

After recording, return to:  
Alston & Bird  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424  
Attn: James G. Farris, Jr., Esq.

RESTATED DECLARATION OF PROTECTIVE COVENANTS  
FOR  
SHAWNEE RIDGE

October 30, 1997

**THIS RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR SHAWNEE RIDGE RESTATES (WITHOUT AMENDING), SUPERSEDES AND REPLACES IN ITS ENTIRETY THAT CERTAIN DECLARATION OF PROTECTIVE COVENANTS FOR SHAWNEE RIDGE DATED MAY 31, 1989, RECORDED IN DEED BOOK 5499, PAGE 149, GWINNETT COUNTY, GEORGIA RECORDS, AS AMENDED**

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<b><u>Exhibit</u></b>	<b><u>Name</u></b>
A	Definitions
B	Property Submitted
C	Additional Property Which Can Be Unilaterally Submitted by Declarant
D	Assessment Obligations and Voting Rights
E	By-Laws of Shawnee Ridge Owners Association, Inc.
F	Multi-Family Residential Developments
G	Combined Units

# RESTATED DECLARATION OF PROTECTIVE COVENANTS

FOR

## SHAWNEE RIDGE

THIS DECLARATION is made on the 30<sup>th</sup> day of October, 1997 hereinafter set forth by THE SHAWNEE RIDGE JOINT VENTURE, a Georgia joint venture comprised of (a) Industrial Developments International, Inc., a Delaware corporation and (b) Suwanee Gwinnett Joint Venture, a Georgia joint venture which is comprised of Suwanee Gwinnett, L.P., a Georgia limited partnership and CMS Gwinnett County, L.P., a Delaware limited partnership (hereinafter sometimes called "Declarant").

### BACKGROUND STATEMENT

Declarant executed that certain Declaration of Protective Covenants for Shawnee Ridge dated May 31, 1989, which was recorded in Deed Book 5499, Page 149, of the Gwinnett County, Georgia records, and amended by that certain Amendment to the Declaration of Protective Covenants for Shawnee Ridge and the Bylaws of Shawnee Ridge Owners' Association, Inc., dated June 4, 1990, recorded in Deed Book 6075, Page 240, said records, further amended by that certain Amendment No. 2 to Declaration of Protective Covenants for Shawnee Ridge, dated April 30, 1992, recorded in Deed Book 7416, Page 109, said records, further amended by that certain Amendment No. 3 to Declaration of Protective Covenants for Shawnee Ridge, dated July 2, 1992, recorded in Deed Book 7602, Page 23, said records, further amended by that certain Amendment No. 4 to Declaration of Protective Covenants for Shawnee Ridge, dated July 21, 1993, recorded in Deed Book 9081, Page 244, said records, further amended by that certain Amendment No. 5 to Declaration of Protective Covenants for Shawnee Ridge, dated October 6, 1993, recorded in Deed Book 9416, Page 186, said records, further amended by that certain Amendment No. 6 to Declaration of Protective Covenants for Shawnee Ridge, dated May 11, 1994, recorded in Deed Book 10306, Page 120, said records, further amended by Amendment No. 7 to Declaration of Covenants for Shawnee Ridge, dated July 18, 1994, recorded in Deed Book 10516, Page 118, said records, further amended by that certain Amendment No. 8 to Declaration of Protective Covenants for Shawnee Ridge, dated April 28, 1995, recorded in Deed Book 11308, Page 248, said records, further amended by that certain Amendment No. 9 to Declaration of Protective Covenants for Shawnee Ridge, dated June 22, 1995, recorded in Deed Book 11453, Page 154, said records, further amended by that certain Amendment No. 10 to Declaration of Protective Covenants for Shawnee Ridge, dated August 3, 1995, recorded in Deed Book 11565, Page 136 said records, further amended by that certain Amendment No. 11 to Declaration of Protective Covenants for Shawnee Ridge, dated January 26, 1996, recorded in Deed Book 12259, Page 115, said records, further amended by that certain Amendment No. 12 to Declaration of Protective Covenants for Shawnee Ridge, recorded July 9, 1996 in Deed Book 12923, Page 258 said records, further amended by that certain Amendment No. 13 to Declaration of Protective Covenants for Shawnee

Ridge, dated July 26, 1996, recorded in Deed Book 13016, Page 58, said records, further amended by that certain Amendment No. 14 to Declaration of Protective Covenants for Shawnee Ridge, dated September 20, 1996, recorded in Deed Book 13238, Page 214, said records, further amended by that certain Amendment No. 15 to Declaration of Protective Covenants for Shawnee Ridge, dated September 23, 1996, recorded in Deed Book 13244, Page 240, said records, further amended by that certain Amendment No. 16 to Declaration of Protective Covenants for Shawnee Ridge, dated September 30, 1996, recorded in Deed Book 13292, Page 117, said records, further amended by Amendment No. 17 to Declaration of Protective Covenants for Shawnee Ridge, dated November 4, 1996, recorded in Deed Book 13430, Page 89, said records, further amended by Amendment No. 18 to Declaration of Protective Covenants for Shawnee Ridge, dated February 18, 1997, recorded in Deed Book 13821, Page 274, said records, and as further amended by Amendment No. 19 to Declaration of Protective Covenants for Shawnee Ridge, dated September 8, 1997, recorded in Deed Book 14729, Page 185, said records, and as further amended by Amendment No. 20 to Declaration of Protective Covenants for Shawnee Ridge, dated October 30, 1997, to be recorded in said records on or around the date hereof (as amended, the "Original Declaration").

