

*Declaration of Protective
Covenants*

For

Highland Lake

Att 11 22132 D15

1st Amend - 2309/16

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
HIGHLAND LAKE**

STATE OF GEORGIA COUNTY OF FULTON

THIS DECLARATION is made on the date hereinafter set forth by S.J. Kilpatrick Construction Co., Inc. a Georgia Corporation (hereinafter referred to as "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of certain real property located in Land Lots 159, 175 and 176, of the 9th District, Fulton County, Georgia, which property is more particularly described in Exhibit "A" attached hereto and made a part of this Declaration (hereinafter referred to as the "Property"); and

WHEREAS, the Declarant intends to develop on the Property, a development to be known as HIGHLAND LAKE (hereinafter referred to as the "Development"); and

WHEREAS, Declarant has caused the Association (as hereinafter deemed) to be formed as a nonprofit civic organization 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 shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Declarations"), which is for the purpose of enhancing and protecting the desirability and attractiveness of, and which shall run with, the Property, and be binding on all parties having any right, title or interest in the Property or any pan thereof, and shall, subject to all limitations herein provided, inure to the benefit of each Owner, his her heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

ARTICLE I

DEFINITIONS

Doc#00136517 Rec#00062552
GEORGIA, FULTON COUNTY
Filed and Recorded
11/22/1996 11:14A
JUANITA HICKS
Clerk, Superior Ct

The following words when used in this Declaration shall have the following meanings:

1.01 ADDITIONAL PROPERTY. "Additional Property" means the additional property which may be added to the Property and made subject to this Declaration pursuant to Article X hereof.

1.02 ASSOCIATION. "Association" means the HIGHLAND LAKE HOMEOWNERS 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 BUILDER. "Builder" means any person, firm, corporation, partnership or other entity which has purchased any part or parcel of the Property from Declarant for the purpose of erecting a structure thereon.

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) including the littoral rights to any lake 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 S.J. Kilpatrick Construction Co., Inc. a Georgia Corporation, its successors and assigns, including, but not limited to, any person, firm, corporation, partnership, association, trust, or other legal entity, of any combination thereof, which acquires all or substantially all of the Development then owned by Declarant for subsequent successors in interest), together with its rights hereunder, by conveyance or alignment 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 that certain final subdivision plat for HIGHLAND LAKE. Unit 1, dated August 19, 1996, prepared by Herndon & Betterton, Inc., to be recorded in 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 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 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 in accordance with the provisions of Article X hereof.

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) any thing 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, 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 flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(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 1.13 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 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 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 be 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 any other Owner. 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 is subject to suspension by the Association as provided in Section 2.03(c) and 3.06.

2.03 RIGHT OF THE ASSOCIATION. The rights and privileges conferred in Section 2.02 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 the 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 the Common Property and revenues from assessments, use 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 and

(h) to sell, lease or otherwise convey all or any part of its properties and interest therein.

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 may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of the Members of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

(a) It is contemplated that certain easements for the erection and maintenance of entrance monuments, subdivision signs, walls, fences and other structures intended to provide an attractive atmosphere or to provide privacy to Owners within the Development will be reserved by the Declarant and set forth on plats or surveys of the Development recorded in the County Records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. Said easement areas shall be designated as such and all Owners taking title to any Lot upon which such easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the deed conveying such easements to the Association. Such easements shall be Common Property.

(b) ENCROACHMENT EASEMENTS. If any building or other improvement initially constructed on any of the Lots, including without limitation any eaves, roof overhangs, balconies, siding, porches, or other structures which may be attached to the walls and roof of such building, and which may encroach onto or over or extend into the air space of any portion of the Common Property, or, conversely, if any such improvement initially constructed on the Common Property encroaches onto or over portions of any Lot, a valid easement for the encroachment and for the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

2.05 DELEGATION OF/USE. Any Owner may delegate to the members of his/her family or his/her tenants who reside on a Lot, in accordance with the By-Laws, his/her right to use and enjoy the Common Property.

