

For Declaration see BK 9186 Pg. 108  
" " " 4253 P. 95  
" " " 9492 P. 106  
" " " 9898 P. 404

Dec 10565 P202

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Cov 10328 P. 188  
RE 11899 P343

FOR AMEND SEE  
DE Book 13993 Page 25

FOR CANC SEE as  
LB Book 5 Page 6156  
LB Book 5 Page 6157 as

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR REL SEE (tab)  
LB Book 11 Page 2771

FOR

LEGACY PARK

COBB SUPERIOR COURT CLERK

Joy C. Stephenson

94 JUL 11 PM 4:55

FILED AND RECORDED

for BK 10565 P. 202

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BK 9357 P. 60417

for release of Easement see 8699 P. 341

for Amend see 8833 P. 179

for Release see 8847 P. 228

For Release - bk 9898 P. 432  
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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**LEGACY PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 31st day of January, 1994, by Legacy Park of Georgia, L.P., a Georgia limited partnership (the "Declarant").

Declarant desires to subject the real property described in Exhibit "A," which is attached and incorporated by reference to the terms of this Declaration. Declarant is the owner of such property, or if not the owner, has the written consent of the owner to subject such property. This Declaration imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

**Article I**  
**DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

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

1.3. "Association": Legacy Park Community Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

1.4. "Base Assessment": Assessments levied on all Units subject to assessment under Article X to fund Common Expenses for the general

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benefit of all Units, as more particularly described in Sections 10.1 and 10.2.

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

1.6. "Builder": Any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

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

1.8. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.2 of the By-Laws.

1.9. "Common Area": All real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Exclusive Common Area, as defined below.

1.10. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" vote of the Association.

1.11. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

1.12. "Covenant to Share Costs": Any agreement or contract between the Association and an owner or operator of property adjacent to the Properties for the allocation of expenses that benefit both the Association and the owner or operator of such property.

1.13. "Declarant": Legacy Park of Georgia, L.P., a Georgia limited partnership, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding



Declarant; provided there shall be only one Person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

1.14. "Design Guidelines": The architectural guidelines and procedures adopted by the New Construction Committee pursuant to Article XI and applicable to all Units within the Properties.

1.15. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article II of this Declaration.

1.16. "Master Plan": The land use plan for the development of the Legacy Park community prepared by Franzman/Davis & Associates, Ltd., dated September 28, 1993, as it may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article IX.

1.17. "Member": A Person entitled to membership in the Association.

1.18. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.19. "Mortgagee": A beneficiary or holder of a Mortgage.

1.20. "Mortgagor": Any Person who gives a Mortgage.

1.21. "Neighborhood": Each separately developed residential area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each single-family detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development. Neighborhood boundaries may be established and modified as provided in Section 3.4.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined in Section 1.23) having concurrent jurisdiction over the property within the Neighborhood.

1.22. "Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 10.1 and 10.4.

1.23. "Neighborhood Association": Any other owners association having concurrent jurisdiction over any Neighborhood.

1.24. "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to the Neighborhoods.

1.25. "Nonresidential Association": Legacy Park Nonresidential Owners Association, Inc., a nonprofit corporation to be formed under the laws of the State of Georgia to serve as a mandatory membership owners association having jurisdiction over all of the property made subject to the Nonresidential Declaration.

1.26. "Nonresidential Declaration": That certain Declaration of Covenants, Conditions and Restrictions for Legacy Park Nonresidential Properties to be recorded by Declarant in the Office of the Clerk of the Superior Court of Cobb County, Georgia, as it may be amended from time to time.

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

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

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

1.30. "Special Assessment": Assessments levied in accordance with Section 10.6.

1.31. "Specific Assessment": Assessments levied in accordance with Section 10.7.

1.32. "Supplemental Declaration": An instrument filed in the Office of the Clerk of the Superior Court of Cobb County, Georgia pursuant to Article IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.33. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, cluster homes and single-family detached houses on separately platted lots,

as well as vacant land intended for development as such, but shall not include Common Areas, common property of any Neighborhood Association, or property dedicated to the public.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units as determined above, and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

**Article II**  
**PROPERTY RIGHTS**

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

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association after notice and a hearing pursuant to Section 3.22 of the By-Laws;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission or other fees for the use of any recreational facility situated upon the Common Area;
- (g) The right of the Board to permit use of any recreational facilities situated on the Common Area by Persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property

as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 14.2; and

(i) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.2.

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

2.2. Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Units within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, bridges, parks and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Units in those Neighborhoods to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed by which the Declarant conveys the Common Area to the Association or on the plat of survey relating to such Common Area; provided, however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Areas are assigned, if applicable, and within the Neighborhood(s) to which the Exclusive Common Areas are to be assigned. As long as the Declarant owns any property described on Exhibits "A" or "B" for development and/or sale, any such assignment or reassignment shall also require the consent of the Declarant.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which certain Exclusive Common Areas are assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

**Article III**  
**MEMBERSHIP AND VOTING RIGHTS**

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Georgia.

3.2. Membership. Every Owner shall be a Member of the Association.

There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, however, there shall be only one vote per Unit, and no vote shall be exercised for any property which is exempt from assessment under Section 10.12.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Section 3.2 of the By-Laws.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

(i) the expiration of the Class "B" Control Period pursuant to Article III of the By-Laws; or

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(ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" member shall be exercised by that Member. If there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

3.4. Neighborhoods. The Declarant, in its sole discretion, may establish Neighborhoods within the Properties by designation on Exhibit "A" to this Declaration, or by Supplemental Declaration. The Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to change the name or boundaries of a Neighborhood; provided, two or more Neighborhoods shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods.

Every Unit shall be located within a Neighborhood. The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except in the case of a condominium or otherwise as required by law. Any Neighborhood which does not have a Neighborhood Association may elect a Neighborhood Committee, as described in Section 5.3 of the By-Laws, to represent the interests of Owners of Units in such Neighborhood.

Each Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood and, upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Neighborhood and the consent of any Builder who owns or is under contract to purchase any Unit in the Neighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such services shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Article X hereof.

#### **Article IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration, the By-Laws and consistent with the Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of (subject to Section 14.2) tangible and intangible personal property and real property. The Declarant or its designees may convey to the Association

improved or unimproved real estate located within the properties described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall reconvey to Declarant, at no cost to Declarant, any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the By-Laws, or Association rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with Section 3.22 of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action from the violating Owner.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit the City of Kennesaw and/or Cobb County to enforce ordinances on the Properties for the benefit of the Association and its Members.

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

4.5. Governmental Interests. For so long as the Declarant owns any property described on Exhibits "A" or "B," the Declarant may designate sites within the Properties for fire, police, water, and other utility facilities, parks, and other public or quasi public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding,

if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

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

4.7. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the City of Kennesaw, Cobb County, Georgia, or to any other local, state, or federal governmental entity, subject to such approval as may be required by Section 14.2.

4.8. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measures can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9. Powers of the Association Relating to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association or Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the



Neighborhood Association or Neighborhood Committee, and (b) require that a proposed budget include certain items and that expenditures be made therefor.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood Committee shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association or Neighborhood Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 10.7. Such assessments may be collected as a Specific Assessment hereunder and shall be subject to all lien rights provided for herein.

