

AGRE 38657/304

DECLARATION  
OF  
COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS  
FOR  
GUILFORD FOREST

REF: 23040-178

AMEND 2 3040-178

NOVEMBER 30, 1987

THIS DECLARATION OF COVENANTS IS RECORDED IN DEED BOOK \_\_\_\_\_  
PAGE \_\_\_\_\_, FULTON COUNTY, GEORGIA RECORDS.

GEORGIA, Fulton County, Clerk's Office Superior Court  
Filed & Recorded, DEC 1 1987 at 2:54 *Arthur J. Rice* CLERK

BOOK 11201 PAGE 350

DECLARATION OF COVENANTS, EASEMENTS,  
CONDITIONS AND RESTRICTIONS  
FOR GUILFORD FOREST

TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE NUMBER</u>
ARTICLE I	<u>DEFINITIONS</u>	1
ARTICLE II	<u>COMMON PROPERTY</u>	
2.01	→ Conveyance of Common Property	3
2.02	Right of Enjoyment	3
2.03	Rights of the Association	4
2.04	Types of Common Property	4
ARTICLE III	<u>HOME OWNERS ASSOCIATION</u>	
3.01	Membership in the Association	5
3.02	Voting Rights	5
3.03	Board of Directors and Officers	5
3.04	Board of Directors	6
3.05	Suspension of Membership	6
3.06	Voting Procedures	6
3.07	Control by Declarant and Appointment of the Board	7
ARTICLE IV	<u>ASSESSMENTS AND MAINTENANCE CHARGES</u>	
4.01	Covenant for Assessments and Creation of Lien and Personal Obligation	7
4.02	Purpose of Assessment	8
4.03	Accumulation of Funds Permitted	8
4.04	Annual Assessment or Maintenance Charge	8
4.05	Special Assessments for Working Capital Fund and Non Recurring Maintenance	10
4.06	Special Assessments Against Specific Lots	10
4.07	Special Assessments for Capital Improvements	11
4.08	Notice and Quorum	11
4.09	Effect of Non Payment of Assessments	11
4.10	Certificate of Payment	11
ARTICLE V	<u>ARCHITECTURAL AND BUILDING RESTRICTIONS</u>	
5.01	Architectural Control Committee-Creation and Composition	12
5.02	Purpose, Powers and Duties of the ACC	12
5.03	Officers, Subcommittees and Compensation	12
5.04	Operations of the ACC	12
5.05	Design Standards	14
5.06	Submissions of Plans and Specifications	14
5.07	Approval of Plans and Specifications	14
5.08	Disapproval of Plans and Specifications	15
5.09	Obligation to Act	15
5.10	Inspection Rights	16
5.11	Violations	16
5.12	Certificate of Compliance	16
5.13	Fees	16
5.14	Nondiscrimination by ACC	17
5.15	Liability for Defects	17
5.16	Costs and Expenses	17
5.17	Improvements of Lots	17
5.18	Additional Construction Covenants	19
5.19	Compliance with Law	19

TABLE OF CONTENTS  
(CONTINUED)

<u>ARTICLE VI GENERAL COVENANTS AND RESTRICTIONS</u>		
6.01	Application	20
6.02	Restriction of Use	20
6.03	Resubdivision of Property	20
6.04	Erosion Control	20
6.05	Landscaping	20
6.06	Trees	20
6.07	Temporary Buildings	20
6.08	Signs	20
6.09	Setbacks	21
6.10	Fences	21
6.11	Roads and Driveways	21
6.12	Antennae	21
6.13	Clotheslines, Garbage Cans, Etc.	22
6.14	Maintenance	22
6.15	Recreational Vehicles and Trailers	22
6.16	Recreational Equipment	22
6.17	Non-Discrimination	22
6.18	Waterfront land	22
6.19	Animals	23
6.20	Solid Waste	23
6.21	Nuisances	23
6.22	Landscape and Monument Easements	23
6.23	Accessory Structures	24
<u>ARTICLE VII EASEMENTS, ZONING AND OTHER RESTRICTIONS</u>		
7.01	Easements for Utilities and Maintenance	24
7.02	Easement Area	25
7.03	Easement for Encroachment	25
7.04	Easement for Entry and Support	25
7.05	Easement for Maintenance by the Association and for Postal Delivery	25
7.06	Declarants' Retained Easements for Construction and Sales Activities	25
7.07	Easements Involving Additional Property	26
7.08	Zoning and Private Restrictions	26
<u>ARTICLE VIII ENFORCEMENT</u>		
8.01	Right of Enforcement	26
8.02	Right of Abatement	27
8.03	Specific Performance	27
8.04	Collection of Assessments and Enforcement of Lien	27
8.05	No Waiver	28
<u>ARTICLE IX DURATION AND AMENDMENT</u>		
9.01	Duration and Perpetuities	29
9.02	Amendment	29
<u>ARTICLE X STAGE DEVELOPMENT AND ANNEXATION</u>		
10.01	Annexation	30
10.02	Reallocation of Votes and Liability for Common Expenses	30
<u>ARTICLE XI MISCELLANEOUS</u>		
11.01	Other Changes	30
11.02	Rights of First Mortgages	31
11.03	Professional Management	31
11.04	Notice of Leases, Tenants and Guests	31
11.05	No Reverter	31

TABLE OF CONTENTS  
(CONTINUED)

11.06	Severability	31
11.07	Headings	31
11.08	Gender	32
11.09	Notices	32
11.10	No Liability	32
11.11	Insurance	32

DECLARATION  
OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS FOR  
GUILFORD FOREST

THIS DECLARATION is made on the date hereinafter set forth by Guilford Forest Associates, a Georgia limited partnership (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Land Lots 61, 62, 79 and 80 of the 14th District, FF of Fulton County, Georgia, which property is more particularly described in Exhibit "A" attached hereto and made a part of this Declaration; and

WHEREAS, Declarant intends to develop on land including the real property described above a development to be known as Guilford Forest (hereinafter referred to as the "Development"), a planned community with restrictive covenants for the benefit of residences within said community; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an entity to which should be delegated and assigned the powers of common maintenance, administration and enforcement of the covenants, conditions and restrictions, collection and disbursement of the assessments and charges hereinafter created, and promoting the health, safety, welfare of the residents; and

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a non profit corporation to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined);

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibit "A" shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions, and Restrictions, which is for the purpose of enhancing and protecting the desirability and attractiveness of, and which shall run with, the real property, and be binding on all parties having any right, title or interest in the described property or any part thereof, and shall, subject to all limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and restrictions, shall have the following meanings:

Section 1.01 "Additional Property" shall mean that property or any portion thereof as described in Exhibit "D" attached hereto which has not yet been submitted to the provisions hereof. The Developer may, from time to time, subject any portion of the Additional Property to the provisions of this Declaration, as more particularly described hereinafter. Except as otherwise specifically provided, no portion of the Additional Property shall be subject to this Declaration unless and until the same

is submitted in the manner hereinafter described.

1.02 Association. "Association" means the Guilford Forest Homeowners and Recreation Association, Inc. (a non-profit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

1.03 Board. "Board" means the Board of Directors of the Association.

1.04 Builders. "Builders" means pre-qualified builders sanctioned by the Guilford Forest Architectural Control Committee, its successors and assigns.