ARTICLE III

THE HOMEOWNERS ASSOCIATION

3.01 PURPOSES, POWERS AND DUTIES OF THE ASSOCIATION. The Association shall be formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the residents of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which shall promote in some way the common good and general welfare of the residents of the Development. To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

3.02 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.

3.03 VOTING RIGHTS. Subject to the following provisions of this Section, the Association shall have two classes of voting membership: Class A and Class B.

(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 member's sale of his/her 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 five (5) 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 and on the Additional Property shall have been conveyed, by either the Declarant or by a builder who purchased a 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 the 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.

3.04 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 of the Association shall be appointed by the Board until such time as Declarant no longer has the right to appoint member's 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 to time, or by law.

3.05 BOARD OK 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.

3.06 SUSPENSION OF MEMBERSHIP, (a) The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(1) 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 ACC (as herein deemed) within 30 days after having received notice of the same pursuant to the provisions of Sections 5.11, 6.14 or 8.02 hereof; or

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

(3) shall be in violation of the rules or regulations of the Association relating to the use operation and maintenance of the Common Property.

(b) 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 a violation described in subsection (a) (3) of this Section, 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 or egress of his. her Lot.

3.07 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.

3.08 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, or in the Articles of Incorporation, or By-Laws of the Association, the Declarant hereby retains the right to appoint two (2) members to the Board. The rights of Declarant to appoint members of the Board also includes the right to remove and replace its appointees until such time as its right to appoint members to the Board ceases.

(a) 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 five (5) 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 and

on the Additional Property shall have been conveyed, by either Declarant or by a builder who purchased a 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 board members by an express amendment to this Declaration executed and recorded by Declarant.

(b) Upon the expiration of the Declarant's right to appoint and remove board members of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant, if Declarant then owns one or more Lots. Upon the final expiration of all rights of Declarant to appoint and replace board members of the Association, a special meeting of the Association shall be called. At such special meeting, the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the 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 board members 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.

ARTICLE IV

ASSESSMENTS AND MAINTENANCE CHARGES

4.01 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN AND PERSONAL OBLIGATIONS. The Declarant, to the extent that Declarant is an Owner, hereby covenants and agrees, and each Owner, jointly and severally, for himself herself, his her heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot with a Residence on it. 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;

(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;

(c) that there is hereby created a continuing charge and lien upon all Lots owned 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 attorney's 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 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 from liability for any assessment assessed;

(f) that all annual assessments (together with interest thereon as provided in Section 4.07 of this

Declaration and costs of collection including reasonable attorney's fees) levied against any Lot or Lots shall be (in addition in being a continuing charge and lien against such Lot or Lots as provided in Section 4.01(c) of this Declaration) a personal obligation of the Owner which will survive any sale or transfer of the Lot, provided, however, that such personal obligation for delinquent assessment shall not pass to an Owners successor in title unless expressly assumed by such successor.

(g) that it has been and continues to be the intention and practice of Declarant, to not collect assessments on any lot until a residence is located thereon.

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 residents 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; 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 shall be paid by the Owners of each Lot within the Property (and any area annexed under the jurisdiction of the Association) in advance annually. The annual maintenance charge and assessment will commence as to each Residence on the earliest of the following events: (a) upon the occupancy of the permanent dwelling located on the Lot as a residence; or (b) upon the 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. The first year's annual assessment shall be prorated as of the commencement date. 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. Notwithstanding the preceding, the annual maintenance charge and 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. The Declarant is authorized, although not required, to advance funds to the Association necessary to further the purposes of the Association, and in the event such funds are advanced, the repayment of same shall be secured by a lien upon the property of the Association. Beginning on the date this Declaration is executed, the annual maintenance charge and assessment shall be in an amount to be determined by Declarant.