For the convenience of all parties interested in the terms of the Original Declaration, Declarant desires to restate (without materially amending) the Original Declaration in its entirety, and thereby to wholly supersede and replace the Original Declaration with the Declaration.

Declarant desires to subject the real property described in Article II, Section 1, hereof to the provisions of this Declaration to create a commercial and residential community and to provide for the subjecting of other real property to the provisions of this Declaration.

Declarant intends by this Declaration to continue to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners and occupants of commercial and residential property within Shawnee Ridge, the planned unit development made subject to this Declaration by the recording of this Declaration and amendments thereto. Declarant desires to continue to provide a flexible and reasonable procedure for the overall development of Shawnee Ridge. Declarant also desires to continue to establish a method for the administration, maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration.

Declarant hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, has been and is hereby subjected to the provisions of this Declaration and shall be held, leased, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto,

their respective heirs, legal representatives, successors, successors in title, and assigns and shall inure to the benefit of each and every owner and occupant of all or any portion thereof.

## Article I Definitions

Unless the context shall prohibit, certain words used in this Declaration shall have the definitional meaning set forth in Exhibit "A", attached hereto and by reference made a part hereof.

## Article II Property Subject To This Declaration

Section 1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B", attached hereto and by reference made a part hereof.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one (1) or more amendments to the Declaration, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided in Article IX.

## Article III Association Membership and voting Rights

Section 1. Membership. Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership.

Section 2. Voting. Owners shall be entitled to cast that number of votes computed in accordance with the formula contained in Exhibit "D" attached hereto and by reference made a part hereof. All votes are weighted in accordance with the formula established in Exhibit "D", and this Declaration shall not be construed as creating equal voting rights. When more than one (1) Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners determine among themselves. In the event of a dispute, the vote shall be suspended if more than one (1) Person seeks to exercise it. Notwithstanding the foregoing, those Owners of property which is exempt from assessments as provided in Article IV, Section 11, hereof, are Members of the



Association and are subject to the provisions of this Declaration, but shall not be entitled to vote.

Any Owner of a Unit leased to an Occupant and not occupied by the Owner may, in the lease or other written instrument with the Occupant, assign the Owner's voting right appurtenant to that Unit to the Occupant, provided that (a) the lease to the Occupant is for a primary term of not less than fifteen (15) years, (b) the entire Unit is leased to a single Occupant and (c) a copy of the instrument so assigning Owner's voting right is furnished to the Secretary within the time period prescribed by the Secretary. Assignments must be for all voting rights appurtenant to a Unit; no partial assignment of voting rights shall be recognized in any Association vote. In the event of an assignment of Owner's voting rights in compliance herewith, the Occupant may vote the Owner's vote on all issues upon which the Owner would be entitled to vote.

An Owner's right to vote may be suspended as provided in Article XI, Section 2, of this Declaration.

There shall be no cumulative voting.

#### Article IV Assessments

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants in the Community, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Type of Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Parcel Assessments, if applicable; (c) special assessments, such assessments to be established and collected as hereinafter provided in Article IV, Section 5; and (d) specific assessments against any particular Unit which are established pursuant to the terms of this Declaration, including, but not limited to, those assessments established by Article IV, Section 10, and Article V, Section 2, hereof and reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws. General Assessments shall be levied for Association Expenses determined by the Board to benefit all Owners and Occupants. General Assessments shall be allocated among all Units in the Community in accordance with Exhibit "D" and this Declaration shall not be construed as creating an equal assessment obligation for each Owner. Parcel Assessments shall be levied against Units in a particular Parcel where the Board has determined that certain Association Expenses benefit only that Parcel. Association Expenses benefiting only a particular Parcel shall include, without limitation, Association Expenses incurred for maintenance and repair of the following items and provision of the following services within a particular Parcel: private streets, if any,

trash and garbage service and lighting. Parcel Assessments shall be allocated among all Units in the particular Parcel in accordance with Exhibit "D". The Board's decision to initially impose Parcel Assessments on a Parcel shall require the approval of said designation by a Majority of votes (in person or by proxy) of the Owners of all Units within the proposed Parcel, including Declarant, if Declarant is such an Owner (exclusive of Declarant's votes attributed to unimproved Units, but inclusive of Declarant's votes attributed to Improved Units [as defined in Exhibit "D"]).

Section 3. Creation of Lien and Personal Obligation for Assessments. All assessments, together with late charges, interest at a rate equal to the lesser of eighteen (18%) percent or the maximum lawful rate, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made. Each such assessment, together with late charges, interest, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment fell due. Each such Owner shall be personally liable for the portion of each assessment coming due while such Person is Owner of a Unit, and the grantee of any Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgage holder, institutional Mortgage holder or purchase money Mortgage holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

General Assessments, Parcel Assessments, and other assessments as determined by the Board shall be annual assessments, even if they are to be paid in installments due more frequently than annually. Assessments shall be paid in such manner and on such dates as may be fixed by the Board, which may include, without limitation, acceleration, upon ten (10) days' written notice, of delinquent annual assessments.

Unless otherwise provided by the Board, assessments shall be paid in annual installments.

