law.

1.4. "Bylaws" shall refer to the Bylaws of Milford Woods Community Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference.

1.5. "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6. "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "A," attached hereto, and (i) such additions thereto as may be made by Declarant by Supplementary Declaration of all or any portion of the real property described in Exhibit "B" attached hereto; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration.

1.7. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

1.8. "Declarant" shall mean and refer to Torrey/Cobb, L.P., a Georgia limited partnership and its successors-in-title and assigns, provided any successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibits "A" or "B" attached hereto. The instrument of conveyance to any successor-in-title or assign shall designate such successor-in-title or assign as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibits "A" and "B," attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one (1) "Declarant" hereunder at any one point in time.

1.9. "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded in the land records of the county where the Community is located. 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 Property, which shall include, without limitation, membership in the Association.

1.10. "Mortgage" means any mortgage, security deed, deed of trust, and any and all other similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

1.11. "Mortgagee" shall mean the holder of a Mortgage.

1.12. "Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.13. "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.14. "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

1.15. "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

1.16. "Total Association Vote" means all of the votes attributable to members of the Association (other than votes of Declarant, so long as Declarant has the right to appoint and remove the directors of the Association) and the consent of Declarant (so long as Declarant has the right to appoint and remove the directors of the Association).

Article II **PROPERTY RIGHTS**

2.1. Common Property. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to:

(a) This Declaration and any other applicable covenants;

(b) ~~Any restrictions or limitations contained in any deed conveying such property to the Association;~~

(c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Property;

(d) The right of the Association to suspend the voting rights of a Lot Owner for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid and for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations; and

(e) The right of the Association to mortgage, dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association; provided, no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of at least two-thirds (2/3) of the Total Association Vote, excluding the votes held by the Declarant.

Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of such Owner's family and to such Owner's tenants. If an Owner leases a Lot, such Owner shall be deemed to have made a delegation of all such rights to the occupants of such Owner's Lot.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Property. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3. Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Section 8.1(c) applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article III ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

3.2. Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves

determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

Article IV **ASSESSMENTS**

4.1. Purpose of Assessment. The assessments 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 Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board.

~~4.2.~~ Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due, costs, including, without limitation, reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Annual assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board, which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

4.3. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

4.4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time if approved at a meeting by two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, as provided herein, shall be secured by a 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 (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of the county where the Community is located and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

4.6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include interest, not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due, all late charges from the date first due and payable, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the

Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, 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 for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment 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 the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements 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 assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.7. Date of Commencement of Assessments. The assessments provided for herein shall commence as to a Lot subject to this Declaration on the first day of the month following the conveyance of such Lot to a Person who has not purchased such Lot for the purpose of construction of a residence and resale of such Lot and residence. Lots which have not been so conveyed shall not be subject to assessment. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year.

4.8. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Section 12.1 of this Declaration and the costs of maintenance performed by the Association which the Owner is responsible for under Sections 5.1 and 5.2 of this Declaration shall be specific assessments. The Board may also specifically assess Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein):

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

4.9. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (i) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant; or (ii) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

Article V

MAINTENANCE; CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION

5.1. Association's Responsibility. Association maintenance shall be performed consistent with the Community-Wide Standard. The Association shall maintain, repair, and replace of all landscaping and improvements situated on the Area of Common Responsibility. The Area of Common Responsibility shall include, without limitation, (a) any Common Property owned by the Association, (b) all entry features and adjacent landscaping, and boundary fences or screening installed by Declarant, regardless of whether such are located on Common Property or a Lot, as such may be designated as an "Association Landscape Easement" on the recorded subdivision plat, in a deed of conveyance of a Lot to an Owner, or by recorded easement, and (c) all lakes, ponds, dams and appurtenant structures and fences, storm water detention or water drainage facilities located in or serving the Community, if and to the extent such improvements and facilities are not maintained by a public entity, owners of property outside of the Community, or other owners associations. Such maintenance shall include, without limitation, the expenses for water, gas, and electricity, if any, provided to all entry features, whether or not located on the Common Property or a Lot. Additionally, the Association shall maintain all property outside of Lots located within the Community which was originally maintained by Declarant.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit all Owners.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

5.2. Owner's Responsibility. Except as provided in Section 5.1, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

5.3. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest located within the Community. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

Article VI

ARCHITECTURAL STANDARDS

6.1. General. No structure shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article, and with the approval of the Architectural Review Committee ("ARC").