1.05 By-laws. "By-Laws" means the By-Laws of the Association.

1.06 Common Property. "Common Property" means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

1.07 Declarant. "Declarant" means Guilford Forest Associates, a Georgia Limited partnership, its successors and assigns, including, but not limited to, any person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, which acquires all or substantially of the Development then owned by Declarant (or subsequent successors in interest), together with its rights hereunder, by conveyance or assignment from Declarant, or judicial or non-judicial foreclosure, for the purpose of development and/or construction on the Property.

1.08 Lot. "Lot" means any numbered parcel of land shown upon a subdivision plat of survey prepared by EDI Engineers and Surveyors, Inc. or any other certified Georgia Engineer dated 11/25/1987, recorded book 155, page 36, recorded in the office of the Clerk of the Superior Court Fulton County, Georgia Records, or as similarly shown on supplemental surveys of such tract or such additional tracts as may be added to the Property from time to time, as provided herein; provided however, that no portion of the Common Property shall ever be a lot except as provided for in Section 2.04.

1.09 Member. "Member" means any member of the Association.

1.10 Owner. "Owner" means the record owner (including Declarant) whether one or more persons or entities, of a fee simple title to any Lot, provided, however, that where a fee simple title has been transferred and is being held merely as security for repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.11 Property. "Property" means that certain real property (other than Common Property) hereinabove described together with such additional real property as the Declarant may acquire and subject to the provisions of this Declaration of Covenants, Conditions and Restrictions in accordance with the provisions of Article I thereof.

1.12 Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.13 Structure. "Structure" means:

(a) anything or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, tennis courts, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

(b) any excavation, grading, fill ditch, diversion dam or other thing or device which affects or alters the natural curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

(c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.12 applies to such change.

ARTICLE II

COMMON PROPERTY

2.01 Conveyance of Common Property

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners (such real and personal property is hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration of Covenants, Conditions and Restrictions, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

2.02 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property, which right shall

se appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03 (c) and 3.05.

2.03 Rights of The Association. The right and privileges conferred in Section 2.02 hereof shall be subject to the right of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;

(b) charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes.

(c) suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;

(d) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system.

(e) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;

(f) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;

(g) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

(h) to sell, lease or otherwise convey all or any part of its properties and interest therein; provided, however, that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of two-thirds (2/3) of each class of Members.

2.04 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement



that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof shall not, without a two-thirds (2/3) vote of each class of Members of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

ARTICLE III

GUILFORD FOREST HOMEOWNERS' ASSOCIATION

3.01 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Conditions and Restrictions.

3.02 Voting Rights. Subject to the following provisions of this Section 3.02, the Association shall have two classes of voting membership: Class A and Class D.

(a) Class A. Every person who is an Owner, with the exception of the Declarant except as otherwise set forth herein, shall be a Class A member and shall be entitled to one vote for each Lot owned. When more than one person is a Class A member by virtue of an ownership interest in the same Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons and an attempt by two or more of them to cast the vote of such Lot, such persons shall not be recognized and the vote of such Lot shall not be counted. The membership of Class A members shall automatically terminate upon the sale of his Lot. However, no termination of Class A membership shall affect such member's obligation to pay assessments, as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

(b) Class B. The Declarant shall be the sole Class B member. Class B membership shall be a full voting membership and during its existence the Class B member shall be entitled to vote on all matters and in all events. The Class B member shall be entitled to three (3) votes for each Lot owned by it. The class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (a) the expiration of six (6) years from the date of recording of this Declaration; (b) the date as of which three-fourths (3/4) of the Lots which may be developed on the Property shall have been conveyed, by either the Declarant or by a builder who purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy; or (c) the surrender by the Declarant of the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed and recorded by Declarant; provided, however, that so long as any Mortgagee of Declarant holds a security interest in any portion of the Property, as security for a Development Loan to Declarant, the Class B membership shall not terminate without the prior written consent of such Mortgagee. If at the time of termination of the Class B membership, Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A member.

3.03 Board of Directors and Officers.

(a) Board. The affairs of the Association shall be managed by a Board of Directors. The number of directors and the method of election of directors shall be as set forth in this Declaration and in the By-Laws of the Association. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation Code or this Declaration, the Association's By-Laws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.

(b) Officers. The number of officers and the method of election of officers shall be as set forth in this Declaration and the By-Laws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association officers shall be appointed by the Board until such time as Declarant no longer has the right to appoint members to the Board.

(c) Casting of Votes. The votes of the members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the By-Laws of the Association, as amended from time, or by law.

3.04 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of directors shall be as set forth in this Declaration and the By-Laws of the Association.

3.05 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation of breach of either the Restrictions or the Design Standards of the Architectural Control Committee (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.14 or 8.02 hereof;

(b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property;

(d) any suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of violation described in subsection (c) of this Section 3.05, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.06 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the By-laws of the Association, as each shall from time to time be in force and effect.

3.07 Control by Declarant and Appointment of the Board.

Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of three (3) members. Notwithstanding any other language or provision to the contrary in this Declaration in the Articles of Incorporation, or in the By-Laws of the Association, the Declarant hereby retains the right to appoint three (3) members to the Board. The rights of Declarant to appoint members of the Board also include the right to remove and replace its appointees until such time as its right to appoint members to the Board ceases. Declarant shall retain the right to appoint and remove its members of the Board until such time as the first of the following events shall occur: (i) the expiration of six (6) years from the date of the recording of this Declaration; (ii) the date upon which three-fourths (3/4) of the Lots which may be developed on the Property shall have been conveyed, by either Declarant or by a builder who purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy; or (iii) the surrender by Declarant of the authority to appoint and replace directors by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the Declarant's right to appoint and remove directors of the Association pursuant to the provisions of this Section, such right automatically pass to the Association. Upon the final expiration of all rights of Declarant to appoint and replace directors of the Association a special meeting of the Association shall be called. At such special meeting the Owners shall elect a Board of Directors which shall undertake the responsibilities of the new Board, and Declarant shall deliver the books, accounts and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE IVASSESSMENTS AND MAINTENANCE CHARGES

4.01 Covenant for Assessments and Creation of Lien and Personal Obligation. The Declarant, to the extent that Declarant is an Owner, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against

all Lots owned by him;

(c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.07 hereof and costs of collection including reasonable attorneys' fees;

(d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens, or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures;

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessment thereafter assessed;

(f) that all annual and special assessments (together with interest thereon as provided in Section 4.07 of this Declaration and costs of collection including reasonable attorneys fees) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Section 4.01 (c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.02 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the new community of the Development, including but not limited to, and in addition to other purposes set forth in this Declaration, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04 Annual Assessment or Maintenance Charge. Subject to the terms of this Article, each Lot in the Property is hereby