Section 4. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared and separate line items for Parcel expenses for each Parcel. The Association Expenses shall be allocated to each Unit as follows. The amount of all estimated expenses to be incurred for the sole benefit of a particular Parcel shall be determined for each Parcel and that portion of the total estimated Association Expenses attributable to a particular Parcel shall be allocated among the Units in the Parcel in accordance with Exhibit "D" and shall be levied as Parcel Assessments. The remaining Association Expenses shall be allocated among all Units in accordance with Exhibit "D" and shall be levied as General Assessments. The Board shall cause the budget and the assessments to be levied against each Unit for the following year to be delivered to each Unit Owner at least thirty (30) days prior to the end of the current fiscal year. The Board may not, without the consent of the Declarant (so long as Declarant has an option

unilaterally to subject additional property to this Declaration as provided in Article IX hereof) and the vote or written assent of at least a majority of the total Association vote entitled to vote thereon, impose a General Assessment per point (as provided in Exhibit "D") which is more than two hundred (200%) percent of the budgeted General Assessment per point for the immediately preceding fiscal year; provided, however, for the purpose of the limitation on assessment increases contained in this Section, the term "General Assessment" shall be deemed to include the amount assessed per point plus a pro rata allocation made in accordance with the method of allocating General Assessments of any amounts the Association received through any subsidy in effect for the year immediately preceding the year for which the assessment is to be increased. In the event that the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year. Limitations on increases in Parcel Assessments, if any, shall be contained in the amendment to the Declaration designating a particular portion of the Community as a Parcel. General Assessments are comprised of Association Expenses determined by the Board to benefit all Owners and Occupants. Such Association Expenses are comprised of "Non-Controllable Expenses" and "Controllable Expenses". Non-Controllable Expenses are expenses which cannot be controlled by the Association, such as ad valorem taxes, insurance premiums, utilities and expenses required to be incurred in order to comply with laws, regulations, ordinances and other governmental regulations. Controllable Expenses are defined as those expenses of the Association which are not included as Non-Controllable Expenses. Any other provision of this Declaration to the contrary notwithstanding, if the Controllable Expenses component of the General Assessments charged per point increases so as to cause an increase in the Controllable Expenses component of the General Assessment per point in excess of four percent (4%) per year compounded annually from fiscal year 1996 or in excess of ten percent (10%) from the immediately preceding year, then said increase in the Controllable Expenses must be approved by a majority of the votes of Owners (exclusive of Declarant's votes attributed to unimproved Units, but inclusive of Declarant's votes attributed to Improved Units [as defined on Exhibit "D"]) represented at the meeting (in person or by proxy) of the membership called to vote on said increase.

Parcel Assessments are comprised of Association Expenses determined by the Board to benefit a specific Parcel and not all Owners. Any other provision of this Declaration to the contrary notwithstanding (including, without limitation, the last sentence of Article IV, Section 4 of the Declaration), if the Controllable Expenses component of the Parcel Assessments charged per point increases so as to cause an increase in the Controllable Expenses component of the Parcel Assessment per point in excess of four percent (4%) per year compounded annually from fiscal year 1996 or in excess of ten percent (10%) from the immediately preceding year, then said increase in the Controllable Expenses must be approved by a majority of the votes of Owners in the Parcel (exclusive of Declarant's votes attributed to unimproved Units in the Parcel, but inclusive of Declarant's votes attributed to Improved Units in the Parcel) represented at the meeting of the membership (in person or by proxy) called to vote on said increase.

Section 5. Special Assessments. In addition to the other assessments authorized herein, the Board may levy special assessments in any year. So long as the total amount of the special assessment levied in any one (1) fiscal year does not exceed Ten Thousand Dollars (\$10,000.00) or ten percent (10%) of the expense budget in effect for that fiscal year, whichever is greater, the Board may impose the special assessment. Any special assessment which would exceed this limitation shall be effective only if approved by a Majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the consent of the Declarant. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. Special assessments shall be allocated among Units in the same manner as General Assessments.

Section 6. Lien for Assessments. All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with late charges, interest, and all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall be secured by a lien on such property in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such property, except for (a) liens of ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage, a purchase money mortgage, or on any Mortgage to Declarant or an institutional lender duly recorded in the land records of the county where the Community is located and all amounts advanced pursuant to such Mortgages and secured thereby in accordance with the terms of such instruments.

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

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid in full by the date specified by the Board ("due date") shall be delinquent. Any assessment delinquent for a period of more than thirty (30) days shall incur a late charge in such amount as the Board may from time to time determine. If the assessment is not paid when due, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest on the principal amount due, and all late charges from the date first due and payable, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyances, vests in the Association and its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the

Association and shall be for the benefit of all other Owners. The Association, acting through the Board and on behalf of the Owners, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non use of Common Property, or abandonment of the Unit. No diminution or abatement of any assessment or set off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

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

The Board or its designee may compile a list of owners who are delinquent in the payment of any assessment due the Association in which list may indicate, without limitation, the Owner, Unit and delinquent amount. Such list may be posted in a prominent place within the Community and/or be placed in a Community newspaper or newsletter after the Board has consulted with legal counsel regarding the specific form and content of such list.

Section 8. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Unit on the first day of the month following the month in which the initial Association Expenses exist.

Section 9. Assessment Obligation of Declarant: Subsidy Agreements. After the commencement of annual assessment payments as to any Unit, the Declarant, on behalf of itself and its successors and assigns, covenants and agrees to pay the full amount of the assessments provided herein for each existing Unit that it owns. The Board is specifically authorized to enter into subsidy contracts with the Declarant or other entities for the payment of some portion of the Association Expenses. Such contract or contracts shall be for the benefit of and enforceable by the Association and its Members.

Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant and the Board agree as to the value of any contribution, the value shall be as agreed. If the Board and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Board with a detailed explanation of the service performed and material

furnished, and the Board shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Board and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors. For purposes of this Section, "in kind contributions" from Declarant to the Association (i) shall be limited to services and/or materials needed by the Association in order to fulfill its responsibilities under the Declaration, and (ii) shall be valued consistent with the market value for such services and/or materials.

Section 10. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Units for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association which benefit less than all of the Units may be specifically Assessed equitably among all of the Units which are benefited according to the benefit received.

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

Section 11. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from General Assessments, Parcel Assessments, and special assessments:

(a) all Common Property (such term as used herein shall not include property which is within any Unit regardless of whether or not the Association is obligated to maintain any such property); and

(b) all property dedicated to and accepted by any governmental authority or public utility including, without limitation, public schools, public streets, and public parks.

#### Article V

#### Maintenance; Conveyance of Common Property by Declarant to Association

**Section 1. Association's Maintenance Responsibility.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The Association shall also maintain all entry features for the Community, street signs, street lights (unless dedicated to the county), medians, landscaped strips and any lake(s), dam(s) or shoreline located within the Community and made available for the use and enjoyment of all Owners.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community. The Association may enter into easements and covenants to share costs agreements regarding property where the Board has determined that this would benefit Owners. Such maintenance and provision of services shall include, without limitation, maintenance of property within a particular Parcel or area of the Community if so required Pursuant to an amendment to the Declaration executed by the Declarant or pursuant to a contract entered into by the Association and the right, at the sole discretion of the Board, to maintain landscaped areas along the right of way between Wildwood Road and the entrance to the Community. Such activities shall not constitute discrimination within a class.

The foregoing maintenance costs shall be assessed as a part of the General Assessment, Parcel Assessments or specific assessments, as determined by the Board in Accordance with this Declaration.

The foregoing maintenance shall be performed consistent with the Community Wide Standard.

**Section 2. Owner's Maintenance Responsibility.** Except as otherwise provided in Article V, Section 1 above, each Owner shall maintain or cause to be maintained in a safe, clean, and attractive condition all property subject to this Declaration which is owned directly or indirectly by such Owner in a manner consistent with the Community wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, exterior lighting, and maintenance facilities in good repair and working order; keeping lawn and landscaped areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; repair of exterior damages to improvements; and, if applicable, striping of parking areas and keeping roads and parking areas in good repair. At the sole discretion of the Board, the Association may contract with any Owner to perform any of the Owner's maintenance responsibilities.

In the event that the Board determines that (a) any Owner or designee of the Owner, as designee is defined below, has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is

responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an owner, his or her family, guests, lessees, invitees, or designee and its not covered or paid for by insurance, in whole or in part, then, the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner or designee written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's or the Owner's designee's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner or his designee shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be treated as a specific assessment against the Owner and the property owned by the Owner. If an Owner has designated an entity such as a condominium association or commercial owners association, to perform all or part of the maintenance required to be performed hereunder by such Owner for property owned directly or indirectly by such Owner and such entity has accepted such designation, either pursuant to a recorded declaration or otherwise, such entity shall be a designee of the Owner as such term is used above and the Association may, to the extent permitted by law, specifically assess such designee and the property owned or administered by such designee for all costs of correcting noncompliance with this Section.

Section 3. Party Walls and Party Fences. Each wall or fence built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall or fence may restore it, and if the other Owner or Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party



refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a Majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

Section 4. Conveyance of Common Property by Declarant to Association.

The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Common Property may include (but shall not be required to include), without limitation, jogging trails, tennis courts, greenbelt and entry features. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. Notwithstanding anything to the contrary contained herein, no property shall be contributed by Declarant to the Association (i) other than for a nominal consideration, (ii) unless Declarant has made a good faith determination through appropriate third party professional testing (through a "Phase I" environmental assessment and any further assessments recommended in the Phase I) that the Property to be contributed is in no way contaminated by any hazardous substances in violation of applicable laws or which require any remediation by the owner of such property, (iii) if such property is encumbered by any deed to secure debt or similar debt encumbrance, and (iv) unless Declarant reasonably believes in good faith that the property to be contributed will be beneficial to the Owners for their common use and enjoyment.

Article VI

Use Restrictions and Rules

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XII, Section 4, hereof regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. This authority shall include, but shall not be limited to, the right to impose all necessary traffic and parking regulations. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the consent of the Declarant.

Section 2. Use Restrictions. All Units shall be used for commercial or residential purposes exclusively. Notwithstanding the foregoing, those uses of property

described in Article IV, Section 11 hereof shall also be permitted in the Community. Subject to any applicable zoning ordinances, commercial and residential uses shall include, without limitation, the use of property for governmental, professional, office, commercial condominiums, business, business park, restaurant, retail and wholesale sales, wholesale distribution, light manufacturing, bank and financial institution, warehouse, hotel, research and development, medical purposes, multi-family residences and single family residences. The Board may issue rules regarding permitted commercial and residential uses; provided, however, that such rules (i) shall not be inconsistent with the other terms of the Declaration and (ii) shall not be dissimilar to such rules customarily issued by association boards for similar real estate developments.

Notwithstanding anything to the contrary contained herein, and except as expressly provided for in the next succeeding sentence, no portion of Phases I, II and III of the Community (i.e. the approximately 385 acres of land [plus land within public and private roads] lying south of Burnette Road) shall be used for residential purposes. Notwithstanding anything to the contrary contained herein, the development of garden style, "Class-A" (hereinafter defined) multi-family residential developments shall be permitted in that certain portion of Phases I, II and III of the Community shown highlighted in Exhibit "F" attached hereto and by reference made a part hereof. "Class-A" property is hereby defined as a property with the most desirable features for the northern Gwinnett County marketplace, such as a variety of highly attractive amenities, high quality of construction finishes and exceptional accessibility, comparable to Chatelaine Park at 2200 Satellite Boulevard, Duluth, Georgia.