No work subject to this Article shall commence unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by the ARC. Any Owner may remodel, paint or redecorate the interior of structures on a Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Community shall be designed by and built in accordance with the plans and specifications of a licensed architect, unless otherwise acceptable to the ARC, in its sole discretion. All plans and specifications shall be subject to review as provided herein. This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

6.2. Architectural Review. Review of all applications for construction and modifications under this Article shall be handled by the ARC. The ARC may be divided into two subcommittees, with one subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. Until 100% of the Community has been developed, or such earlier time as the Declarant shall designate in writing, the Declarant shall have the right to appoint all members of the ARC. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the ARC. Written design guidelines and procedures may be promulgated for the exercise of this review. The ARC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. The Board may employ architects, engineers, or other Persons as it deems necessary to enable the ARC to perform its review. The ARC may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

In reviewing each submission, the ARC may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. The ARC shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

In the event that the ARC fails to approve or to disapprove in writing any application within 60 days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with established design guidelines for the Community unless a variance has been granted in writing by the ARC.

All work shall be completed within one year of commencement or such shorter period as the ARC may specify in the notice of approval. As a condition of approval under this Section each Owner and all successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. The ARC may require an Owner to acknowledge such responsibilities in a recordable written instrument.

Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to verify compliance with these restrictive covenants. Such person or persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Section 12.1, record in the appropriate land records a notice of violation naming the violating Owner.

6.3. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

6.4. Variance. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.5. Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ARC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ARC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that such person or Owner will not bring any action or suit against Declarant, the Association, the ARC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and

covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Article VII USE RESTRICTIONS AND RULES

7.1. General. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Lot. These use restrictions may only be amended in the manner provided in Section 12.4 regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, cancelled, or modified in a regular or special meeting by a majority of the Total Association Vote.

7.2. Residential Use. All Lots shall be used exclusively for residential purposes of a single family. No business or business activity shall be carried on, in, or upon any Lot at any time except with the written approval of the Board. Leasing of a Lot shall not be considered a business or business activity. However, the Board may permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, does not create a disturbance and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities.

7.3. Signs. No sign of any kind shall be erected by an Owner or occupant within the Community without the prior written consent of the ARC. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. "For Sale" and "For Rent" signs and security signs consistent with the Community-Wide Standard and reasonable signs required by legal proceedings or pursuant to a first Mortgage may be erected upon any Lot.

7.4. Vehicles. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles. All vehicles shall be parked in designated parking spaces. Where the Lot contains a garage, "parking areas" shall refer to the number of garage parking spaces. All single-family detached homes shall contain a garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles authorized by the Board.

No vehicle may be left upon any portion of the Community, except in a garage or driveway for a period longer than five days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle shall be considered a nuisance and may be removed from the Community. Any towed vehicle, boat, recreational vehicle, motor home, or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than 24 hours each shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view.

7.5. Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least six months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

7.6. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner.

7.7. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No pets shall be kept, bred or maintained for any commercial purpose.

7.8. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without

limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARC, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

7.9. Unsightly or Unkept Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

7.10. Prohibited Conditions. The following conditions, structures, or activities are prohibited within the Community unless prior approval in writing is obtained from the ARC by the Owner or occupant:

(a) Antennas. No exterior antennas of any kind, including, without limitation, satellite dishes;

(b) Tree Removal. No trees that are more than four inches in diameter at a point two feet above the ground shall be removed, and no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed; except for any trees, regardless of their diameter, that are located within ten feet of a drainage area, a septic field, a sidewalk, a residence, or a driveway;

(c) Air-Conditioning Units. No window air-conditioning units shall be installed;

(d) Lighting. Exterior lighting visible from the street shall not be permitted except for (i) approved lighting as originally installed on a Lot; (ii) one decorative post light, (iii) street lights in conformity with an established street lighting program for the Community; (iv) seasonal decorative lights during the usual and common season; or (v) front house illumination of model homes.

(e) Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, statuary, play equipment (including, without limitation, stationary or movable basketball goals), planters, gardens, window boxes and similar items must be approved by the ARC;

(f) Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARC;

(g) Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

(h) Exterior Security Devices. No exterior security devices, including, without limitation, window bars or security doors, shall be

permitted on any residence or Lot. Signs placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

(i) Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

7.11. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves to the Declarant and the Association a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

7.12. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped so as to permit safe sight across such areas. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

7.13. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks removed from a building site.

7.14. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the ARC. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

7.15. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types.