subjected to an annual maintenance charge for the purpose of creating a fund to be known as the "maintenance fund" which maintenance charge and assessment will be paid by the Owner or Owners of each Lot within the Property (and any area annexed under jurisdiction of the Association) in advance in monthly, quarterly or annual installments. The annual maintenance charge and assessment will commence as to each Lot on the first day of the month following the earliest to occur of the following events: (a) upon the occupancy of a permanent dwelling located on the Lot as a residence; or (b) upon conveyance of the Lot by Declarant to an owner or tenant for residential occupancy; or (c) upon the conveyance by a Builder who has purchased the Lot from Declarant for the purpose of erecting a dwelling thereon to an Owner or tenant for residential occupancy. Neither the Declarant nor any Builder who has purchased a lot from Declarant for the purpose of erecting a dwelling thereon shall be subject to the annual maintenance charge and assessment; however, the Declarant hereby agrees that until such time as it no longer has the right to appoint members to the Board of the Association, the Declarant will pay to the Association any deficit amounts not covered by the income of the Association and reasonably necessary to maintain the Common Property in a neat and attractive appearance and in addition, where such property is intended for recreational use, usable condition however such deficit amount shall not exceed the assessment for the number of developed lots held by the Declarant. Any such deficit amount required to be paid by Declarant shall be treated as an assessment and subject to the provisions of Section 4.07; provided, however any lien for such an assessment will commence as to each Lot owned by Declarant or a builder upon the occupancy of a permanent dwelling located thereon as a residence. Beginning six months from the date this Declaration is executed through December 31, 1988, the annual maintenance charge and assessment will not exceed \$25.00 per month or a rate of \$300.00 per annum (said rate of charge referred to hereinafter as the "Initial Rate"). The Initial Rate will be determined by the Board of Directors; however, said Initial Rate will not exceed the maximum rate stated in the preceding sentence. Whether such assessment shall be payable monthly, quarterly or annually will be determined by the Board of Directors. January 1, 1989, and from year to year thereafter, the annual assessment may be adjusted by the Board of Directors as the needs of the Development may in the judgement of the directors require; however, the maximum annual assessment may be increased at any time and from time to time during each assessment year not more than twenty-five percent (25%) above the maximum assessment for the previous year without a vote of the membership, which shall require approval of two-thirds (2/3) of each class of Members present, in person or by proxy at a meeting duly called for such purpose, with at least sixty (60%) percent of the Owners or other proxies present. If sixty (60%) percent of the Owners do not attend, a second meeting may be called and the quorum will be reduced to thirty (30%) percent of the Owners or their proxies. The due dates shall be established by the Board of Directors. The Association shall use the proceeds of said maintenance fund in providing for normal, recurring maintenance charges for the Common Property for the use and benefit of all residents of said Property. Such uses and benefits to be provided by said Association may include, by way of clarification, and not limited to any and all of the following: normal, recurring maintenance of the Common Property (including, but not limited to mowing, edging, watering, clipping, sweep, pruning, raking and otherwise recreational facilities) and the acquisition and installation of capital improvements to such Common Property, such as sprinkler systems, provided that the Association shall have no obligation (except as

expressly provided hereinafter) to make capital improvements to the Common Property; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the Property to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employment of security guards or watchmen, if determined necessary; caring for vacant lots; and doing any other thing or things necessary or desirable in the opinion of the Board or membership of the Association to keep the property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the majority of the Members of the Association in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Property. The fund shall be established and maintained out of regular annual assessments.

4.05 Special Assessments for Working Capital Fund, Nonrecurring Maintenance, and Capital Improvements. In addition to the annual assessments authorized by this Article IV, the Association may levy:

(a) upon the first sale to an Owner who will individually or through tenants or assigns occupy a Lot, such sale to be made by Declarant or by a builder who has purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, a special assessment equal to two (2) months' estimated regular assessments, which shall be collected at the closing of such sale for the benefit of the Association. The Aggregate fund established by such special assessments shall be maintained in a segregated account, and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board.

(b) If the annual budget established hereunder proves inadequate for such fiscal year, then the Board may, at any time within said fiscal year, levy a special assessment for the purpose of meeting the expenses of the Association.

4.06 Special Assessments Against Specific Lots. Any expenses incurred by the Association which are occasioned by the conduct of a Lot Owner, his family, tenants, invitees or licensees, including reasonable attorneys' fees actually incurred in enforcing this Declaration, shall be specially assessed against such Lot; provided, however, that no such assessment may be made against any Lot after such Lot Owner has conveyed the Lot to a bona fide purchaser or after such Lot has been transferred in a manner which would, under Section 4.01 (d) hereof, extinguish the lien for any outstanding assessments. Any expenses incurred by the Association benefiting fewer than all of the Lots or significantly disproportionately benefiting the Lots shall be assessed equitably among the Lots so benefited; provided, however, that no such special or disproportionate allocation may be made by the Association for common expenses intended to be covered by any established reserve fund for periodic maintenance, repair and replacement of common elements for the primary reason that such maintenance repair or replacement of the common elements of one building or Lot is

required at a different time from similar work on common elements of any other building or Lot on the Property. The special assessments provided for in this section shall be levied by the Board of Directors, and the amount and due date(s) of such special assessments so levied shall be as specified by the Board.

4.07 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of voting members of the Association who are voting in person or by proxy at a meeting duly called for this purpose, together with the vote of the Developer should the Developer be the original owner of any Lots at that time. The Board of Directors may make such special assessment payable in installments.

4.08 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.04, 4.05 or 4.06 shall be sent to all Members, or delivered to their residence, not less than fifteen (15) days or more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be thirty percent (30%) of all votes of each class of membership. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

4.09 Effect of Nonpayment of Assessments. Any Assessment which is not paid within fifteen days after the Due Date shall bear interest from the Due Date at the rate of ten percent (10%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment on or before the date on which payment is due, such paid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorney's fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

4.10 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including Penalties, Interest and Costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the

Association and any bona fide purchaser of, or lender on, the Lot in question.

ARTICLE V

ARCHITECTURAL AND BUILDING RESTRICTIONS

5.01 Architectural Control Committee - Creation and Composition. An Architectural Control Committee (the "ACC") shall be established consisting of five (5) individuals to be appointed by the Board of Directors. For so long as the Declarant owns any Lot, the Declarant shall have the exclusive right to appoint members of the Committee. At such time as the Developer no longer owns any Lots in the Development, the Committee shall consist of all members of the Boards of Directors of all Associations or such smaller number of members as designated and appointed by said Boards of Directors.

5.02 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any Structure on any Lot. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure of any Lot.

5.03 Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC shall be reimbursed for traveling expenses and other out-of-pocket costs incurred in the performance of their duties as members of the ACC as provided in Section 5.16. However no member of the Committee shall be entitled to compensation for performing his or her duties under this Declaration.

5.04 Operations of the ACC.

(a) Meetings. The ACC shall hold regular meetings at least once every three (3) months or more often as may be established by the ACC. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day of the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice



of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objections or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business can be transacted which might have been transacted at the meeting originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

(b) Activities.

(i) The ACC shall adopt and promulgate the Design Standards described in Section 5.05 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(ii) Any three (3) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the three (3) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such three (3) or more members shall, within five (5) working days thereof, be given to any applicant for approval, permit or authorization. The applicant may within ten (10) days after receipt of notice of any decision which deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

5.05 Design Standards.

(a) The ACC shall from time to time adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purposes of:

(i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;

(ii) governing the procedure for such submission of plans and specifications;

(iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structure and all other matters that require approval by the ACC pursuant to this Declaration; and

(iv) assuring the conformity and harmony of external design and general quality of the Development.

(b) The ACC shall make a published copy of its current Design Standards readily available to members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.06 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including where applicable, and without being limited to:

(a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;

(b) a foundation plan;

(c) a floor plan;

(d) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures shall appear after all back-filling and landscaping are completed;

(e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and

(f) preliminary plans for landscaping and grading. Final landscape plan must be submitted when final grade is established.

5.07 Approval of Plans and Specifications. Upon approval by the ACC of any plans and specification submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant

submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

5.08 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

(a) the failure to include information in such plans and specifications as may have been reasonably requested;

(b) the failure of such plans or specifications to comply with this Declaration, or the Design Standards, other restrictive covenants, or any plat restrictions affecting the Lot;

(c) failure of the proposed Structure to comply with any applicable zoning, building, or subdivision ordinance;

(d) failure of the plans and specifications to provide proper drainage, surface water runoff and siltation control; or

(e) an existing uncured default by the Owner under this Declaration or any other restrictive covenants affecting the Lot including, without limitation, any unpaid fines or assessments against the Lot created by any such restrictive covenants.