Section 3. Signs. No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board and Declarant shall have the right to erect reasonable and appropriate signs. The sign regulations, as specified in the Zoning Resolution of Gwinnett County or Zoning Resolution of the City of Suwanee, as applicable, shall be applied as the minimum standards within the project. No billboards shall be permitted except for the billboard currently existing on the northwestern portion of Phase II on the site known as "D-2", which billboard is located near the right of way of Interstate 85.

Section 4. Vehicles. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go carts, trucks, campers, buses, vans, and automobiles.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Section 5. Parking, Loading Docks. Vehicles shall be parked only in appropriate parking spaces or designated areas.

Section 6. Occupants Bound. All provisions of the Declaration and By-Laws and of any rules and regulations, use restrictions, or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 7. Animals and Pets. Unless otherwise permitted by the Board in the case of animal hospitals and similar facilities which the Board may, in its discretion, allow, no animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit.

Section 8. Nuisance and Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No property within the Community shall be used, in whole or in part, for the generation, treatment, storage or disposal of Hazardous Substances in violation of applicable law. The term "Hazardous Substances" as used herein means any hazardous or toxic substance or waste as those terms are defined by any applicable federal, state or local law or regulation, including, without limitation, the Comprehensive Environmental Recovery Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA") and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("RCRA"), and asbestos, petroleum products and oil and any other materials regulated by environmental laws. Notwithstanding anything to the contrary contained herein, no property within the Community shall be used in a manner which would cause such property or any portion thereof to become subject to regulation as a hazardous waste disposal facility under RCRA or the regulations promulgated thereunder or any equivalent Georgia law. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community, including, without limitation, nuisances resulting from vibration, sound, electromechanical disturbance and radiation, electromagnetic disturbance and radiation, air or water pollution, dust, or emission of toxic or odorous non toxic matter. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound

device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Unit unless required by law.

**Section 9. Architectural Standards.** No exterior construction, alteration, addition, or erection of any nature, whatsoever shall be commenced or placed upon any part of the Community except as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been properly submitted in writing to and approved by the Architectural Review Committee ("ARC"). The ARC may establish a review fee to cover the costs of review of plans and specifications consistent with the type of review being conducted and which, for the five (5) years after the date of the recording of this Declaration, shall not exceed One Thousand Dollars (\$1,000.00). Such plans and specifications shall not be considered to have been properly submitted to the ARC unless and until the review fee has been paid to the Association. The Architectural Review Committee may be established such that it is divided into two (2) subcommittees, with one subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. The Board may employ for the Architectural Review Committee architects, engineers, or other Persons necessary to enable the Committee to perform its review. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the Committee for all matters delegated. Written design guidelines and procedures shall be promulgated for the exercise of this review. So long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration or surrender of such right, the Board shall appoint the members of the Architectural Review Committee.

If the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. In such an event, all of the provisions of this Declaration and any rules, regulations or guidelines promulgated pursuant thereto shall apply to the same extent as to any other Unit. As a condition of approval under this Section, an Owner, on behalf of himself and his successors in interest, shall automatically be deemed to assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of himself and his successors in interest. The Architectural Review Committee shall be the sole arbiter of such plans and may, as long as it is exercising reasonable discretion, withhold approval for any reason, including a determination that the style, size, materials, or other features of the proposed construction would not be aesthetically compatible with the general theme of the Community or the style of other Units in the Community, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its

representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Article XII Section 1, hereof, record in the appropriate land records a notice of violation naming the violating owner.

Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, the Declarant nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 10. Antennas. No exterior antennas or satellite dishes or other apparatus of any kind for the sending or receiving of radio, television, electromagnetic, or microwave signals shall be placed, allowed, or maintained upon any portion of the Community without the prior written consent of the ARC. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost effective way to transmit or receive the signals sought to be transmitted or received.

Section 11. Tree Removal. No trees shall be removed without the express consent of the ARC, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees; or (c) safety reasons. All plans submitted to the ARC for units containing trees shall specifically designate "tree save areas" from which trees will not be removed.

Section 12. Irrigation. Each Unit shall be equipped with an irrigation system consistent with the landscape improvements located thereon. No sprinkler or irrigation systems of any type which draw directly from creeks, streams, rivers, lakes, ponds, canals, or other waterways shall be installed, constructed, or operated within the

Community without the prior written consent of the ARC. All sprinkler and irrigation systems not originally installed by the Declarant shall be subject to approval by the ARC.

Section 13. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves easements over the Community and each Unit for drainage of surface water and for the purpose of altering drainage and water flow wherever and whenever reasonably necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that when the drainage plans, construction of the initial principal structure and landscaping approved for such Unit in accordance with the terms hereof have been completed, said drainage easement shall be deemed to be limited to (i) the drainage lines and related facilities installed in, on and under the Unit and (ii) that portion of the Unit necessary for surface drainage into said drainage lines and related facilities. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, or to take any similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance on the Community.