4.10. Utility Lines. Each Owner, occupant, guest, and invitee acknowledges that neither the Association, the Board nor Declarant shall in any way be considered insurers or guarantors of health within the Properties and neither the Association, the Board, nor Declarant shall be held liable for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Properties. Each Owner, occupant, guest, and invitee assumes all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that neither Declarant nor the Association have made any representations or warranties, nor has any Owner, occupant, guest, or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

#### **Article V MAINTENANCE**

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all Common Area;
- (b) all landscaping and other flora, parks, lakes, entry features, bridges, sidewalks, swimming pools, recreational centers, playing field(s), playground(s), tennis courts, bike and pedestrian pathways/trails, street lights, park benches, gazebos, and arbors situated upon the Common Area;
- (c) landscaping, sidewalks, streetlights, street furniture and signage within public rights-of-way within or abutting the Properties;
- (d) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any

Supplemental Declaration, Covenant to Share Costs, or any contract or agreement for maintenance thereof entered into by the Association; and

(e) all streams and/or wetlands located within the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith.

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

The Association may assume maintenance responsibility for the common property of any Neighborhood Association, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

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

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any covenant to share costs, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any agreement, Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 10.7. The Association

shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

Each Owner of a Unit subject to the Landscape Easement referenced in Section 13.6 shall not remove any tree, shrub or similar vegetation from this area without prior approval pursuant to Section 11.2 hereof.

5.3. Neighborhood's Responsibility. Any Neighborhood Association whose common property is adjacent to any portion of the Common Area upon which a wall, other than a wall which forms part of a building, is constructed shall maintain and irrigate that portion of the Common Area between the wall and the Neighborhood Association's property line. Any Neighborhood Association whose common property fronts on any roadway within the Properties shall maintain and irrigate the landscaping on that portion of the Common Area or right-of-way between the property line and the nearest curb of such roadway. Any Neighborhood Association whose common property abuts the bank or water's edge, or abuts a portion of the Common Area abutting the bank or water's edge, of any lake, stream, or wetland area within the Properties shall maintain and irrigate all landscaping between the boundary of its common property and such bank or water's edge; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article XI hereof.

Any Neighborhood Association having responsibility for maintenance of all or a portion of the property within such Neighborhood pursuant to additional covenants applicable to such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any Neighborhood Association fails to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Units within such Neighborhood as provided in Section 10.7.

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

5.5. Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Disputes. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XVI.

**Article VI**  
**INSURANCE AND CASUALTY LOSSES**

**6.1. 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 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 Area, if any, 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. 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 policy 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 1/6 of the annual Base Assessments on all Units 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, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

In addition, the Association may obtain and maintain property insurance on the insurable improvements within any Neighborhood in such amounts and with such coverages as determined by the Board. Any such policies shall provide for a certificate of insurance to be furnished to the Neighborhood Association or Neighborhood Committee, as applicable, and to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment, except that (i) premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Units within the benefitted Neighborhood as a Neighborhood Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual 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 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 6.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.22 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 10.7.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National

Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

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

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

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(vi) a cross liability provision; and

(vii) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties 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 Area shall be repaired or reconstructed unless Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss 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 Area shall be repaired or reconstructed.

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

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

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage.

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, and liability insurance, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners hereunder, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Unit and the Owner thereof pursuant to Section 10.7.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide

Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Unit. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

**Article VII**  
**NO PARTITION**

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article 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.

**Article VIII**  
**CONDEMNATION**

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.



**Article IX**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

9.1. Annexation without Approval of Membership. Until all property described on Exhibit "B" has been subjected to this Declaration or December 31, 2008, whichever is earlier, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Office of the Clerk of the Superior Court of Cobb County, Georgia. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

9.2. Annexation with Approval of Membership. The Association may annex real property other than that described on Exhibit "B," and after December 31, 2008, any property described on Exhibit "B," to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Office of the Clerk of the Superior Court of Cobb County, Georgia. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

9.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article IX for the purpose of removing any portion of the Properties then owned by the Declarant or its affiliates or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

9.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain

and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any Supplemental Declaration annexing additional property may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

9.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or "B."

#### **Article X ASSESSMENTS**

10.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 10.6; and (d) Specific Assessments as described in Section 10.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Georgia law) computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 10.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by foreclosure or power of sale as provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base

Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

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

10.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay regular assessments on all of its unsold Units, notwithstanding the commencement date for assessments set forth in Section 10.9, or to pay the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

10.3. Computation of Base Assessment. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.5.

The Base Assessment shall be levied equally against all Units subject to assessments; provided, each Unit shall be assessed at 50% of the full Base Assessment until the first day of the first month following (a) the issuance of a certificate of occupancy for the residential dwelling thereon or (b) actual occupancy of the Unit, whichever is earlier. The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 10.9 on the first day of the

fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article IX, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 10.2), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

Notwithstanding the above, during the Class "B" Control Period, there shall be a maximum Base Assessment for each year. The maximum Base Assessment for the fiscal year 1994 shall be \$360.00. The maximum Base Assessment shall automatically increase for each subsequent fiscal year by 10% over the maximum Base Assessment of the immediately preceding fiscal year. The maximum Base Assessment for any year may be increased by an amount greater than that set forth above with the consent of at least 67% of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present.

10.4. Computation of Neighborhood Assessments. At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment; provided, however, all Neighborhoods which are similarly situated shall be treated the same. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and, upon approval in accordance with Section 3.4 herein, any

additional costs shall be added to the Neighborhood budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood benefitted thereby and levied as a Neighborhood Assessment; provided, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefitted Units in proportion to the benefit received.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least 30 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by a majority of the Owners of Units in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least 10% of the Units in such Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood.

If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.5. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the budget period.

10.6. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall require the affirmative vote or written consent of Members (if a Common Expense) or Owners (if a Neighborhood Expense) representing at least 51% of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

10.7. Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within a Neighborhood or within the Properties that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests. The Association may also levy a Specific Assessment against any Unit or Neighborhood to reimburse the Association for costs incurred in bringing the Unit or Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules, provided the Board gives prior notice to the Unit Owner or the Neighborhood, as applicable, and an opportunity for a hearing.

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

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

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 10.9, including such acquirer, its successors and assigns.

10.9. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which a subdivision plat is recorded for the property comprising the Unit, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

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10.10. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.11. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to 1/6 of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

10.12. Exempt Property. The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

#### **Article XI ARCHITECTURAL STANDARDS**

11.1. General. No structure shall be placed, erected, or installed upon any Unit, 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 approval of the appropriate committee under Section 11.2. Notwithstanding this, the Board may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Any Owner may remodel, paint or redecorate the interior of his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be

required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or building designer acceptable to the NCC in its sole discretion.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area 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.

11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the two committees as described in subsections (a) and (b) below. The members of the Committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

(a) New Construction Committee. The New Construction Committee (NCC) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the NCC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board may, at its option, either appoint the members of the NCC, who shall thereafter serve and may be removed in the Board's discretion, or combine the NCC and the MC (hereafter defined) into a single architectural review committee which shall assume all powers and responsibilities of both committees under this Declaration.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee (MC) to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space. The MC may delegate its authority as to a particular Neighborhood to the Neighborhood Association, if any, so long as the MC has determined that such Neighborhood Association has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. The NCC shall have the right to veto any action taken by



the MC or a Neighborhood Association which the NCC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the NCC.

### 11.3. Guidelines and Procedures.

(a) The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.

The NCC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The NCC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the NCC.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the appropriate committee for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the committees 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.

In the event that the NCC or MC fails to approve or to disapprove any application within 30 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 the Design Guidelines unless a variance has been granted in writing by the NCC pursuant to Section 11.5.

11.4. 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.

11.5. Variance. The NCC 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 NCC 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.

11.6. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the NCC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit.