(f) any other matter which, in the judgement of the ACC, would be likely to cause the proposed installation, construction or alteration of a structure (i) to fail to be in conformity and harmony of external design and general quality with the standards of the Development as set forth in the Design Standards, or (ii) as to location to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.09 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

**5.10 Inspection Rights.** Any employee or agent of the Association or the ACC may after reasonable notice, at any reasonable time or times enter upon any Lot and Structure, thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by the reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

**5.11 Violations.** If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation. If the owner shall not have taken reasonable steps toward the required remedial action within fifteen (15) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

**5.12 Certificate of Compliance.**

(a) Upon completion of the installation, construction or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warrant to anyone the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment.

The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation other than those of the ACC.

**5.13 Fees.** The ACC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 5.10. This shall be established from time to time by the ACC and published in the Design Standards.

5.14 Nondiscrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color sex, religion, age or national origin.

5.15 Liability for Defects. The Declarant, the Association, the Board of Directors, officers of the Association, or the ACC shall not be liable for any defects in any plans and specifications for any alleged defects or flaws in any Structure approved by the ACC, it being acknowledged by all Owners that the ACC approval of any proposed Structure represents solely an aesthetic judgment and in no way implies a judgment on the soundness or integrity of any design materials or workmanship. Neither the ACC nor any of its members shall have any liability whatsoever to any person for the noncompliance of any Structure or the construction thereof with any federal, state, or local statute or ordinance. No members of the ACC shall have any liability whatsoever to any person by reason of any decision of the ACC unless the person complaining of such decision shall affirmatively prove that such member acted in bad faith in participating in such decision.

5.16 Costs and Expenses. Any costs or expenses incurred by the Committee in performing its duties hereunder shall be the sole responsibility of the Owner of the Lot on which the proposed Structure is to be located and shall be paid directly by such Owner or reimbursed to the Committee upon demand.

5.17 Improvement of Lots. All construction of dwellings, accessory structures and all other improvements in the Development shall be undertaken and completed in accordance with the following conditions:

(a) All construction shall be carried out in compliance with the laws, code rules, regulations and orders of all applicable governmental agencies and authorities.

(b) All homes in the following Guilford Forest community must have the following minimum square feet of heated space exclusive of porches, basements and garages unless approved by the ACC.

	<u>1 Story</u>	<u>2 Story</u>
The Estates	2500 s.f.	2750 s.f.
Overlook	2000 s.f.	2400 s.f.
The Crossings	1800 s.f.	2000 s.f.

(c) Unless approved by the ACC homes under construction must be completed from the date of any excavation on a lot as follows: An Estate home must be completed within twelve (12) months, an Overlook home must be completed within eight (8) months and a Crossing home must be completed within six (6) months. Any later additions or alterations must be completed within six (6) months from the time such additions or alterations are begun.

(d) All homes will have enclosed garages for a least 2 cars. Garages with a frontal entrance will not be permitted in the Estates unless approved by the ACC. All garages must have

doors, and each garage door must be coordinated with the dwelling to which it is appurtenant.

(e) Curbs must be sawn for driveway cuts.

(f) Poured concrete foundations only are permitted in Guilford Forest. Whenever buildings erected on any lot or constructed in whole or in part of poured foundations, such foundations shall be veneered on the front with painted stucco brick or natural stone or other approved material over the entire surface exposed above the finished grade. The exterior surface of the entire structure shall have a minimum of 75% coverage of masonry, brick, stucco, stone or any combination thereof in the Estates 50% in Overlook and 25% in the Crossings. Wood exteriors may be permitted in the Estates and Overlook but only by review and permission of the ACC where a builder and or home purchaser desires an acceptable traditional effect i.e. salt box exterior.

(g) Concrete or concrete block or cinder block shall not be used as a building material for the exposed exterior surface of dwelling or accessory structure constructed or placed on any lot.

(h) All outside buildings shall be built in harmony with the exterior decor of the home as to siding, veneer, roof and paint.

(i) There shall be no chain-link fences, wire fences or walls of any other material which the ACC determines to be incompatible with dwellings or other structures in the Development.

(j) Only one mailbox shall be located on any lot. It shall be selected to be consistent with the quality and design of surrounding dwellings and mail boxes and shall be placed and maintained to complement the dwelling to which it is appurtenant to the extent such mailbox is permitted to be located and maintained by the United States Postal Service, its successors and assigns. The Estates and Overlook communities must use brick, stucco or stone veneer which match the dwellings.

(k) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any lot except for purposes of construction of a dwelling or accessory structure on such a lot, nor shall any such building materials or devices be stored on any lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.

(l) No exposed above-ground tanks for the storage of fuel or water or any other substance shall be located on any lot other than apparatus relating to solar energy, the location and design of which must be approved by the ACC.

(m) Adequate off-street parking shall be provided for each lot. Permanent on street parking as discouraged by the ACC.

(n) Containers for garbage and other refuse shall be underground or in screened sanitary enclosures; no incinerators for garbage, trash or other refuse shall be used, and a garbage disposal is required for each dwelling.

(o) No window air conditioning unit may be located in part of any dwelling or accessory structure which is visible from

any street, and all exterior compressor units shall be groundmounted and screened by fencing or planting of a density and height to hide the unit effectively, which fencing or planting shall be approved by the ACC.

(p) There shall be no silver finish aluminum doors (including glass sliding doors) or windows of any kind in any dwelling or accessory structure; provided, however, that copper screening or factory painted or anodized finish aluminum door or window may be used if the color of such aluminum or screening has been approved by the ACC.

(q) Any screened porch which is a part of any dwelling or accessory structure must have a dark color screen, and no bright color silver finish screens may be used.

(r) No plumbing vent or heating vent may be placed on the front side of any roof of any dwelling or accessory structure, and any such vent shall be painted the same color as the roof on which it is placed or darker.

(s) Any person undertaking any construction on a lot shall be at the risk of the owner of such lot and the owner of such lot shall be responsible for any damage to any curbing or street resulting from construction on such lot, and repairs of such damage must be made within thirty (30) days after completion of such construction.

(t) Roof lines to have a minimum pitch of 9-12 on front elevations unless otherwise approved by the ACC.

(u) No building or structure on any lot shall be allowed to fall into neglect or disrepair. In the case of fire-damaged buildings, they shall be demolished and the debris removed within sixty (60) days of the damage or repaired or rebuilt within nine (9) months at the election of the owner, thereof. Failure by the owner to take such action as is necessary to maintain, repair or replace such buildings after ten (10) days written notice from the ACC shall allow the ACC to repair or demolish such building and to charge the costs thereof as a lien against the property. This lien shall be subordinate to any deeds to secure debt placed against such property to evidence loans secured by such property. No lien rights shall rise after five (5) years from the date hereof, although any liens then in existence shall continue as permitted by law.

#### 5.18 Additional Construction Covenants.

(a) All ceilings to have minimum height of nine (9) feet on first floor of The Estate and Overlook homes unless otherwise approved by ACC.

(b) All pool houses must match decor of house. ACC must approve location of pool. Pool area must be kept unobstructed and clean at all times.

(c) No lighted tennis courts shall be allowed unless approved by ACC. All tennis court location requests shall be approved by ACC. No tennis courts will be allowed on side or front set backs unless approved by ACC.