Beginning January 1, 1998, 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 judgment of the Directors require; however, the maximum annual assessment may be increased each year not more than ten percent (10%) 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, by a meeting duly called for such purpose, with at least sixty percent (60%) of the Owners or other proxies present. If sixty percent (60%) of the Owners do not attend, a second meeting may be called and the quorum will be reduced to thirty percent (30%) 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 including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for existing landscaping and maintaining and repairing recreational facilities and the acquisition and installation of capital improvements to such Common Property, such as sprinkler systems, providing that the Association shall have no obligation except as expressly provided

thereinafter 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 collection and administration of the 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 Members 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 which 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 reserve 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 assessment 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 in an amount to be determined which may be collected at the closing of such sale for the benefit of the Association. The aggregate fund established by such special assessment 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 service deemed necessary or desirable by the Board; and

(b) in any calendar year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by a two-thirds (2/3) vote of each class of Members of the Association who are present in person or by proxy at a meeting duly called for such purpose.

4.06 NOTICE AND QUORUM. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.04 or 4.05 shall be sent to all Members, or delivered to their residence, not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting the presence of members or of proxies entitled to cast fifty percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such subsequent meeting, shall be held more than 60 days following the preceding meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the members.

4.07 EFFECT OF NONPAYMENT OF ASSESSMENTS. Any Assessment which is not paid within 30 days after the Due Date shall bear interest from the Due Date until paid in full at the rate often 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 that an Owner shall fail to pay fully any portion of any assessment on or before the date on which payment is due, such unpaid portion, 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 and the laws of the State of Georgia.

4.08 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 CONTROL

5.01 ARCHITECTURAL CONTROL COMMITTEE - CREATION AND COMPOSITION. An Architectural Control Committee (the "ACC") shall be established consisting of three (3) individuals to be appointed by the Board 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 Development, and (ii) as to the location of Structures with respect to topography, furnished 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 every thing 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 limits sole discretion to approve or disapprove plans and specifications or any installation, construction or alteration of any Structure on any Lot.

5.03 OFFICERS, SUBCOMMITTEES AND COMPENSATION. The members of the ACC 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.

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 determined as necessary 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 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 objection 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 may 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, or any action which may 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 two (2) members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) 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. Written notice of the decision of the ACC shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he 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 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 Structures 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 publish its current Design Standards and have copies 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, 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) the 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) plans for landscaping and grading.

5.07 APPROVAL OF PLANS AND SPECIFICATIONS. Upon approval by the ACC of any plans and specifications 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 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 sole 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, however, shall be final as to that 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.

- (a) failure to include information in such plans and specifications as may have been reasonably requested; or
- (b) failure of such plans or specifications to comply with this Declaration or the Design Standards; or
- (c) any other matter which, in the judgment 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, 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 within 30 days after receipt. 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 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 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 the 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 reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Declaration.

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 ACC approval. 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 and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within 10 days after the mailing of the notice of violation, then the Association shall have all of the remedies set forth in Section 3.01 below, including the right to impose fines, the Right of Abatement set out in section 8.02. or judicial remedy.

5.12 CERTIFICATION 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 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 the Certificate shall be tiled 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; 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, code 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. The fee 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 which it approves.

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 runoff 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 included 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 plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure shall be included in the Design Standards of the ACC.

6.06 TREES. No living tree having a diameter of six (6) 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 landscaping plans and specifications submitted pursuant to the provisions of Section 6.05 hereof. 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 therefore 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: or

(ii) one "For Sale" or "For Rent" sign, such sign 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; or

(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 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.

(c) Notwithstanding anything contained herein to the contrary, for so long as Declarant owns any Lots in the Development, declarant shall be entitled to install such signs as Declarant shall deem reasonably necessary in connection with the sale of Lots or Residences in the Development.

6.09 SETBACKS. (a) Each dwelling which is erected on a Lot shall be situated on such Lot in accordance with the building and setback 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 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.