7.16. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the ARC. Under no circumstances shall any fence be placed, erected, allowed, or maintained upon any Lot closer to the street than the rear one-third of the residence located on the Lot. Only shadow-box style

privacy fencing constructed of six foot maximum height, dog-eared, unpainted, cedar shall be approved by the ARC. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Board shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Property.

7.17. Mailboxes. All mailboxes located on Lots shall be of a similar style approved by the ARC. Replacement mailboxes may be installed after the type has been approved in writing by the ARC.

7.18. Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the ARC.

7.19. Entry Features and Boundary Fences. Owners shall not alter, remove or add improvements to any entry features or boundary fence constructed by the Declarant on any Lot, or any part of an Association Landscape Easement without the prior written consent of the ARC or the Board.

7.20. Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot. Hot tubs and portable spas shall not be permitted without the prior written consent of the Architectural Review Committee and then only if enclosed by an approved fence.

Article VIII INSURANCE AND CASUALTY LOSSES

8.1. Association Insurance.

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

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Property and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its members for damage or

injury caused by the negligence of the Association or any of its members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

(b) Policy Requirements. The Association shall periodically cause a review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Atlanta, Georgia area.

All Association policies shall provide for a certificate of insurance to be furnished to each member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 8.1(a). In the event of an insured loss, the deductible shall be treated as a common expense of the Association; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 4.4.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Community covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Property shall be repaired or reconstructed unless at least 75% of the Total Association Vote otherwise agree not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Property shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Property shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

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

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the members, levy a special assessment to cover the shortfall.

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

Article IX
ANNEXATION OF ADDITIONAL PROPERTY

9.1. Unilateral Annexation By Declarant.

(a) As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until seven (7) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B," attached hereto and by reference made a part hereof, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

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

9.2. Other Annexation. Subject to the consent of the owner(s) thereof and the consent of the Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right to unilaterally annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President of the Association whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

Article X
MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

10.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

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

10.2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

10.3. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

10.4. VA/HUD Approval. As long as the Declarant has the right to appoint and remove the directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD") for insuring or the U.S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage in the Community the following actions shall require the prior approval of the VA and/or HUD as applicable: annexation of additional property to the Community, except for annexation by Declarant in accordance with Section 11.1 hereof pursuant to a plan of annexation previously approved by the VA and/or HUD as applicable; dedication of Common Property to any public entity; mergers and consolidations; dissolution of the Association; and material amendment of the Declaration, Bylaws or Articles of Incorporation.

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

10.6. Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA

subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Article XI **EASEMENTS**

11.1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

11.2. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

11.3. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Section 12.2, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety reasons, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

11.4. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

11.5. Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot as more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

11.6. Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article IX terminates and thereafter so long as Declarant owns any property in the Community for development and/or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property described on Exhibit "A" and Exhibit "B" to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to construct recreational facilities on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices and may also use recreational facilities available for use by the Community as a sales office without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as hereinabove provided.

11.7. Irrigation Easements. There is hereby reserved to the Declarant and the Association a blanket easement to pump water from ponds, lakes and other bodies of water located within the Community for irrigation purposes.

Article XII GENERAL PROVISIONS

12.1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified 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. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

12.2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

12.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision shall be automatically extended for successive periods of ten (10) years.

12.4. Amendment. This Declaration may be amended as provided in this section. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

(a) By Declarant. So long as Declarant owns a lot for sale in the community, it may unilaterally amend this Declaration to (a) bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) enable any title insurance company to issue title insurance coverage; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans. However, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Section 9.1, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

(b) By the Board. The Board, by two-thirds (2/3) vote of the directors, shall be authorized to amend this Declaration without the consent of the Owners, to submitting the Community to the Georgia Property Owners' Association Act and to conform this Declaration to any mandatory provisions thereof. Any such amendment shall require the consent of the Declarant so long as the Declarant owns any property within the Community or which may be come subject to this Declaration pursuant to Section 9.1.

(c) By the Owners. This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right to unilaterally annex additional property to the Community).

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

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

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

12.8. Preparer. This Declaration was prepared by Anthony W. Oxley, Hyatt & Stubblefield, P.C., 1200 Peachtree Center South Tower, 225 Peachtree Street, N.E., Atlanta, Georgia 30303.