Section 14. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

Section 15. Mechanical Equipment, Garbage Cans, Trash Containers, Tanks, Etc. All mechanical equipment servicing buildings, above ground tanks and other similar items, storage facilities, garbage cans, and trash containers shall be located or screened so as to be concealed from the view of neighboring streets and property, or as otherwise approved by the ARC. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Each Owner, however, shall have the right in connection with construction on a Unit and consistent with customary local construction practices, subject to all applicable laws and government regulations, to burn and/or dump and bury construction debris and trash on any Unit then owned by such Owner as needed for efficient construction. Except as expressly permitted pursuant this Section 15, trash, garbage, debris, or other waste matter of any kind may not be burned within the Community.

Section 16. Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the ARC. The Declarant, however, hereby expressly reserves the right to replat any Unit or Units. Any such division, boundary line change, or replotting shall not be in violation of the applicable subdivision and zoning regulations.

Section 17. Tents, Trailers, and Temporary Structures. Except for tents, trailers or temporary structures used by the Declarant in the marketing or leasing of Units,

no tent, trailer, or temporary structure of any kind shall be placed upon a Unit or any part of the Community without the express written consent of the ARC, except that temporary structures shall be permitted during initial construction on a Unit provided they are not used for residential purposes and are removed as soon as practicable after completion of construction.

Section 18. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction.

Section 19. Air Conditioning Units. Except as may be permitted by the ARC, no window air conditioning units may be installed.

Section 20. Lighting. All exterior lights are to be contained in cut off type luminaries or directed toward buildings in the Unit.

Section 21. Artificial Vegetation, Exterior Sculpture, and Similar Items. Unless approved by the ARC no artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must also be approved by the ARC.

Section 22. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARC.

Section 23. Property Maintained by the Association. Entry features, street signs, street lights, landscaped areas adjacent to rights of way and any other property, equipment or thing maintained by the Association, regardless of whether or not located upon or within any Unit, shall not be altered, removed or additional improvements added thereto without the prior written approval of the ARC.

Section 24. Flood Hazard Area. All flood hazard areas located within the Community shall be left undisturbed unless the Gwinnett County Department of Development or the City of Suwanee, as applicable, approves road or utility crossings, drainage ways or detention or retention ponds for stormwater runoff control; or if the property is located in unincorporated Gwinnett County, a variance is approved by the Gwinnett County Zoning Board of Appeals.

Section 25. Building Facades. All building facades shall be finished in brick, stucco, stone, decorative concrete or masonry products, wood, glass or any combination thereof.

Section 26. Buffers and Landscaped Strips. Buffers and landscaped strips shall be provided in the Community as required by zoning regulations of Gwinnett County and/or City of Suwanee, or as further required by the ARC. In the absence of a zoning or

other governmental requirement, the ARC cannot alter the buffer or landscape requirements of a Unit once the ARC has approved the plans and specifications for a structure to be constructed thereon, and provided the structure is constructed in accordance with said plans and specifications.:

Section 27. Lakes. Use of any lake located within the Community which is made available for the use and enjoyment of Owners shall be restricted to Owners of Units containing any portion of such lake; provided, however, if the lake is accessible from Common Property or other common access points designated as such within or outside the Community, the lake may be used by any Owner, subject to the restrictions contained in this Section. No fishing, ice skating, swimming, water skiing or motorized boats shall be permitted on any lake.

Section 28. Other Prohibited Uses. In addition to uses which are inconsistent with zoning for the Community or are prohibited or restricted by other covenants, conditions, restrictions, or easements that are recorded in the chain of title respecting the Community, or are otherwise prohibited pursuant to this Declaration, and not as an exhaustive list, the following uses and activities are prohibited within the Community:

(a) No portion of Phases I, II and III of the Community (i.e. the approximately 385 acres of land [plus land within public and private roads] lying south of Burnette Road) shall be used for residential purposes, except as expressly allowed under Section 2 of Article VI hereof;

(b) trailer courts, mobile home parks and recreation vehicle campgrounds;

(c) oil drilling, water drilling, oil refining, quarrying or mining operations and all construction incident thereto;

(d) junk yards, sanitary landfills, and recycling facilities;

(e) commercial excavation of building or construction materials, except in the usual course of construction of improvements;

(f) distillation of bones;

(g) dumping, disposal, incineration, treatment, processing, or reduction of garbage, sewage, offal, dead animals or refuse;

(h) fat rendering;

(i) stockyard or slaughter of animals;

(j) refining of petroleum or of its products;



- (k) smelting of iron, tin, zinc or other ores;
- (l) cemeteries;
- (m) labor camps and migrant worker camps;
- (n) jails or honor farms;
- (o) agricultural uses, including animal husbandry;
- (p) ammunitions and related manufacturing and storage;
- (q) automobile service or gas stations, except as may be approved in writing by the Board;
- (r) outdoor storage of building or construction materials, unless approved by the ARC. Notwithstanding anything to the contrary contained in this Subsection (r), the outdoor storage of building or construction materials shall be permitted as is necessary for the usual course of the construction of improvements on property within the Community, provided that said construction is being diligently pursued to completion;
- (s) funeral homes;
- (t) sawmills;
- (u) community fairs or flea markets;
- (v) deleted;
- (w) park and ride facilities;
- (x) truck stop-type facilities;
- (y) commercial helicopter facilities (accessory use helicopter pads may be approved by the ARC if located not less than fifteen hundred (1,500) feet from any residential property).