5.19 Compliance with Law. The construction of any Structure shall be commenced, pursued and completed in compliance with all federal, state, and local statutes and ordinances, all of which shall be the complete and sole responsibility of the Owner of the

Lot on which such Structure is being built.

ARTICLE VI

GENERAL COVENANTS AND RESTRICTIONS

6.01 Application. The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon.

6.02 Restriction of Use. Lots may be used for single-family residences only and for no other purpose provided that Declarant or Builder may operate a Sales Office and/or Model Home on a Lot or Lots designated by Declarant.

6.03 Resubdivision of Property. No Lot may be split, divided or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision.

6.04 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may as a condition or approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include ( by way of example and not of limitation) physical devices of controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape, and required landscaping as provided for in Section 6.05. Guidelines for the prevention and control of erosion and siltation may be include in the Design Standards of the ACC.

6.05 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of preliminary plans and specifications for the landscaping to accompany such construction or alteration. All lots in Estates and Overlook communities must use sod in their landscape plans. The ACC must approve the final landscape plan. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Design Standards of the ACC.

6.06 Trees. Except for the ACC approved building site no living tree having a diameter of eight (8) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot unless such removal is in conformity with approved preliminary landscaping plans and specifications submitted pursuant to the provisions of Section 6.05 hereof unless approved by the ACC. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC.

6.07 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefor approved by the ACC. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot.

6.08 Signs.



(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefore, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

(i) such signs as may be required by legal proceedings;

(ii) not more than one "For Sale" or "For Rent" sign, such having a maximum face area of four square feet; provided, however, that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used;

(iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC.

(b) In no event during approved construction of any Structure shall have more than one job identification sign be approved by the ACC. Except as provided in the Design Standards no "Sold" sign shall at any time be installed or maintained on any Lot or on any portion of the Structure visible from the exterior thereof.

**6.09 Setbacks.** (a) Each dwelling which is erected on a lot shall be situated on such Lot in accordance with the building and set back line shown on the recorded plat, and in no event shall any dwelling be erected upon any Lot in a manner which violates such building and setback lines. For purposes of this requirement all porches, patios, decks, shutters, awnings, eaves, gutters and other such overhangs will not be considered in violation thereof, even though such structure shall extend beyond said building and setback lines if approved by the ACC.

(b) In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ACC. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks. Unless otherwise approved by the ACC the minimum setback for the Estates and Overlook is 60 feet.

**6.10 Fences.** No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Guidelines relating to the design, location and uses of fence and walls may be included in the Design Standards of the ACC.

**6.11 Roads and Driveways.** No road or driveway shall be constructed or altered on any Lot without prior written approval of the ACC of plans and specifications for such roads and driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards of the ACC.

**6.12 Antennae.** No exterior television or radio antennae or satellite dish of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC. No antennae shall be installed or used for the purpose of transmitting electronic signals.

**6.13 Clotheslines, Garbage Cans, Etc.** No clotheslines shall be permitted. All equipment, garbage cans, and woodpiles shall be kept in garage or screened by adequate planting or approved fencing so as to conceal them from view by neighboring residences and streets.

**6.14 Maintenance.** Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, the Association shall have the Right of Abatement as provided in Section 8.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

**6.15 Recreational Vehicles and Trailers.** No house trailer, mobile home, motor home, recreation vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed three (3) consecutive days per month.

**6.16 Recreational Equipment.** Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC.

**6.17 Non-Discrimination.** No Owner or person authorized to act for an Owner shall refuse to sell or rent after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

**6.18 Waterfront Land.**

(a) On lots adjacent to lakes, ponds, rivers, streams, creeks or other water bodies or courses:

(i) no boat canal shall be dug or excavated therein, except with the prior written approval of the ACC of plans and specifications for said digging or excavation;

(ii) no bulkheading, barge, docks, piling, float or other marine Structure shall be erected adjacent thereto or thereupon, without the prior written approval of the ACC of plans and specifications for such Structure; and

(iii) no refuse of any kind shall be placed on or disposed of therefrom into the adjacent waters.



(b) On lakes, ponds, rivers, streams, creeks or other water bodies or courses comprising any part of the Common Property, (i) no boat shall be moored so as to obstruct navigation; (ii) no power boat shall be used (iii) no boat of a length greater than fifteen (15) feet, except canoes, shall be launched or used.

(c) Any lake which is depicted on the Plats of the Development and which is part of the Common Property shall be maintained only as a lake and, to this end, the Association, shall not cause or permit to be caused any act or acts to the contrary.

#### 6.19 Animals.

(a) No animals, including birds, insects, and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No farm animals allowed. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans, specifications and location for said Structure have been approved by the ACC.

(b) Leash Law - No stray animals will be allowed. The Homeowners Association will have the power to impound stray animals. The Homeowners Association will not be liable for any costs, harm, negligence or fatalities experienced by the stray animal.

#### 6.20 Solid Waste.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(b) Except during approved construction, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed in a manner which may be set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Design Standards.

6.21 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the community.

6.22 Landscape and Monument Easements. On Lots subject to a Landscape and Monument Easement as set forth on any recorded plat of survey of the Development, such Lots are subject to those easement rights set forth in Section 2.04.

6.23 Accessory Structures. A detached accessory structure may be placed on a lot to be used for a playhouse, a swimming pool, tennis court, a tool shed, a mailbox, or a dog house. Such accessory structures shall conform in exterior design and quality to the dwelling on the same lot. With the exception of a garage that is attached to a dwelling, an accessory structure placed on any lot shall be located only behind the dwelling as such dwelling fronts on a street of the Development. Such accessory structures shall also be located within such side and rear setback lines as may be required by applicable zoning law. The ACC shall have the right to approve or disapprove the plans and specifications for an accessory structure may not be commenced until complete final plans and specifications shall have been submitted to an approved by the ACC in accordance with the provisions of these covenants. Any accessory structure shall be constructed concurrently with or subsequent to the construction of the dwelling on the lot on which such accessory structure is located.

ARTICLE VII

EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01 Easements for Utilities and Maintenance

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limited to the following:

(i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities;

(ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;

(iii) slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.

(v) the erection, installation, construction and maintenance of fences, walls, monuments, signs, etc. along streets in, around and along and at entrances to the Development, and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature.

(vi) lake maintenance, access and recreational use for portions of the Property abutting lakes if any, which easement may be for the benefit of the Declarant and Owners. No easement shall be granted to the Association or others by Declarant to permit any person or person using any lake or lakes

on Common Property to enter onto any portion of a Lot not covered by such lake unless such entering person is the Owner of the Lot.

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

7.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto.

7.03 Easement for Encroachment. All of the Lots and the Common Property shall be subject to easements for encroachments created by construction, reconstruction, repair, settling, and overhang for all structures located upon the Property as designed or constructed. In the event that any portion of an encroaching structure on any Lot is partially or totally destroyed, an easement for encroachment upon the adjacent Lots and upon the Common Property resulting from repair and restoration of such structure as it existed prior to such repair or reconstruction shall and does exist. The foregoing notwithstanding, in no event shall an easement for encroachment exist if such encroachment occurred due to the willful conduct of an Owner, a tenant or agent of an Owner, or the Association. In addition, each Lot shall be subject to an easement for encroachment in favor of adjacent Lot Owners to allow use by the adjacent Lot Owner of any parking area constructed and designed by Declarant intended for the use of the adjacent Lot Owner.