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

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

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

**Article XII**  
**USE RESTRICTIONS AND RULES**

12.1. Plan of Development: Applicability: Effect. Declarant has established a general plan of development for the Properties as a master planned community in order to enhance all Owners' quality of life and

collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community. The Properties are subject to the land development, architectural, and design provisions set forth in Article XI, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

12.2. Authority to Promulgate Use Restrictions and Rules. Initial use restrictions applicable to all of the Properties are attached as Exhibit "C" to this Declaration. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

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

Such action shall become effective unless disapproved at a meeting by Members representing at least 2/3 of the total Class "A" votes and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in By-Laws Section 2.4.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in By-Laws Section 2.4, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of 2/3 of the total Class "A" votes and the approval of the Class "B" Member, if any.

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

12.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified

hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules may change from time to time.

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

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

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

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

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

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

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

lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of its costs to administer that lease or transfer.

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

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

The limitations in this Section 12.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 17.2.

#### **Article XIII EASEMENTS**

13.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

13.2. Easements for Utilities, Etc. There are hereby reserved unto Declarant (so long as the Declarant owns any property described on Exhibit "A" or "B," of this Declaration), the Association, and the designees of each (which may include, without limitation, the City of Kennesaw, Cobb County, Georgia and any utility company(ies)), perpetual nonexclusive easements for the purpose of installing, repairing, maintaining, operating, replacing and removing cable television systems, master television antenna systems, security and similar systems, roads, walkway, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, storm drainage, telephone, gas, and electric facilities and appurtenances, over, on, across, under, and through the Properties, as well as an easement for access of vehicular and pedestrian traffic over, across and through the Properties, as necessary, to exercise the perpetual nonexclusive easements described above.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the

expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section 13.2, or (ii) to define the limits of any such easements; provided, however, Declarant shall relocate, at its own expense, any utility lines or facilities located on or under that portion of the Properties being released.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

No utilities may be installed or replaced on the Properties without the approval of the Board or as provided by Declarant.

13.3. Easements for Lake Maintenance and Flood Water. The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any lake, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association, and their designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) at any point thereon which is at or below 962 feet above mean sea level in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, streams, and wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such lakes, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising its rights under this Section. All persons

entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section 13.3, or (ii) to define the limits of any such easements.

13.4. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such Property.

13.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

13.6. Landscape Easements and Tree Preservation. There are hereby reserved to Declarant (so long as the Declarant owns any property described on Exhibits "A" or "B" to this Declaration), the Association and the designees of each, non-exclusive easements for access, installation, pruning and other maintenance, removal and replacement of street trees and landscaping over those portions of the Properties lying adjacent to public road rights-of-way and consisting of a strip of land 30 feet in width and

running the entire length of, and on both sides of, the loop road around the recreational and park area ("Landscape Easement") and over such other portions of the Properties as are designated "Landscape and Access Easement" on the recorded plats of the Properties. Such easement shall include the right to disturb existing landscaping within the Landscape Easement, to dig holes and to temporarily pile dirt and plant material upon the Landscape Easement, provided the area is restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of the activities authorized hereunder. Nothing herein shall obligate the Declarant or the Association to undertake any of the activities which such easement authorizes. Except as may otherwise be provided in any written agreement executed by the Declarant, the Declarant may, but shall not be obligated to, install street trees and landscaping within such public rights-of-way and/or these Landscape Easements at its option, at such times and in such numbers and locations as it may deem appropriate in its sole discretion. These Landscape Easement areas shall not be disturbed by any Owner without prior approval in accordance with Section 11.2.

13.7. Easement for Special Events. Declarant hereby reserves for itself, its successors, assigns and designees a perpetual, non-exclusive easement over the Common Areas for the purpose of conducting educational, cultural, entertainment, or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

#### **Article XIV MORTGAGE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

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

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

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of



the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Members representing at least 67% of the total Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

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

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

14.5. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

14.6. Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

14.7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

14.8. HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the Federal Housing Administration or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the mortgage on any Unit: annexation of additional property other than that described on Exhibit "B," dedication, conveyance or mortgaging of Common Area, or material amendment of this Declaration. If either FHA or VA is insuring or guaranteeing the mortgage on any Unit, no portion of the Common Property may be mortgaged or conveyed unless at least 67% of the total Class "A" Members consent, not including the Declarant.

#### **Article XV DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Office of the Clerk of the Superior Court of Cobb County, Georgia.

The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

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

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

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 20 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

#### **Article XVI DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

16.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 16.2, shall be resolved using the procedures set forth in Section 16.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

16.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 16.3:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article X (Assessments);

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI (Architectural Standards) and Article XII (Use Restrictions);

(c) any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the

laws of the State of Georgia or federal law in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00;

(d) any suit involving two or more Persons where all of the Persons are not Bound Parties; and

(e) any suit arising out of a written contract between the Declarant and a Builder.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 16.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 16.3 shall require the approval of the Association.

16.3. Mandatory Procedures for All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

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

(i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

(ii) the basis of the Claim (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the Claim arises);

(iii) what Claimant wants Respondent to do or not do to resolve the Claim; and

(iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

(i) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

(i) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of an independent agency in the metropolitan Atlanta, Georgia, area providing mediation services upon which the Parties may mutually agree.

(ii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(iii) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(iv) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

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

**16.4. Allocation of Costs of Resolving Claims.**

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 16.3 (a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 16.3(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 16.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 16.4(c).

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

**16.5. Enforcement of Resolution.** If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 16.3 and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 16.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

**Article XVII  
GENERAL PROVISIONS**

**17.1. Term.** This Declaration shall run with the land and bind the Properties. The covenants, conditions, restrictions and easements shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of 20 years and shall be automatically renewed for successive terms of 20 years perpetually until terminated as provided by Georgia law.

**17.2. Amendment.**

(a) **By Declarant.** The Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal

Home Loan Mortgage Corporation, to make or purchase mortgage loans on the Units; (iv) to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (v) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Declarant still owns property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner or title to any Unit without the consent of the affected Owner.

(b) By Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the total Class "A" votes in the Association, including 67% of the Class "A" votes held by Members other than the Declarant, and the consent of the Declarant, so long the Declarant has an option to subject additional property to this Declaration pursuant to Section 9.1. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable.

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

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

(c) Effective Date and Validity. To be effective, any amendment must be recorded in the Office of the Clerk of the Superior Court of Cobb County, Georgia.

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

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

17.4. 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 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

17.5. Litigation. After termination of the Class "B" Membership, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without

limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article X; (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 approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision shall apply in addition to the provisions of Article XVI, if applicable.

17.6. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other covenants applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than set forth in this Declaration, and the Association shall have the standing and authority to enforce the same.

17.7. Use of the Words "Legacy Park". No Person shall use the words "Legacy Park" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the term "Legacy Park" in printed or promotional matter where such term is used solely to specify that particular property is located within Legacy Park, and the Association shall be entitled to use the words "Legacy Park" in its name.

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

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

17.10. Nonresidential Properties; Covenant to Share Costs. Adjacent to or in the vicinity of the Properties there may be certain




nonresidential areas, including, without limitation, retail, commercial, or business areas, which are not subject to this Declaration and are neither Units nor Common Area as defined in this Declaration (hereinafter "nonresidential properties"). Such nonresidential properties are not subject to this Declaration, and the owners of such nonresidential properties shall not be Members of the Association and shall not be entitled to vote, nor shall they be subject to assessment under Article X of this Declaration.