6.10 FENCES. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without prior written approval of the ACC of plans and specifications for such fence and wall. Guidelines relating to the design, location and uses of fences 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 the prior written approval of the ACC of plans and specifications for such road and driveway. 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 of any sort, including satellite dishes, 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, TRASH CANS, ETC. No clotheslines shall be permitted. All equipment, garbage cans, crash containers and woodpiles shall be kept in a 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/her, 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. 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 the 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 10 days after the mailing of said written notice by certified mail, then the Association shall have all of the remedies set forth in Section 8.01 below including the right to impose finds, the right of abatement set out in Section 8.02, or judicial remedy. 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 commercial vehicle, house trailer, mobile home, motor home, recreational 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 forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicle or equipment may be stored on a lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view by neighboring residences and streets.

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 persons 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 the 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 except a boat powered by an electric motor with a power rating not to exceed 3.5 horsepower; and

(iii) no boat of a length great than fifteen (15) feet, except canoes, shall be launched or used.

(c) On Lots which either abut or are located partially within any lake now located upon the Property. Declarant hereby expressly reserves unto Declarant and to the other Owners of Lots which abut such lake, the following rights and casements;

(i) a perpetual non-exclusive easement for the benefit of only such parties as are expressly named immediately above, over that portion of the Property from time to time covered with waters of any such lake and also the embankment thereof within five feet of such water line for ordinary and customary recreational uses and lake maintenance.

(ii) the easement reserved immediately above shall be limited in use to the Owners of the Lots actually abutting any such lake, their immediate families, and only such visitors of such owners as are actually and in good faith personally accompanied by such Owner or a member of such Owner's immediate family.

(iii) a perpetual non-exclusive easement over that portion of the Property now or hereafter covered by any such lake for purpose of soil erosion and sediment control from other portions of the Property, which

shall include, without limitation, the right to allow runoff of sediment, dirt rock and other materials to flow from other portions or the Property and to have no responsibility to Owners of the Lots abutting any such lake for water clarity or siltation to such lake.

(d) Declarant makes no warranties of any nature with regard to the water retention dam ("Dam") which holds water to any above described lake. Owners of Lots which abut any such lake agree to pay any reasonable expenses necessary to maintain the structural integrity of the Dam and such other maintenance to the lake as may be agreed upon by the majority of the abutting Lot Owners. In the event a property Owner Luis or refuses to pay his or her proportionate share of any such expense, the remaining Owners shall be entitled to file a lien against the Lot of such owner as if a supplier of labor and/or materials pursuant to official Code of Georgia Annotated Section 44-14-360 et seq. Any payment not made within ten days after notification of the establishment of the maintenance cost and proportionate share of each such Owner shall bear interest thereafter until paid at the rate of 20% per annum, compounded daily.

6.19 ANIMALS. 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 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 and specifications and location for said Structure have been approved by the ACT.

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 bum 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, meals, 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 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 or Common Property, 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(a).

ARTICLE VI

EASEMENTS. ZONING AND OTHER RESTRICTIONS

7.01 EASEMENTS.

(a) Declarant hereby expressly reserves to the Declarant, its successor; 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 limitation, 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;

(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 and 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; and

(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: provided, however, 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 ENTRY. The Declarant and its employees, agents, successors and assigns, shall have the right, at all reasonable times, to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Article. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 7.01.

7.04 ZONING AND PRIVATE RESTRICTIONS. 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.

8.01 RIGHT OF ENFORCEMENT. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his/her legal representatives, heirs, successors and assigns.

Failure to comply with this Declaration and the Restrictions contained herein, the By-Laws, the rules and regulations, use restrictions or Design Standards shall be grounds for judicial remedies pursuant to Section 8.03 below. In addition, the Board shall have the Right of Abatement pursuant to Section 3.02 below, and the right to impose fines or other sanctions, in accordance with the procedures set forth in the By-Laws, which fines shall be collected as provided herein for the collection of assessments. Failure by the Board or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

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 10 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 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 provision of this Section, and with the cost thereof, including the costs of collection and reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by law or ten percent (10%) per annum 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 judgment 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, (it) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure loans 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 a beneficiary hereof, its transferees, successors or assigns, by reason of a 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

If any assessment, interest, cost, fine or other charge is not paid is required by this Declaration. the Association may bring either in action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by the 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 attorney's fees.