7.04 Easement for Entry and Support. Each Owner shall have and is hereby granted an easement for the right to ingress and egress over, upon and across the Common Property as necessary for access to his Lot and shall have an easement for lateral support of his Lot, and such rights shall be appurtenant to and pass with the title to each Lot. Furthermore, each Lot shall be subject to an easement for reconstruction and repair in favor of the Association and of Owners of adjacent Lots to permit the Association and/or the Owners of such adjacent Lots to make reasonable entry upon such Lot for the purpose of effecting any necessary maintenance, repair, or reconstruction upon the Common Property or other Lots. Any such entry shall be reasonable, shall be made in such a way as to minimize disturbance and inconvenience to the Owner of such Lot, and entry for reconstruction or repair shall, except in the case of an actual emergency, be made only upon at least twenty-four hours' advance notice to the owner of such Lot. Any damage caused to any Lot or to any property located thereon shall be the responsibility of the party entering the Lot to effect such maintenance, repair, or reconstruction.

7.05 Easement for Maintenance by the Association and for Postal Delivery. There is hereby granted to the Association and its designated representatives an easement for access to each Lot for the purpose of exercising the maintenance responsibilities of the Association on the Lot and adjacent Lots. There is further granted to the Association and the Owners the easement and right to maintain and for access to such facilities for delivery of the United States mail as may be necessary under the regulations of the United States Postal Service as promulgated from time to time.

BOOK 11201 PAGE 378

7.06 Declarant's Retained Easements for Construction and Sales Activities. In connection with the development of the Property and the Additional Property, Declarant hereby reserves

for itself, its successors and assigns, easements for the installation and maintenance of water, sanitary sewer and storm drainage lines, and electric and telephone lines, any and all of which may encroach upon the Lots or the Common Property. In utilizing such easements, Declarant may cut any trees, bushes, or shrubbery or make any soil gradings or excavations necessary to install such water, sanitary sewer or storm drainage lines or such electrical and telephone lines, provided Declarant restores the affected area to a condition as near as practicable to its original condition. Declarant further, for itself, its successors and assigns, reserves the right and easement to close or place obstructions within the Common Property or any Lot owned by Declarant and to place building materials, construction equipment and construction and sales offices and trailers temporarily on the Common Property or any Lot owned by Declarant in connection with the development and marketing of the Property and the Additional Property; provided, however, that such construction and sales activities shall not be allowed to cut off all access to any Lot not then owned by Declarant, except as may be necessary during normal working hours for the installation, repair or maintenance of any utilities or common parking, driveway or road facilities; and provided, further, that the Association or the Architectural Control Committee may restrict or prohibit the construction or placement of temporary sheds and trailers for use in construction on any Lot. Developer shall also have an easement to place and maintain signs on the Common Property and upon any Lot adjacent to any road bordering the Property in connection with the development and marketing of the Property and the Additional Property. Declarant also reserves, for itself, its successors and assigns, an easement for pedestrian and vehicular ingress and egress across any and all streets and roads which now or hereafter exist upon the Property and the Additional Property for purposes of construction, maintenance or repair of lots located thereon and for such other reasonable purposes as Declarant may determine from time to time, and this easement shall not be limited to any period of development of the Property.

**7.07 Easements Involving Additional Property.** Declarant hereby grants and reserves in favor of the Property and the Additional Property reciprocal, permanent, non-exclusive easements for vehicular and pedestrian ingress and egress over the portions of the Additional Property and the Property, respectively, intended for such use. Said easement shall be appurtenant to the title to the Property and the Additional Property and shall inure to the benefit of any owner of all or any portion of the Property and the Additional Property.

**7.08 Zoning and Private Restriction.** None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

#### ARTICLE VIII

##### ENFORCEMENT

**8.01 Right of Enforcement:** This Declaration and the Restrictions contained herein shall inure to the benefit of an Owner, shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal

representatives, heirs, successors and assigns.

**8.02 Right of Abatement.**

(a) Except where different notice provisions are provided in Sections 5.11 and 6.14, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and Sections 5.11 and 6.14 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or 10% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgement or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a lot or lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

**8.03 Specific Performance.** Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to be beneficiary hereof, its transferees, successors or assigns, by reason of violation of, or failure to perform any of the obligations provided by, this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

**8.04 Collection of Assessments and Enforcement of Lien.**

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to

the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Fulton County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Fulton County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made the Association or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen per centum of the aggregate amount due for attorney's fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collecting of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

8.05 No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.



ARTICLE IXDURATION AND AMENDMENT

9.01 Duration and Perpetuities. The provisions of these covenants shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Georgia law limits to twenty (20) years, the period during which covenants restricting lands to certain uses may run, any provision of these Covenants affected thereby shall run with and bind the land for a period of twenty (20) years from the date these Covenants are filed for record in the Office of the Clerk of the Superior Court of Fulton County, Georgia, after which time such provision shall be automatically extended, if permitted by law, for successive periods of ten (10) years, unless an instrument, signed by at least seventy-five (75%) percent of the then Owners of record and the holders of first mortgages on their Lots has been recorded in the Office of the Clerk of said Court, agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any portion of the Property, by acceptance of a deed or other conveyance thereof, thereby agrees that the provisions of these Covenants may be extended and renewed as provided in this section.

9.02 Amendment. These Covenants may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the lots subject to these Covenants, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to these Covenants, or (iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private mortgage insurance company to insure mortgage loans on the Lots subject to these Covenants; provided any such amendment shall not adversely affect the title to any Owner's Lot, unless any such Owner so affected thereby shall consent thereto in writing. These Covenants may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) percent of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the owner of any real property subject to these Covenants; and provided further, however, no amendment affecting the Declarant's right to add additional property shall be effective unless also signed by Declarant. No amendment to the provisions of these Covenants shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of Fulton County Georgia. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to these Covenants, by acceptance of a deed or other conveyance therefor, thereby agrees that these Covenants may be

amended as provided in this Section.

ARTICLE X

STAGE DEVELOPMENT AND ANNEXATION

10.01 Annexation. Additional real property including the additional property described in Exhibit "B" attached here to or any portions thereof, may be annexed to the Property by the Declarant without the consent of the Owners at any time for a period of ten (10) years following the date on which this Declaration is filed in the Office of the Clerk of the Superior Court of Fulton County. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Fulton County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration. At the expiration of ten (10) years following the date of filing of this Declaration, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Owners.

10.02 Reallocation of Votes and Liability for Common Expenses. Upon the effective submission of any portion of the Additional Property pursuant to this Article, the votes in the Association and liability for Common Expenses shall be reallocated, so that all Lots in the Development, including any Lots added by such submission, shall be allocated equal votes and equal liabilities for payment of Common Expenses.

ARTICLE XI

MISCELLANEOUS

11.01 Other Changes. Notwithstanding any other provisions herein which may be construed to the contrary, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or owners (other than the Declarant) of the individual Lots in the Development have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by such Association (the granting of easement for public utilities or for other public purposes consistent with the intended use of such common area or property by the Association shall not be deemed a transfer within the meaning of this clause);

(b) change method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of dwellings on the Lots of the Development, the exterior maintenance of Lots and improvements thereon, the maintenance of the Common Property or party walks or common fences or common roadways and driveway, or the upkeep of lawns and planting in the Development.

(d) fail to maintain fire and extend coverage on insurable Association Common Property, if any, on a current replacement cost basis in an amount not less than one hundred

percent (100%) of the insurable value (based on current replacement cost);

(c) use hazard insurance proceeds for losses to any Association Common Property for another than the repair, replacement or reconstruction of such property.