12.9. 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 only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

12.10. Indemnification. To the fullest extent allowed by applicable Georgia law, the Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

12.11. Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and

documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

12.12. Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board may decide; provided, however, after having received the Board's financial statements at the annual meeting, by a majority of the Total Association Vote, the Owners may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

12.13. Notice of Sale, Lease or Acquisition. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

12.14. Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right to unilaterally annex additional property to the Community) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

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

12.16. Variances. Notwithstanding anything to the contrary contained herein, the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

12.17. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure

of liens), (b) the imposition and collection of assessments as provided in Article IV hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant pursuant to Section 12.4, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

IN WITNESS WHEREOF, the Declarant herein, hereby executes this instrument under seal by and through the duly authorized officers of its general partner, this 19 day of December, 1994.

DECLARANT: Torrey/Cobb, L.P., a Georgia limited partnership

By: TORREY DEVELOPMENT CORPORATION, its
general partner

By: Burl T. Horton, President

Attest: Linda Sloman, Ass't. Secretary

[AFFIX CORPORATE SEAL]

Signed, sealed, and delivered
this 19th day of December
1994, in the presence of:

[Signature]
WITNESS

[Signature]
NOTARY PUBLIC

Notary Public, Forsyth County, Georgia
My Commission Expires March 3, 1997

[AFFIX NOTARY SEAL]

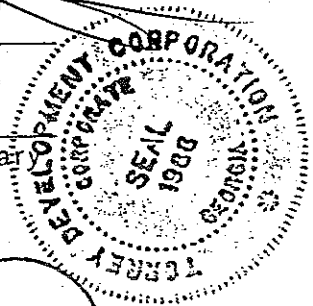
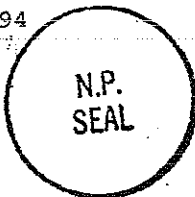
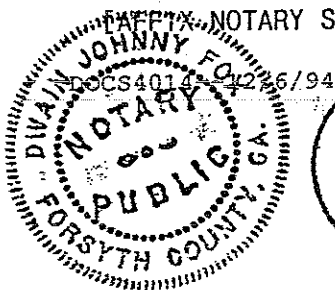


EXHIBIT "A"

Property Submitted To This Declaration of Protective
Covenants Upon Filing in the Public Records

ALL THAT TRACT OR PARCEL OF LAND, lying and being in Land Lots 708 and 709 of the 19th District, Second Section of Cobb County, Georgia, containing approximately 17.34 acres and being designated as Unit I, Phase I: Lots 1-15 (inclusive), Lots 193-211 (inclusive), and Lots 241-242 (inclusive); and the Recreation Area, as more particularly described in that certain Final Subdivision Plat of Milford Woods, Unit I, Phase I, prepared by Gaskins Surveying Co., dated November 29, 1994, containing the seal of John C. Gaskins, G.R.L.S. No 2060, which plat was recorded on December 14, 1994 in Plat Book 153, Page 77, of the Cobb County, Georgia, land records.

BK8644PG0474

EXHIBIT "B"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 698, 708 and 709 of the 19th District, 2nd Section, of Cobb County, Georgia, and being all of Land Lot 709 containing 40 acres, more or less; all of Land Lot 708 except 3-1/2 acres, more or less, located in the northeast corner of said Land Lot; and the south 30 acres, more or less, of Land Lot 698, being more particularly described as follows:

BEGINNING at the southwest corner of Land Lot 709 and running thence east along the south line of said land lot and continuing along the south line of Land Lot 708 a total distance of 2,759 feet to the southeast corner of Land Lot 708; thence north along the east line of Land Lot 708 a distance of 612 feet to an iron pin; thence west, forming an interior angle of 91 degrees 26 minutes, 210 feet to an iron pin; thence north 723 feet to an iron pin on the north side of a drive and on the land lot line, 210 feet west of the northeast corner of said land lot; thence west along the north land lot line, forming an interior angle of 91 degrees 26 minutes, 1,111 feet to the northwest corner of said Land Lot 708 and the southeast corner of Land Lot 698, which corner is shown as a sweetgum tree; thence north along the east line of Land Lot 698 a distance of 960 feet to an iron pin; thence west, forming an interior angle of 90 degrees, 1,406 feet to an iron pin on the west line of said land lot; thence south, forming an interior angle of 90 degrees, along the west line of Land Lot 698 and continuing along the west line of Land Lot 709 a total distance of 2,297 feet to the POINT OF BEGINNING, containing 111.6 acres according to a plat made for Lockheed Aircraft Corporation, Georgia Division, of the J. P. Pair property, by J. P. Phillips, Surveyor, dated December 17, 1956, a copy of said plat now being on file in the office of Lawyers Title Insurance Corporation, Marietta, Georgia.