8.05 NO WAIVER. The failure of the Declarant, the Association, or the Owner of any Lot, or 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 to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE IX

DURATION 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 20 years, the period during which covenants restricting lands to certain uses may run. any provision of these covenants affected therein shall run with and bind the land for a period of 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 often 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 therefore, thereby agrees that these covenants may be amended as provided in this Section.

ARTICLE X

ANNEXATION

For so long as Declarant owns property contiguous to the property, of for a period of five (5) years, whichever is later, additional real property may be annexed to the Property by the Declarant without the consent of the Class A Members. 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; or filing an amendment to the Declaration which has been consented to by the owners of the real property to be annexed if such real property is owned by someone other than Declarant.

ARTICLE XI

MISCELLANEOUS

11.01 NO REVERTER. No restriction herein is intended to be or shall be construed as. a condition subsequent or as creating a possibility of reverter.

11.02 SEVERABILITY. A determination by a court that any provision herein is invalid for any reason shall not affect the validity of any other provision hereof.

11.03 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.

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

11.05 NOTICES. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant this Declaration, whether made by the Declarant, the Association, the ACC, the Owners, 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 addresses:

(a) Declarant: S.J. Kilpatrick Construction Co., Inc.
Ann: S.J. Kilpatrick
1380 Shallowford Road
Marietta. GA 30066

(b) Owner: S.J. Kilpatrick Construction Co., Inc.
Attn: S.J. Kilpatrick
1380 Shallowford Road
Marietta, GA 30006

Any written communication Transmitted in accordance with this Section shall be deemed received on the third (3rd) day following; the day such written notice is deposited in the United States Mail.

11.06 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 provision 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.

11.07 INSURANCE.

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss or any and or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders and insured be given thirty (30) days prior written notice of any cancellation of such policies.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove directors, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repairs or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

(c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

(d) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time, by either the Veterans Administration or Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.

11.08 OTHER CHANGES. Notwithstanding any other provision 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 easements 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 the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner, or

(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 Structures on the Lots of the Development, the exterior maintenance of Lots and improvements thereon or the maintenance of the Common Property.

ARTICLE XII

MORTGAGE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on Residences in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.01 NOTICES OF ACTION. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

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

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

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

(d) any proposed action which would require the consent of a specified percentage of eligible mortgagees.

12.02 SPECIAL FHLMC PROVISION. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first mortgagees or at least two-thirds (2/3) of the total Members of the Association vote entitled to vote thereon consent, the Association shall not;

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);

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

(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 and maintenance of Residences and of the Common Property (the issuance and amendments of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

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

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

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

12.03 NO PRIORITY. No provision of this Declaration or By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

12.04 NOTICE TO ASSOCIATION. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Residence.

12.05 AMENDMENT BY BOARD. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements

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

12.06 VETERANS ADMINISTRATION APPROVAL. As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article X, the following actions shall require the prior approval of the Veterans Administration so long as the Veterans Administration is guaranteeing any mortgage in the Community: annexation of additional property to (he Community, except for annexation by Declarant in accordance with Article X, pursuant to a plan of annexation previously approved by the Veterans Administration: dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation.

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

12.08 FAILURE OF MORTGAGE TO RESPOND. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

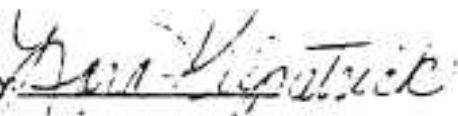
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this 15th day of November, 1996 .

Signed, sealed and delivered
in the presence of:


S.J. Kilpatrick Construction Co., Inc.


Unofficial Witness



Notary Public


By: 
Secretary

HIGHLAND LAKE HOMEOWNERS ASSOCIATION, INC:


Unofficial Witness

By: 


Notary Public


By: _____