**11.02 Rights of First Mortgages.**

(a) First mortgagees of Lots in the Development may jointly or singly, pay taxes or other charge which are in default and which may or have become a charge against the Association's Common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Property and first mortgages making such payments shall be owed immediate reimbursement therefor from the Association. Despite any other provision of this Declaration which may be interpreted otherwise, it is expressly intended that no Owner or any other party have priority over any rights of the first mortgage of a Lot pursuant to its mortgage or security deed in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of Association Common Property.

(b) In addition to the rights of mortgagees elsewhere provided, each first mortgage of a Lot, upon request, shall (i) be entitled to written notice from the Association of any default in the performance of his obligations under the Development documents of an Owner which is not cured within sixty (60) days; (ii) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (iii) be furnished copies of annual financial reports made to the Owners; and (iv) be entitled to inspect the financial books and records of the Association during reasonable business hours.

**11.03 Professional Management.** Any agreement for professional management of the Association, or any other contract providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on forty-five (45) days written notice.

**11.04 Notice of Leases, Tenants and Guests.** All tenants, lessees, guest and visitors are subject to the covenants contained in this Declaration, and they must abide by the rules and regulations set forth herein as promulgated by the Association and the ACC. It is the responsibility of the Owner to inform his tenants, lessees, guests and visitors of this requirement. It is also the responsibility of the Owner to inform the Association of any lease of his dwellings, whether by written or oral agreement, and where the Owner will not be occupying his dwelling, to provide the Association with a forwarding address where he may be contacted.

**11.05 No Reverter.** No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

**11.06 Severability.** A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

**11.07 Headings.** The headings of the Articles and Section hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

11.08 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural and vice versa.

11.09 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following address.

(a) Declarant: Guilford Forest Associates, Ltd.  
- 1045 New Hope Road  
Fulton County, Georgia 30331

(b) Each Owner's address as registered with the Association in accordance with the By-Laws. Any written communication transmitted in accordance with this Section 11.09 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

11.10 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

11.11 Insurance.

(a) The Board of Directors of the Association or its duly authorized agent shall obtain and maintain fire and extended coverage insurance for all insurable improvements located in the Common Area in an amount sufficient to cover the full replacement cost of such improvements in the event of damage or destruction from any insured peril. The Board of Directors shall also obtain and maintain such public liability and property damage insurance in such amounts and in such forms as shall be determined by the Board of Directors of the Association, for injury or injuries, including death, arising out of a single occurrence, covering the Association, all agents and employees of the Association, all Lot Owners and other persons entitled to occupy any Lot or other portion of the Property (but only with respect to events or occurrences upon the Common Area), and, to the extent obtainable, the Board of Directors and officers of the Association. The Board of Directors shall obtain and maintain such worker's compensation insurance as may be required by law and such other insurance as the Board may from time to time deem appropriate. Premiums for all such insurance shall be an expense of the Association. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association. Such insurance shall be governed by the provisions contained in the Bylaws of the Association.

(b) No Lot Owner shall be entitled to exercise his right to maintain insurance coverage in such a manner as to diminish or affect any recovery or payment which may be realized

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this 1st day of December 1, 1987.

Signed, sealed and delivered in the presence of:

Guilford Forest Associates, Ltd  
a Georgia Limited Partnership

[Signature]  
Unofficial Witness

By: [Signature]  
Managing General Partner

C. Regina Thomason  
Notary Public

Date of Execution by Notary:

November 20, 1987



## EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lots 61, 62 and 80 of the 14 FF (formerly Fayette) District of Fulton County, Georgia and being more particularly described as follows:

Beginning at a point on the northwesterly right-of-way of New Hope Road (45 feet north westerly of the center line of the same) a distance of 619.35 feet northeasterly of the intersection of said right-of-way with the southerly line of Land Lot 611; proceed thence north and northwesterly along an arc of 31.42 feet on a radius of 20.00 feet (subtended by a chord of 28.28 feet on a bearing of N 36 degrees-29 feet-10 inches W) to a point on the south westerly right-of-way of Guilford Forest Drive (50 feet southwesterly of said centerline); thence N 81 degrees-29 feet-10 inches W along said right-of-way a distance of 150.00 feet to a point; thence westerly and northwesterly along an arc of 135.52 feet on a radius of 285.56 feet (subtended by a chord of 134.25 feet on a bearing of N 67 degrees-53 feet-27 inches W) to a point; thence westerly and southwesterly along an arc of 30.35 feet on a radius of 20.00 feet (subtended by a chord of 27.52 feet on a bearing of S 82 degrees-14 feet-9 inches W) to a point on the southeasterly right-of-way of Handen Forest Drive (44 foot right-of-way); thence southerly and southwesterly along said right-of-way and an arc of 115.04 feet on a radius of 582.34 feet (subtended by a chord of 114.85 feet on a bearing of S 44 degrees-25 feet-35 inches W) to a point; thence N 39 degrees-54 feet-52 inches W a distance of 230.67 feet to a point; thence S 38 degrees-46 feet- 17 inches W a distance of 71.05 feet to a point; thence N 86 degrees-4 feet-11 inches W a distance of 219.01 feet to a point; thence S 81 degrees-26 feet-35 inches W a distance of 133.77 feet to a point; thence N 26 degrees-24 feet 8 inches W a distance of 136.00 feet to a point; thence S 76 degrees-53 feet-30 inches W a distance of 188.25 feet to a point; thence S 43 degrees-23 feet-10 inches W a distance of 235.09 feet to a point; thence S 60 degrees-52 feet-32 inches E a distance of 158.70 feet to a point, thence S 21 degrees-35 feet-9 inches E a distance of 169.40 feet to a point; thence S 21 degrees-47 feet-41 inches W a distance of 239.64 feet to a point; thence S 00 degrees-29 feet-40 inches E a distance of 172.72 feet to a point on the south line of Land Lot 61; thence N 89 degrees-10 feet-13 inches W along the line between Land Lot 61 and Land Lot 62 to an iron pin found; thence S 00 degrees-19 feet- 24 inches E a distance of 407.00 feet to a point; thence N 65 degrees-40 feet-23 inches W a distance of 281.99 feet to a point on the westerly right-of-way of Forest Overlook Drive (50 foot right-of-way); thence northerly and northwesterly a long said right-of-way an arc distance of 14.54 feet on a radius of 421.18 feet (subtended by a chord of 14.54 feet on a bearing of N 23 degrees-20 feet-16 inches W) to a point; thence northwesterly and westerly along an arc of 33.66 feet on a radius of 20.00 feet (subtended by a chord of 29.83 feet on a bearing of N 25 degrees-52 feet-18 inches W) to a point on the southerly right-of-way of Forest Overlook Trail (50 foot right-of-way); thence N 74 degrees-5 feet-31 inches W along said right-of-way a distance of 48.64 feet to a point; thence westerly and northwesterly along said right-of-way an arc distance of 96.00 feet on a radius of 296.93 feet (subtended by a chord of 95.59 feet on a bearing of N 64 degrees 49 feet- 45 inches W) to a point; thence N 34 degrees-25 feet-59 inches E a distance of 214.00 feet to a point; thence N 36 degrees-30 feet-17 inches W 102.73 feet to a point; thence N 15 degrees-44 feet-14 inches E a distance of 400.92 feet to a point; thence N 3 degrees-30 feet-50 inches E a distance of 94.46 feet to a point; thence N 65