**Section 29. Initial Construction Period and Declarant's Right of Re entry.**  
If, after the expiration of one (1) year from the date of conveyance of any Unit by Declarant to an Owner, actual construction of a building approved by the ARC upon such Unit shall not have been commenced in good faith, then Declarant shall have the option, exercisable within ninety (90) days after the expiration of said one year period, of refunding to the then Owner the purchase price theretofore paid to Declarant for such Unit and, upon tender to such owner of said purchase price, such Owner shall reconvey such Unit to Declarant by limited warranty deed subject only to those matters set forth in the initial

conveyance by Declarant of the Unit. For the purposes of this Section, construction will be deemed to have commenced as to a Unit when footings and foundations have been poured or otherwise constructed and at least One Hundred Thousand Dollars (\$100,000.00) in construction costs have been incurred. All conveyances of Units by Declarant shall be made and accepted upon the condition that the purchaser, grantee, or Owner will reconvey such Unit to Declarant upon the exercise by Declarant of the aforesaid option under the conditions herein set forth, whether or not said condition is expressly set forth in any deed from Declarant or any subsequent grantor to such Owner. Declarant may, in its sole discretion, extend in writing the time within which such construction must be commenced. Notwithstanding the foregoing, Declarant agrees to subordinate the option reserved by it as set forth in this Article VI, Section 29 to the lien and security title of any Mortgage placed on such Unit if, and only if, (i) the indebtedness secured by such Mortgage does not exceed the purchase price theretofore paid to Declarant for such Unit, (ii) the promissory note evidencing the indebtedness secured by the Mortgage expressly permits prepayment of the indebtedness evidenced thereby without penalty or notice, and (iii) the holder of the Mortgage and the promissory note evidencing the indebtedness secured thereby expressly in writing agrees that, if Declarant exercises its option reserved in this Article VI, Section 29, said holder will accept payment by Declarant, or its assignee of the option herein contained, of the principal balance and accrued interest evidenced by said promissory note and immediately upon receipt thereof release its lien and security title in and to said Unit. Declarant retains the right to (but shall have no obligation to) subordinate its rights under the herein described option to any other Mortgage at the sole discretion of Declarant.

## Article VII

### Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and any other insurable improvements which the Association is obligated to maintain under Article V, Section 1 hereof. The Association shall also have the authority, if required or permitted by an amendment to the Declaration or contract entered into by the Association, to obtain blanket casualty insurance for other improvements, including Units; provided, the Association shall have no obligation to obtain insurance on Units, and no Unit shall be insured under a blanket policy obtained by the Association except with the consent of the Unit Owner. All costs of insurance coverage on Units shall be specifically assessed against only the Units benefited thereby, pursuant to Article IV, Section 10. All casualty insurance obtained by the Association shall, at a minimum, cover loss or damage by fire and all other hazards normally covered by the standard extended coverage endorsement and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard Alternatively, the Board may purchase "all risk" coverage in like amounts.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property

insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance. The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse the Declarant for the cost thereof, provided the Declarant is able to obtain such insurance coverage on a competitive basis, and the Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon the Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by the Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board is unable to so comply because the Board has contracted for or otherwise arranged to obtain insurance coverage through the Declarant.

Premiums for all insurance shall be Association Expenses. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in Georgia.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and, the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one (1) or more qualified Persons, at least one (1) of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) The Association's Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

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

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

(iii) that no policy may be canceled, invalidated, or suspended on account of any one (1) or more individual Owners;

(iv) that no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Board to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Board, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled, subjected to nonrenewal or substantially modified without at least ten (10) days' prior written notice to the Board.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and, if available at reasonable cost (in the sole discretion of the Board) a fidelity bond or employees dishonesty coverage covering the directors, officers, agents, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and may not be canceled, subjected to nonrenewal or substantially modified without at least ten (10) days' prior written notice to the Association.

**Section 2. Property Insured By Association: Damage and Destruction.** 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 allowing for any changes or improvements necessary to comply with applicable building codes.

Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy five (75%) percent of the total Association vote entitled to vote thereon, the Owner(s) of the damaged property, if any, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, 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 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 may, upon the affirmative vote or written consent, or any combination thereof, of a Majority of the total Association vote entitled to vote thereon, levy a special assessment against all Owners. 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 repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to 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 and 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.

**Section 3. Property Insured By Owners: Damage and Destruction.** By virtue of taking title to property within the Community, each Owner acknowledges and agrees that the Association shall have no obligation to insure the Owner's property and that in the event that the Association does not carry insurance on the Owner's property, each Owner shall carry liability and casualty insurance or cause such insurance to be carried by another entity, such as a condominium association or commercial owners association. Each Owner further covenants and agrees that in the event of loss or damage and destruction of improvements on the Owner's Unit, the Owner shall proceed promptly either (a) to repair or reconstruct the damaged structure in a manner consistent with the original construction or in such other manner as may be approved pursuant to Article VI, Section 9; or (b) to clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter to maintain the Unit in a neat and attractive condition consistent with the Community Wide Standard.

**Section 4. Insurance Deductible.** 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.

Article VIII  
Condemnation

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VII, Section 2, above, applicable to Common Property improvements damage or destruction shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

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Article IX  
Annexation of Additional Property

Section 1. Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until twenty (20) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C", attached hereto and by reference made a part hereof, to the provisions of this Declaration and the jurisdiction of the Association by filing for record an amendment to the Declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such amendment to the Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of the then Owners are not adversely affected, Declarant may unilaterally amend this Declaration to reflect the different character of any real property annexed by Declarant at the time the property is subjected to this Declaration. Any subsequent change in the character or use of said property must be made in accordance with the terms of this Declaration.