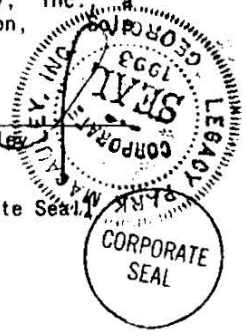
The owners of some or all of the nonresidential properties may enter into agreements with the Association which obligate the owners of such nonresidential properties to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners of such nonresidential properties and the owners within the Properties or which obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such nonresidential properties, if any, which are used by or benefit jointly the owners of such nonresidential properties and the owners within the Properties. The owners of such nonresidential properties shall be subject to assessment by the Association in accordance with the provisions of the agreement. The owners of the nonresidential properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 31st day of January, 1994.

DECLARANT: LEGACY PARK OF GEORGIA, L.P., a Georgia limited partnership

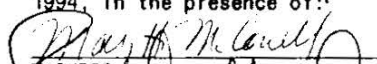
By: Legacy Park Macauley, Inc., a Georgia corporation, General Partner


By:   
Stephen H. Macauley  
Its: President



[Corporate Seal]

Signed, sealed, and delivered this 31st day of January, 1994, in the presence of:

  
WITNESS

  
NOTARY PUBLIC

My Commission Expires  
DOCS258--11/23/93



My Commission Expires  
April 1, 1995

## EXHIBIT "A"

### Overall Tract

ALL THAT TRACT or parcel of land lying and being in Land Lots 50, 51, 63, 64, 65, 88, 89 and 90 of the 20th District, 2nd Section of Cobb County, Georgia, containing 612.818 acres, same being more particularly described as follows:

BEGINNING at an iron pin found at the corner common to Land Lots 65, 66, 87 and 88, said District, Section and County; thence traveling along the Land Lot Line common to Land Lots 65 and 66 north 02 degrees 11 minutes 54 seconds east a distance of 2,336.65 feet to an iron pin found on the southerly Right-of-Way Line of McEver Road (Fifty (50') foot Right-of-Way); thence leaving said Land Lot Line and traveling along the southerly Right-of-Way Line of McEver Road south 82 degrees 35 minutes 13 seconds east a distance of 183.16 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 436.44 feet (said arc being subtended by a chord bearing north 79 degrees 38 minutes 30 seconds east a chord distance of 429.47 feet and having a radius of 703.58 feet) to a point on said Right-of-Way Line; thence continuing along the southeasterly and easterly Right-of-Way Line of said Right-of-Way Line of McEver Road north 61 degrees 52 minutes 16 seconds east a distance of 145.74 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 226.92 feet (said arc being subtended by a chord bearing north 59 degrees 51 minutes 24 seconds east a chord distance of 226.88 feet and having a radius of 3,227.39 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line north 57 degrees 50 minutes 33 seconds east a distance of 190.56 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 357.77 feet (said arc being subtended by a chord bearing north 40 degrees 30 minutes 58 seconds east a chord distance of 352.34 feet and having a radius of 591.55 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line north 23 degrees 11 minutes 23 seconds east a distance of 91.59 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 241.68 feet (said arc being subtended by a chord bearing north 18 degrees 51 minutes 54 seconds east a chord distance of 241.45 feet and having a radius of 1,600.92 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line north 14 degrees 32 minutes 25 seconds east a distance of 289.33 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 393.10 feet (said arc being subtended by a chord bearing north 06 degrees 23 minutes 07 seconds east a chord distance of 391.77 feet and having a radius of 1,380.95 feet) to a point on the southerly Right-of-Way Line of L & N Railway (Sixty-six (66') foot Right-of-Way); thence leaving the Right-of-Way Line of said McEver Road and traveling along the southerly Right-of-Way Line of said L & N Railway south 89 degrees 07 minutes 07 seconds east a distance of 1,171.03 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the right an arc distance of 605.00 feet (said arc being subtended by a chord bearing south 73 degrees 40 minutes 16 seconds east a chord distance of 597.69 feet and having a radius of 1,122.00 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south

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58 degrees 13 minutes 26 seconds east a distance of 720.71 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the right an arc distance of 546.20 feet (said arc being subtended by a chord bearing south 50 degrees 25 minutes 29 seconds east a chord distance of 544.52 feet and having a radius of 2,006.31 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 42 degrees 37 minutes 32 seconds east a distance of 276.78 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 588.44 feet (said arc being subtended by a chord bearing south 58 degrees 12 minutes 27 seconds east a chord distance of 581.22 feet and having a radius of 1,081.87 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 73 degrees 47 minutes 23 seconds east a distance of 265.84 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the right an arc distance 494.20 feet (said arc being subtended by a chord bearing south 68 degrees 04 minutes 51 seconds east a chord distance of 492.71 and having a radius of 1,836.59 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 58 degrees 22 minutes 20 seconds east a distance of 1,043.50 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 382.83 feet (said arc being subtended by a chord bearing south 67 degrees 24 minutes 36 seconds east a chord distance of 381.24 feet and having a radius of 1,213.49 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 76 degrees 26 minutes 52 seconds east a distance of 242.67 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the right an arc distance of 347.40 feet (said arc being subtended by a chord bearing south 66 degrees 40 minutes 32 seconds east a chord distance of 345.71 feet and having a radius of 1,018.41 feet) to an iron pin set on said Right-of-Way Line; thence leaving said Right-of-Way Line and traveling south 21 degrees 54 minutes 08 seconds west a distance of 320.08 feet to an iron pin set on the northwesterly Right-of-Way Line of Jiles Road (Fifty (50') foot Right-of-Way); thence traveling along the northwesterly Right-of-Way Line of Jiles Road along a curve to the left an arc distance of 100.03 feet (said arc being subtended by a chord bearing south 42 degrees 03 minutes 23 seconds west a chord distance of 97.97 feet and having a radius of 141.86 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 21 degrees 51 minutes 22 seconds west a distance of 925.08 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the right an arc distance of 338.29 feet (said arc being subtended by a chord bearing south 23 degrees 49 minutes 00 seconds west a chord distance of 338.23 feet and having a radius of 4,943.17 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 25 degrees 46 minutes 38 seconds west a distance of 60.95 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the right an arc distance of 119.71 feet (said arc being subtended by a chord bearing south 56 degrees 41 minutes 01 second west a chord distance of 113.99 feet and having a radius of 110.96 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the right an arc distance of 119.77 feet (said arc being subtended by a chord bearing north 89 degrees 17 minutes 27 seconds west a chord distance of 119.71 feet and having a radius of 1,099.94 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line north 86 degrees 10 minutes 22 seconds west a distance of 254.24 feet to a point on said

Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the right an arc distance of 282.56 feet (said arc being subtended by a chord bearing north 84 degrees 52 minutes 40 seconds west a chord distance of 282.54 feet and having a radius of 6,238.92 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line north 83 degrees 34 minutes 54 seconds west a distance of 45.37 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 220.75 feet (said arc being subtended by a chord bearing south 78 degrees 29 minutes 50 seconds west a chord distance of 217.17 feet and having a radius of 352.88 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 80 degrees 34 minutes 33 seconds west a distance of 187.85 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 303.39 feet (said arc being subtended by a chord bearing south 44 degrees 02 minutes 19 seconds west a chord distance of 299.20 feet and having a radius of 525.58 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 311.32 feet (said arc being subtended by a chord bearing south 25 degrees 47 minutes 01 second west a chord distance of 311.28 feet and having a radius of 5,192.15 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 24 degrees 03 minutes 57 seconds west a distance of 587.62 feet to an iron pin found on said Right-of-Way Line; thence leaving said Right-of-Way Line and traveling north 62 degrees 08 minutes 46 seconds west a distance of 197.49 feet to an iron pin found; thence traveling south 23 degrees 09 minutes 41 seconds west a distance of 233.01 feet to an iron pin set; thence traveling north 86 degrees 50 minutes 09 seconds west a distance of 1,008.45 feet to an iron pin found; thence traveling north 02 degrees 56 minutes 15 seconds east a distance of 1,347.19 feet to an iron pin found on the Land Lot Line common to Land Lots 64 and 89, said District, Section and County; thence traveling along said Land Lot Line north 86 degrees 34 minutes 14 seconds west a distance of 1,314.53 feet to an iron pin found at the corner common to Land Lots 64, 65, 88 and 89, said District, Section and County; thence traveling along the Land Lot Line common to Land Lots 88 and 89 south 03 degrees 09 minutes 17 seconds west a distance of 1,881.17 feet to an iron pin found on said Land Lot Line; thence leaving said Land Lot Line and traveling north 87 degrees 31 minutes 07 seconds west a distance of 1,614.35 feet to an iron pin found; thence traveling north 02 degrees 07 minutes 17 seconds east a distance of 1,826.38 feet to an iron pin set on the Land Lot Line common to Land Lots 65 and 88, said District, Section and County; thence traveling along said Land Lot Line north 86 degrees 28 minutes 17 seconds west a distance of 986.67 feet to an iron pin found on the corner common to Land Lots 65, 66, 87 and 88, said District, Section and County, which common corner is the POINT OF BEGINNING.

ALL AS SHOWN on that certain Survey entitled "SURVEY FOR MACAULEY/WELAND LEGACY PARK ASSOCIATES, LEGACY PARK OF GEORGIA, L.P., LEGACY PARK MACULEY, INC., BANK SOUTH MORTGAGE, INC., CHICAGO TITLE INSURANCE COMPANY AND MACAULEY PROPERTIES LIMITED", prepared by Rochester & Associates, Inc., bearing the seal and certification of James C. Jones, Georgia Registered Land Surveyor No. 2298, dated September 12, 1991, last revised January 12, 1994.

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LESS AND EXCEPT FROM THE ABOVE-DESCRIBED "OVERALL TRACT" THE  
FOLLOWING DESCRIBED TRACTS OR PARCELS OF LAND, BEING IDENTIFIED  
AS POD A, POD N, POD O, AND POD P:

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**EXHIBIT "A"**

**Pod A**

ALL THAT TRACT or parcel of land lying and being in Land Lot 63 of the 20th District, 2nd Section of Cobb County, Georgia, containing 32.676 acres, same being more particularly described as follows:

BEGINNING at a point on the southerly Right-of-Way Line of L & N Railway (Sixty-six (66') foot Right-of-Way) which lies a distance of 5527.52 feet southeasterly along said Right-of-Way Line from the intersection of said Right-of-Way Line with the easterly Right-of-Way Line of McEver Road (Fifty (50') foot Right-of-Way); thence traveling along said Right-of-Way Line of L & N Railway south 58 degrees 22 minutes 20 seconds east a distance of 184.18 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 382.83 feet (said arc being subtended by a chord bearing south 67 degrees 24 minutes 36 seconds east a chord distance of 381.24 feet and having a radius of 1213.49 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 76 degrees 26 minutes 51 seconds east a distance of 242.67 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the right an arc distance of 347.40 feet (said arc being subtended by a chord bearing south 66 degrees 40 minutes 27 seconds east a chord distance of 345.71 feet and having a radius of 1018.41 feet) to an iron pin set on said Right-of-Way Line; thence leaving said Right-of-Way Line and traveling south 21 degrees 54 minutes 08 seconds west a distance of 320.08 feet to an iron pin set on the northwesterly Right-of-Way Line of Jiles Road (Fifty (50') foot Right-of-Way); thence traveling along said Right-of-Way Line of Jiles Road along a curve to the left an arc distance of 100.03 feet (said arc being subtended by a chord bearing south 42 degrees 03 minutes 23 seconds west a chord distance of 97.97 feet and having a radius of 141.86 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 21 degrees 51 minutes 22 seconds west a distance of 635.48 feet to a point on said Right-of-Way Line; thence leaving said Right-of-Way Line and traveling north 78 degrees 35 minutes 34 seconds west a distance of 900.00 feet to a point; thence traveling south 35 degrees 54 minutes 56 seconds west a distance of 430.00 feet to a point; thence traveling south 46 degrees 12 minutes 18 seconds west a distance of 339.07 feet to a point on the northeasterly Right-of-Way Line of Proposed Road (one-hundred (100') foot Right-of-Way); thence traveling along the northeasterly Right-of-Way Line of Proposed Road along a curve to the right an arc distance of 1.58 feet (said arc being subtended by a chord bearing north 30 degrees 35 minutes 45 seconds west a chord distance of 1.58 feet and a radius of 65.15 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line north 30 degrees 25 minutes 30 seconds west a distance of 98.42 feet to a point on said Right-of-Way Line; thence leaving said Right-of-Way Line north 46 degrees 12 minutes 18 seconds east a distance of 224.25 feet to a point; thence traveling north 13 degrees 59 minutes 36 seconds east a distance of 164.40 feet to a point; thence traveling north 11 degrees 49 minutes 06 seconds east a distance of 315.37 feet to a point; thence traveling north 45 degrees 49 minutes 57 seconds east a distance of 130.75

**EXHIBIT "A"**

feet to a point; thence traveling north 65 degrees 19 minutes 51 seconds east a distance of 152.07 feet to a point; thence traveling north 02 degrees 48 minutes 45 seconds east a distance of 308.70 feet to a point; thence traveling north 13 degrees 26 minutes 23 seconds east a distance of 339.11 feet to a point; thence traveling north 33 degrees 10 minutes 47 seconds east a distance of 268.35 feet to a point; thence traveling north 34 degrees 04 minutes 47 seconds east a distance of 89.65 feet to a point on the southerly Right-of-Way Line of said L & N Railway, which point is the POINT OF BEGINNING.

ALL AS SHOWN on that certain Survey entitled "Survey for Legacy Parks, L.P., Being Pod A", prepared by Rochester & Associates, Inc., bearing the seal and certification of James C. Jones, Georgia Registered Land Surveyor No. 2298, dated November 17, 1993.

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EXHIBIT "A"

POD N

ALL THAT TRACT or parcel of land lying and being in Land Lots 63, 89 and 90 of the-20th District, 2nd Section of Cobb County, Georgia, containing 6.210 acres, same being more particularly described as follows:

BEGINNING at a point on the westerly Right-of-Way Line of Jiles Road (Right-of-Way Varies) which lies south 70 degrees 11 minutes 56 seconds west a distance of 2855.34 feet from the corner common to Land Lots 64, 65, 88 and 89, said District, Section and County; thence leaving said Right-of-Way Line and traveling north 66 degrees 54 minutes 53 seconds west a distance of 35.55 feet to a point; thence traveling north 17 degrees 26 minutes 17 seconds west a distance of 165.39 feet to a point; thence traveling north 12 degrees 40 minutes 48 seconds east a distance of 155.67 feet to a point; thence traveling north 09 degrees 42 minutes 44 seconds west a distance of 157.44 feet to a point; thence traveling north 35 degrees 49 minutes 28 seconds west a distance of 86.16 feet to a point; thence traveling north 36 degrees 22 minutes 00 seconds east a distance of 581.71 feet to a point; thence traveling north 45 degrees 28 minutes 21 seconds east a distance of 121.93 feet to a point on the westerly Right-of-Way Line of Proposed Roadway (One hundred (100') foot Right-of-Way); thence traveling along said Right-of-Way Line south 30 degrees 25 minutes 32 seconds east a distance of 154.07 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the right an arc distance of 75.63 feet (said arc being subtended by a chord bearing south 27 degrees 20 minutes 06 seconds east a chord distance of 75.59 feet and a radius of 700.00 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 24 degrees 14 minutes 27 seconds east a distance of 91.66 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 17 degrees 36 minutes 21 seconds west a distance of 83.05 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 40 degrees 35 minutes 05 seconds west a distance of 52.72 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 251.91 feet (said arc being subtended by a chord bearing south 39 degrees 28 minutes 48 seconds west a chord distance of 250.12 feet and a radius of 609.00 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 27 degrees 38 minutes 11 seconds west a distance of 137.07 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 62 degrees 18 minutes 28 seconds east a distance of 3.95 feet to a point at the intersection of said Right-of-Way Line and the northwesterly Right-of-Way Line of said Jiles Road; thence leaving the northwesterly Right-of-Way Line of said Proposed Roadway and traveling along the northwesterly Right-of-Way Line of said Jiles Road along a curve to the left an arc distance of 262.89 feet (said arc being subtended by a chord bearing south



25 degrees 31 minutes 14 seconds west a chord distance of 262.86 feet and a radius of 5192.15 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 24 degrees 03 minutes 57 seconds west a distance of 160.27 feet to a point on said Right-of-Way Line, which point is the POINT OF BEGINNING.

ALL AS SHOWN on that certain Survey entitled "Survey for Legacy Park, L.P., Being Pod N", prepared by Rochester & Associates, Inc., bearing the seal and certification of B. K. Rochester, Jr., Georgia Registered Land Surveyor No. 1534, dated November 23, 1993.

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**EXHIBIT "A"**

POD O

ALL THAT TRACT or parcel of land lying and being in Land Lot 63 of the 20th District, 2nd Section of Cobb County, Georgia, containing 2.946 acres, same being more particularly described as follows:

BEGINNING at a point on the northeasterly Right-of-Way Line of Proposed Roadway (One hundred (100') foot Right-of-Way) which lies south 88 degrees 05 minutes 49 seconds east a distance of 3241.65 feet from the corner common to Land Lots 64, 65, 88 and 89, said District, Section and County; thence traveling along said Right-of-Way Line north 24 degrees 14 minutes 27 seconds west a distance of 91.89 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 84.78 feet (said arc being subtended by a chord bearing north 27 degrees 16 minutes 37 seconds west a chord distance of 84.74 feet and a radius of 800.00 feet) to a point on said Right-of-Way Line; thence leaving said Right-of-Way Line and traveling north 46 degrees 12 minutes 18 seconds east a distance of 339.07 feet to a point; thence traveling north 35 degrees 54 minutes 56 seconds east a distance of 27.04 feet to a point; thence traveling south 30 degrees 32 minutes 54 seconds east a distance of 518.65 feet to a point on the northerly Right-of-Way Line of Proposed Right-of-Way; thence traveling along said Right-of-Way Line north 88 degrees 47 minutes 47 seconds west a distance of 119.05 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line north 75 degrees 18 minutes 02 seconds west a distance of 51.42 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line north 88 degrees 47 minutes 47 seconds west a distance of 36.05 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 169.32 feet (said arc being subtended by a chord bearing south 83 degrees 23 minutes 33 seconds west a chord distance of 168.79 feet and a radius of 621.00 feet) to a point at the intersection of said Right-of-Way Line and the northeasterly Right-of-Way Line of Proposed Roadway (One hundred (100') foot Right-of-Way); thence leaving said Right-of-Way Line and traveling along the northeasterly Right-of-Way Line of Proposed Roadway (One hundred (100') foot Right-of-Way) north 65 degrees 35 minutes 55 seconds west a distance of 82.57 feet to a point, which point is the POINT OF BEGINNING.

ALL AS SHOWN on that certain Survey entitled "Survey for Legacy Park, L.P., Being Pod O", prepared by Rochester & Associates, Inc., bearing the seal and certification of James C. Jones, Georgia Registered Land Surveyor No. 2298, dated November 23, 1993.

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EXHIBIT "A"

POD P

ALL THAT TRACT or parcel of land lying and being in Land Lot 63 of the 20th District, 2nd Section of Cobb County, Georgia, containing 13.433 acres, same being more particularly described as follows:

BEGINNING at a point on the northerly Right-of-Way Line of Proposed Road which lies south 87 degrees 50 minutes 48 seconds east a distance of 3690.12 feet from the corner common to Land Lots 64, 65, 88 and 89, said District, Section and County; thence traveling along said Right-of-Way Line north 30 degrees 32 minutes 54 seconds west a distance of 518.65 feet to a point; thence traveling north 35 degrees 54 minutes 56 seconds east a distance of 402.96 feet to a point; thence traveling south 78 degrees 35 minutes 34 seconds east a distance of 900.00 feet to a point on the westerly Right-of-Way Line of Jiles Road (Fifty (50') foot Right-of-Way); thence traveling along said Right-of-Way Line south 21 degrees 51 minutes 22 seconds west a distance of 231.02 feet to a point on said Right-of-Way Line and the westerly Right-of-Way Line of said Proposed Road; thence leaving said Right-of-Way Line of Jiles Road and traveling along said Right-of-Way Line of Proposed Road along a curve to the right an arc distance of 74.77 feet (said arc being subtended by a chord bearing south 34 degrees 05 minutes 46 seconds west a chord distance of 74.20 feet and a radius of 175.00 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 46 degrees 20 minutes 10 seconds west a distance of 258.46 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line along a curve to the left an arc distance of 144.78 feet (said arc being subtended by a chord bearing south 27 degrees 54 minutes 08 seconds west a chord distance of 142.29 feet and a radius of 225.00 feet) to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line south 48 degrees 44 minutes 37 seconds west a distance of 36.89 feet to a point on said Right-of-Way Line; thence continuing along said Right-of-Way Line north 88 degrees 47 minutes 47 seconds west a distance of 446.18 feet to a point, which point is the POINT OF BEGINNING.

ALL AS SHOWN on that certain Survey entitled "Survey for Legacy Park, L.P., Being Pod P", prepared by Rochester & Associates, Inc., bearing the seal and certification of James C. Jones, Georgia Registered Land Surveyor No. 2298, dated November 17, 1993.

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EXHIBIT "A"

Declarant hereby designates the following names for the below-listed Neighborhoods:

<u>PARCEL</u>	<u>NEIGHBORHOOD NAME</u>
B	Annandale
C	Bellingrath
D	Carillon
E	Grammercy
F	Highcroft
G	Kentmere
H	Lullwater
I	Madison
J	Palisades
K	Winterthur

Parcel Legal Descriptions will be added to this Declaration from time to time by Supplemental Declaration.

**EXHIBIT "B"**

**Land Subject to Annexation**

All of those tracts or parcels of land lying and being in Land Lots 24, 25, 26, 27, 28, 48, 49, 50, 51, 52, 53, 62, 63, 64, 65, 66, 67, 87, 88, 89, 90, 91, 101, 102, and/or 103 of the 20th District, of the 2nd Section of Cobb County, Georgia.

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**EXHIBIT "C"**

**Initial Use Restrictions**

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article XII of the Declaration.

1. General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association, business offices for the Declarant or the Association, or any information center and/or sales office consistent with this Declaration and any Supplemental Declaration).