31 feet-15 inches E a distance of 133.00 feet to a point on the southwesterly right-of-way of Forest Overlook Drive (50.00 Foot right-of-way); thence northwesterly and northerly along said right-of-way an arc distance of 75.00 feet on a radius of 294.32 feet (subtended by a chord of 74.80 feet on a bearing of N 17 degrees-10 feet-44 inches W) to a point; thence N 35 degrees-37 feet-15 inches W a distance of 87.79 feet to a point; thence N 84 degrees-28 feet-34 inches W a distance of 98.31 feet to a point; thence N 54 degrees-45 feet-43 inches W a distance of 374.61 feet to a point; thence N 29 degrees-18 feet-57 inches W a distance of 83.30 feet to a point; thence N 35 degrees-15 feet-10 inches W a distance of 126.20 feet to a point; thence S 77 degrees-26 feet-4 inches W a distance of 58.00 feet to a point; thence S 76 degrees-11 feet-19 inches W a distance of 141.88 feet to a point; thence N 8 degrees-10 feet-59 inches W a distance of 562.01 feet to a point; thence due North a distance of 40.00 feet to a point; thence N 46 degrees-21 feet-1 inch E a distance of 107.99 feet to a point; thence N 53 degrees-22 feet-46 inches E a distance of 207.05 feet to a point; thence N 45 degrees-21 feet-3 inches E a distance of 148.09 feet to a point; thence N 78 degrees-57 feet-14 inches E a distance of 48.85 feet to a point; thence S 89 degrees-31 feet-16 inches E a distance of 324.17 feet to a point; thence S 4 degrees-9 feet-1 inch W a distance of 146.00 feet to a point on the northerly right-of-way of Forest Crossing Drive (50.00 foot right-of-way); thence S 30 degrees-48 feet-10 inches E a distance of 60.82 feet to a point on the southerly right-of-way of Forest Crossing Drive; thence S 3 degrees-00 feet-33 inches W a distance of 154.39 feet to a point; thence N 88 degrees-15 feet-52 inches W a distance of 170.00 feet to a point; thence S 72 degrees-16 feet-6 inches W a distance of 216.84 feet to a point; thence S 17 degrees-43 feet-54 inches E a distance of 154.81 feet to a point on the northwesterly right-of-way of Dranford Forest Way (50.00 foot right-of-way); thence S 53 degrees-42 feet-46 inches E a distance of 54.55 feet to a point on the southeasterly right-of-way of Dranford Forest Way; thence S 22 degrees-9 feet-32 inches E a distance of 125.39 feet to a point; thence N 79 degrees-39 feet-10 inches E a distance of 93.68 feet to a point; thence S 52 degrees-8 feet-26 inches E a distance of 57.83 feet to a point; thence S 75 degrees-42 feet-22 inches E a distance of 75.45 feet to a point; thence N 82 degrees-13 feet-44 inches E a distance of 153.05 feet to a point; thence N 75 degrees-40 feet-23 inches E a distance of 176.93 feet to a point; thence N 65 degrees-6 feet-16 inches E a distance of 134.33 feet to a point; thence N 56 degrees-28 feet-44 inches E a distance of 88.00 feet to a point; thence N 18 degrees-3 feet-19 inches E a distance of 87.00 feet to a point; thence S 69 degrees-42 feet-27 inches E a distance of 185.00 feet to a point on the northwesterly right-of-way of Bethany Forest Drive (50.00 foot right-of-way) a distance of 15.32 feet to a point; thence S 72 degrees-38 feet 7 inches E a distance of 50.07 feet to a point on the southeasterly right-of-way of Bethany Forest Drive; thence S 72 degrees-38 feet-7 inches E a distance of 216.26 feet to a point; thence N 16 degrees-19 feet-21 inches E a distance of 220.00 feet to a point; thence S 45 degrees-31 feet-54 inches E a distance of 320.65 feet to a point; thence S 20 degrees-40 feet - 7 inches E a distance of 361.20 feet to a point; thence S 43 degrees-33 feet-36 inches W a distance of 133.00 feet to a point on the northerly right-of-way of Guilford Forest Drive (right-of-way varies); thence southeasterly and easterly along said right-of-way an arc distance of 173.52 feet on a radius of 324.19 feet (subtended by a chord of 171.46 feet on a bearing of S 66 degrees-9 feet-9 inches E) to a point; thence S 81 degrees-29 feet-10 inches E along said right-of-way (50.00 feet northerly of said centerline) a distance of 150.00 feet to a point; thence

northeasterly and northerly along an arc of 31.42 feet on a radius of 20.00 feet to a point on the northeasterly right-of-way of New Hope Road; thence S 8 degrees-30 feet-50 inches W a distance of 140.00 along said right-of-way to the point of beginning.

The above courses and distances are taken from that certain plat of property for Guilford Forest Associates, Ltd dated November 10, 1987, prepared by EDI Engineers and Surveyors, Inc. (Samuel G. Evans, Jr., Registered Land Surveyor). The total area of the above-described land, according to said plat survey, is 37.3055 acres.



EXHIBIT "D"

ALL THAT TRACT or parcel of land lying and being in Land Lots 61, 62, 79, 80 14th FF District, Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at the point of intersection of the westerly right-of-way line of New Hope Road (having a right-of-way 70 feet in width) with the line dividing Land Lots 61 and 62, said District and County; running thence North 89 degrees 10 minutes 13 seconds West, a distance of 1,234.39 feet to a point; running thence South 00 degrees 19 minutes 24 seconds East, a distance of 742.51 feet to a point; running thence South 89 degrees 40 minutes 47 seconds West, a distance of 750.02 feet to a point; running thence South 00 degrees 06 minutes 22 seconds West a distance of 18.16 feet to a point; running thence North 88 degrees 25 minutes 25 seconds West, a distance of 1,456.11 feet to a point; running thence North 00 degrees 30 minutes 16 seconds West, a distance of 755.34 feet to a point; running thence North 02 degrees 48 minutes 33 seconds East, a distance of 2,182.88 feet to a point; running thence South 89 degrees 56 minutes 15 seconds East, a distance of 3,010 feet to a point; running thence North 01 degrees 05 minutes 15 seconds West, a distance of 477.63 feet to a point on the westerly right-of-way line of New Hope Road; running thence in a southeasterly, southerly and southwesterly direction along the westerly right-of-way line of New Hope Road, and following the curvature thereof, the following courses and distances: South 13 degrees 18 minutes 46 seconds East, a distance of 78.76 feet to a point; southeasterly along the arc of a curve, a distance of 374.24 feet to a point (said arc being subtended by a chord bearing South 18 degrees 49 minutes 31 seconds East, a chord distance of 373.66 feet); South 24 degrees 20 minutes 16 seconds East, a distance of 569.40 feet to a point; southeasterly, southerly and southwesterly along the arc of a curve, a distance of 789.83 feet to a point (said arc being subtended by a chord bearing South 07 degrees 54 minutes 43 seconds East, a chord distance of 779.06 feet); and South 08 degrees 30 minutes 50 seconds West, a distance of 993.89 feet to the point of beginning.

The above courses and distances are taken from that certain plat of survey entitled "Boundary Survey For Guilford Forest Associates & Ticor Title Insurance Company", prepared by EDI Engineers & Surveyors, Inc. (Samuel G. Evans, Jr., Registered Land Surveyor), dated December 15, 1986. The total area of the above-described land, according to said plat of survey, is 213.76 acres.