2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored or inoperable vehicles in places other than enclosed garages or other designated areas, if any; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas;

(b) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Pets shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

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

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

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(g) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Office of the Clerk of the Superior Court of Cobb County, Georgia, except that (i) the Declarant shall be permitted to subdivide or plat Units which it owns, and (ii) any Builder shall be permitted to replat and/or re-subdivide Units with the Declarant's consent;

(n) Swimming, boating, use of personal flotation devices, or other active use of lakes, streams or other bodies of water within the Properties, except that fishing from the bank shall be permitted with appropriate licenses and paddle boats shall be permitted on the lake. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, streams or other bodies of water within or adjacent to the Properties;

(o) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

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(r) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

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

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

(s) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties;

(t) Removal of trees except for diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons;

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

(v) Operation of motorized vehicles on pathways or trails maintained by the Association.

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

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

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

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or



other ground or surface waters within the Properties, except that Declarant and the Association shall have the right to draw water from such sources;

(d) Any construction, erection, or placement of a thing, permanently or temporarily, on the outside portions of the Unit whether such portion is improved or unimproved, unless approved by the New Construction Committee or Modifications Committee as set forth in Article XI of the Declaration. This shall include, without limitation, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; antennas, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; and hedges, walls, dog runs, animal pens, or fences of any kind.

4. Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term, which requirements may vary from Neighborhood to Neighborhood. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing in a manner consistent with Section 12.4(f) of the Declaration.

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**EXHIBIT "D"**

**Rules of Arbitration**

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").

2. Each Party shall select an arbitrator ("Party Appointed Arbitrator"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("Neutral(s)") so that the total arbitration panel ("Panel") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 20 days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson ("Chair").

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, Claimant may notify the Georgia chapter of the Community Associations Institute (or a similar independent agency), which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.

5. The Arbitrator or Chair, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

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10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There will be no posthearing briefs.

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

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

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

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EXHIBIT "E"

BY-LAWS  
OF  
LEGACY PARK COMMUNITY ASSOCIATION, INC.

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**BY-LAWS**  
**OF**  
**LEGACY PARK COMMUNITY ASSOCIATION, INC.**

**Article I**  
**Name, Principal Office, and Definitions**

1.1. Name. The name of the Association shall be Legacy Park Community Association, Inc. (the "Association").

1.2. Principal Office. The principal office of the Association in the State of Georgia shall be located in Cobb County. The Association may have such other offices, either within or outside the State of Georgia, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Legacy Park (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall otherwise require.

**Article II**  
**Association: Membership, Meetings, Quorum, Voting, Proxies**

2.1. Membership. The Association shall have two classes of membership, Class "A", Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board either within the Properties or as convenient thereto as possible and practical.

2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur no later than 60 days after the close of the Association's fiscal year on a date and at a time set by the Board.

2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by Members representing at least 10% of the total Class "A" votes of the Association.

2.5. Notice of Meetings. The Secretary of the Association shall provide written notice stating the place, day, and hour of any meeting of the

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Members, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten nor more than 60 days before the date of such meeting.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at any meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

2.9. Proxies. At all meetings of Members, each Member may vote in person, by mail-in ballot, or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Unit, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of 11 months from the date of the proxy.

2.10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than 50% of the total number.

2.11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person, by mail-in ballot, or by proxy of Members representing 10% of the total vote of the Association shall constitute a quorum at all meetings of the Association.

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2.12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

2.13. Action without a Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if written consents setting forth the action so taken are signed by Members holding the voting power required to pass such action and such action is consented to by the Declarant if required. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

2.14. Action by Written Ballot. Any action to be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, shall state the percentage of approvals necessary to approve each matter other than election of directors, and shall specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board of Directors. The results of each action by written ballot shall be certified by the Secretary of the Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

### Article III

#### Board of Directors: Number, Powers, Meetings

##### A. Composition and Selection.

3.1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or spouses of such Members and shall reside in Legacy Park; provided, however, no person and his or her spouse may serve on the Board at the same time.

3.2. Directors during Class "B" Control Period. Subject to the provisions of Section 3.5, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) when 75% of the Units permitted by the Master Plan for the property described on Exhibits "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than the Declarant or Builders;

(b) December 31, 2008; or

(c) when, in its discretion, the Class "B" Member voluntarily relinquishes such control by a written instrument.

3.3. Number of Directors. The number of directors in the Association shall be not less than three nor more than seven, as provided in Section 3.5. The initial Board shall consist of three members and shall be appointed by the Class "B" Member.

3.4. Nomination of Directors. Except with respect to directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be nominated from the floor or made by a Nominating Committee, if established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

3.5. Election and Term of Office. Notwithstanding any other provision contained herein:

(a) Within 30 days after the time Class "A" Members, other than the Declarant or a Builder, own 700 Units, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The Association shall call a special meeting at which the Class "A" Members shall elect two of the five directors. The remaining three directors shall be appointees of the Class "B" Member. The directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two years or until the happening of the event described in subsection (b) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (b) below, successors shall be elected for a like term.

(b) Within 30 days after termination of the Class "B" Control Period, the Association shall call a special meeting at which the Class "A" Members shall elect three of the five directors. The remaining two directors shall be appointees of the Class "B" Member. The directors elected by the Members shall not be subject to removal by the Class "B" Member acting alone and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting occurs within 30 days after termination of the Class "B" Control Period, this subsection shall not apply, and directors shall be elected in accordance with subsection (c) below.

(c) At the first annual meeting of the membership after the termination of the Class "B" Control Period, directors shall be elected as follows: Three directors shall be elected for a term of two years and two directors shall be elected for a term of one year. At the expiration of the

initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected to serve for a term of two years.

Each Member shall be entitled to cast one vote with respect to each vacancy to be filled from each slate on which such Member is entitled to vote. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. The directors elected by the Members shall hold office until their respective successors have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

3.6. Removal of Directors and Vacancies. Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. A director who was elected at large solely by the votes of Members other than the Declarant may be removed from office prior to the expiration of his or her term only by the votes of a majority of Members other than the Declarant. Upon removal of a director, a successor shall then and there be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than 30 days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and it may appoint a successor. Any director appointed by the Board shall serve for the remainder of the term of such director.

B. Meetings.

3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as shall be fixed by the Board.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the time and place of the meeting shall be communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President of the Association or by a majority of the directors. The notice shall specify the time and place of

the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four days before the time set for the meeting. Notices given by personal delivery, telephone, or telegram shall be delivered, telephoned, or given to the telegraph company at least 72 hours before the time set for the meeting.

3.10. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" vote of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

3.13. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of meetings of the Board, recording therein all resolutions adopted by the Board and all transactions and proceedings occurring at such meetings.

3.14. Open Meetings. With the exception of meetings conducted pursuant to Section 3.16, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or

her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.15. Action without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

3.16. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all Persons participating in the meeting can hear each other at the same time, and those directors so participating shall be deemed present at such meeting. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

C. Powers and Duties.

3.17. Powers. The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Members generally.

The Board shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, the following, in way of explanation, but not limitation:

(a) preparation and adoption, in accordance with Article X of the Declaration, of annual budgets in which there shall be established the contribution of each Owner to the Common Expenses and Neighborhood Expenses;

(b) making assessments to defray the Common Expenses and Neighborhood Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board, the annual assessment for each Unit's proportionate share of the Common Expenses shall be payable in advance on the first day of each fiscal year;

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(m) making available to any prospective purchaser of a Unit, any Owner of a Unit, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Unit and all other books, records, and financial statements of the Association;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(o) cooperating with the parties subject to the Covenant to Share Costs and carry out the functions of the Association under same; and

(p) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is permitted by Georgia law, the Articles, or the Declaration.

3.18. Management. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent or Manager. The term of any management agreement shall be subject to termination by either party, without cause and without penalty, upon 90 days written notice.

3.19. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period;  
and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by resolution of the Board of Directors); and

(g) an annual report consisting of at least the following shall be distributed to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on such accounting basis as determined by the Board; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement.

3.20. Borrowing. The Association, acting through the Board of Directors, shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Area of Common Responsibility without the approval of the Members of the Association. The Board shall also have the power to borrow money for other purposes; provided, the Board shall obtain Member approval in the same manner provided in Section 10.6 of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed 5% of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the Articles of Incorporation, during the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least 51% of the Members other than the Declarant.

3.21. Rights of the Association. With respect to the Area of Common Responsibility, and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of a majority of the total number of directors of the Association.

The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the Class "B" Control Period unless such contract, lease or other agreement contains a right of termination exercisable by either party without penalty at any time, with or without cause, upon not more than 90 days notice to the other party.

3.22. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the responsible Owner, and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any occupant, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board



to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested within the allotted ten day period, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice 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 agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10 day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 30 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or, following compliance with the procedures set forth in Article XVI of the Declaration, if applicable by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

#### **Article IV Officers**

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among

the members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board.

4.2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board at the first meeting of the Board of Directors following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

4.3. Removal. Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers unless otherwise determined by resolution of the Board.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12.

#### **Article V Committees**

5.1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board. Committee members need not be Board Members except to the extent required under Georgia law.

5.2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven members. Acting in accordance with the provisions of the Declaration,

these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.22.

5.3. Neighborhood Committees. In addition to any other committees appointed as provided above, any Neighborhood which has no formal organizational structure or association may elect a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association. Such services shall be in addition to those which the Association is obligated to provide pursuant to any applicable Supplemental Declaration and those provided to all Members of the Association in accordance with the Declaration. Special services requested by the Neighborhood shall have the approval of owners representing at least 51% of the total votes in the Neighborhood. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board.

Neighborhood Committees, if elected, shall consist of three to five members, as specified in a written petition submitted to the Board. The petition, requesting that the Board call for the election of a Neighborhood Committee, shall be signed by Owners of at least 10% of the Units within the petitioning Neighborhood.

Election of a Neighborhood Committee may be held by mail-in ballot sent out by the Board for the initial election and after the initial election by the Neighborhood Committee. Each Owner shall have the number of votes assigned to his Unit(s) in the Declaration. The candidates receiving the greatest number of votes shall be elected Committee members shall be elected for a term of one year and until their successors are elected. Any director elected to the Board from a Neighborhood shall be an ex officio member of the Committee.

The Owners of Units within the Neighborhood holding at least 51% of the total votes of Units in the Neighborhood shall constitute a quorum at any meeting of the Neighborhood. In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the procedures and requirements applicable to the Board of Directors set forth in Sections 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, and 3.15; provided, however, the term "Member" shall refer to the Owners of Units within the Neighborhood. Each Neighborhood Committee shall elect a chairman from among its members who shall preside at its meetings and who shall be responsible for transmitting any and all communications to and from the Board.

#### **Article VI Miscellaneous**

6.1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board. In the absence of a resolution, the fiscal year shall be the calendar year.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules and regulations of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, Member of the Association, or by the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in the Unit at the office of the Association or at such other place within the Properties 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 requested.

(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 extracts and a copy of relevant documents at the expense of the Association.

6.5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6. Amendment.

(a) By Declarant. The Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is (i) necessary

to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as it still owns property described in Exhibits "A" or "B" of the Declaration for development as part of the Properties, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

As long as there is a Class "B" membership, and the Federal Housing Administration ("FHA") or the U.S. Department of Veterans Affairs ("VA") is insuring or guaranteeing the mortgage on any Unit, FHA and/or VA may veto any proposed amendments to these By-Laws.

(b) By Owners. Except as otherwise specifically provided herein, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of 67% of the total Class "A" votes in the Association, including 67% of the Class "A" votes held by Members other than the Declarant, and the consent of the Class "B" Member, so long as such membership exists. In addition, the approval requirements set forth in Article XIV of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the Office of the Clerk of the Superior Court of Cobb County, Georgia.

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

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

STATE OF GEORGIA

COUNTY OF COBB

CONSENT OF SECURITY DEED HOLDER

The undersigned, Bank South Mortgage, Inc. is the holder of the following (hereinafter, as heretofore and hereafter amended, referred to collectively as the "Loan Documents"):

(a) Deed to Secure Debt and Security Agreement, dated January 31, 1994, executed by Legacy Park of Georgia, L.P., a Georgia limited partnership, in favor of Bank South Mortgage, Inc., recorded in Deed Book 8007, Page 87, Cobb County, Georgia Records; and

(b) U.C.C. Financing Statement No. 94-785, between Legacy Park of Georgia, L.P., as debtor, and Bank South Mortgage, Inc., as secured party, filed in aforesaid records.

The undersigned hereby consents to the within and foregoing Declaration of Covenants, Conditions and Restrictions for Legacy Park, subordinates the Loan Documents to said Declaration of Covenants, Conditions and Restrictions for Legacy Park, and agrees that the undersigned shall not terminate said Declaration of Covenants, Conditions and Restrictions for Legacy Park upon foreclosure of the Loan Documents, or any one of them, or upon conveyance of the property encumbered thereby in lieu thereof. This Consent is binding upon the undersigned, its successors and assigns.

WITNESS the hand and seal of the undersigned.

Signed, sealed and delivered in the presence of:

BANK SOUTH MORTGAGE, INC.

Judy L. Morgan  
Unofficial Witness  
Harriet K. Colquitt  
Notary Public

By: Henry O. Smith  
Title: V.P.



[CORPORATE SEAL]

Date of Execution of Notary Public: 7th of July, 1994

Date of Execution: 7/2/94

My Commission Expires:

[NOTARIAL SEAL]



STATE OF GEORGIA

COUNTY OF COBB

CONSENT OF SECURITY DEED HOLDER

The undersigned, John F. Wieland is the holder of the following (hereinafter, as heretofore and hereafter amended, referred to collectively as the "Loan Documents"):

(a) Deed to Secure Debt and Security Agreement, dated January 31, 1994, executed by Legacy Park of Georgia, L.P., a Georgia limited partnership, in favor of John F. Wieland, recorded in Deed Book 8007, Page 112, Cobb County, Georgia Records; and

(b) U.C.C. Financing Statement No. 94-786, between Legacy Park of Georgia, L.P., as debtor, and John F. Wieland, as secured party, filed in aforesaid records.

The undersigned hereby consents to the within and foregoing Declaration of Covenants, Conditions and Restrictions for Legacy Park, subordinates the Loan Documents to said Declaration of Covenants, Conditions and Restrictions for Legacy Park, and agrees that the undersigned shall not terminate said Declaration of Covenants, Conditions and Restrictions for Legacy Park upon foreclosure of the Loan Documents, or any one of them, or upon conveyance of the property encumbered thereby in lieu thereof. This Consent is binding upon the undersigned, its successors and assigns.

WITNESS the hand and seal of the undersigned.

Signed, sealed and delivered in the presence of:

Rene Shelley  
Unofficial Witness

Jean W. Nichols  
Notary Public

John F. Wieland [SEAL]  
JOHN F. WIELAND

Date of Execution: 7/7/94

Date of Execution of Notary Public: 7/7/94

My Commission Expires: January 2, 1996  
Notary Public, Clayton County, Georgia



BK8357PG0503