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

Section 2. Annexation by Association. Subject to the consent of the owner thereof and, so long as the Declarant has an option to subject additional property to this Declaration as provided above, the consent of the Declarant, upon the affirmative vote of at least two thirds (2/3) of the Association vote present, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least two thirds (2/3) of the votes cast in a referendum on the issue), the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record an amendment to the Declaration describing the property being annexed. Any such amendment to the Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such amendment to the Declaration, unless otherwise provided therein.

Article X  
Mortgagee Provisions

The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 2. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 3. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request as herein provided 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 receipt of the Association's request. All written requests from the Board shall be personally delivered (including commercial courier service) or mailed, postage prepaid, certified mail, return receipt requested.

## Article XI Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Unit and such portion or portions of the Common Property adjacent thereto or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Property or as between adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

Section 2. Easements for Use and Enjoyment of Common Property. Every Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his property, subject to the following provisions:

(a) the right of the Board to limit the number of guests who may use the Common Property, to allow Persons who are not Members of the Association, such as Persons living or working in the vicinity of the Community, to use the Common Property on a regular or temporary basis and to charge or not charge such Persons a user fee therefor, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his tenants, guests, occupants, and invitees;



(b) the right of the Board to suspend the voting rights of an Owner and Occupant and the right of an Owner and Occupant to use the Common Property (other than for ingress and egress to the Owner's Unit) for any period during which any assessment which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, use restrictions, rules and regulations or design guidelines;

(c) the right of the Board, upon the affirmative vote of a Majority of the total Association vote entitled to vote thereon, to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Unit or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Unit or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Board to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Unit or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Unit or other property located within the Community.); and

(d) the right of the Board to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Association vote present, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, by the Declarant.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall extend to his tenants, invitees and guests. An Owner shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Unit, if leased.

Upon the affirmative vote of the Majority of the Association vote present, in person or by proxy, at a meeting duly called for such purpose, (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional Property to this Declaration as provided in Article IX hereof, the consent of Declarant, the Board may alter the use of any Common Property. For example, and by way of illustration and not limitation, the Board may convert a parking lot into a park or vice versa.

Section 3. Reserved Easements for the Provision of Services to the Community. There is hereby reserved to the Declarant, its successors and assigns and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, maintaining, and removing rights of way, drainage facilities, floodway easements, and all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, and any other similar service such as, but not limited to, a master television antenna system, cable television system, or video system which the Declarant or the Association might decide to have installed to serve the Community or any portion thereof. It shall be expressly permissible for the Declarant and its successors and assigns and the Association to install, repair, replace, maintain, and remove or to authorize the installation, repair, replacement, maintenance, or removal of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Declarant and its successors and assigns and the Association shall have full rights of ingress and egress at all times over all portions of the Community for the installation, operation, maintenance, repair, or removal of any of the foregoing utilities or services and shall have the right to remove any unauthorized obstruction placed in or on any of the foregoing easements that would, in the sole discretion of Declarant or its successors and assigns, or the Association, interfere with the use of the above easements, or with the use, maintenance, operation, or installation of the foregoing utilities or services. In no event shall the foregoing prohibit paving or landscaping within such easements. Declarant and the Association shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies, quasi public service companies, or relevant governmental authorities. All utilities installed within the above described easements shall be installed underground. Notwithstanding anything to the contrary contained herein, at such time that a building is substantially completed on a Unit, neither Declarant nor the Association shall have the right (i) to install any additional utilities, rights-of-way or other facilities over, under or across that Unit without the written consent of the Owner of such Unit, which consent shall not be unreasonably withheld or delayed so long as there would be no material adverse impact on the use, value or marketability of the Unit, or (ii) to remove any utilities, roadways or other facilities over, under or across such Unit which are utilized by such Unit unless such removal is a part of replacement of such utility facility and is effected in a manner so as to minimize to the extent reasonably possible any disruption to such Owner and any Occupant of such Unit.

ALL OWNERS, OCCUPANTS, GUESTS, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, THE ASSOCIATION AND ITS BOARD OF DIRECTORS, AND THE ARCHITECTURAL REVIEW COMMITTEE DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR SECURITY MEASURES WILL BE IMPLEMENTED IN THE COMMUNITY OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, GUEST, OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS,

AND ARCHITECTURAL REVIEW COMMITTEE ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, GUEST, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, AND ARCHITECTURAL REVIEW COMMITTEE HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self help as provided in Article XII, Section 2, hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

Section 5. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of the Declarant, its successors and assigns, and the Association, over and upon each Unit for the maintenance required under Article V, hereof. This easement shall include, without limitation, the rights of ingress, egress, installation, construction, landscaping and maintenance of entry features for the Community, street signs, street lights, any lake(s), dam(s) or shoreline located within the Community and made available for the use and enjoyment of Owners and landscaped areas adjacent to rights of way for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and adjacent to rights of way and the right to grade the land under and around and adjacent to entry features, lake(s), dam(s), shoreline and landscaped areas.

## Article XII

### General Provisions

Section 1. Enforcement. Each Owner and every Occupant shall comply strictly with the By-Laws, the rules and regulations, the use restrictions and with the design guidelines, all as may be amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration, as may be amended from time to time, and in the deed to such Owner's property within the Community, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the By-Laws, the rules

and regulations, use restrictions, or design guidelines shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board, on behalf of the Association, or, in a proper case, by an aggrieved Owner or Occupant. Failure by the Board or any Owner or Occupant to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-Laws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

Section 2. Self Help. In addition to any other remedies provided for herein, the Board or its duly authorized agent shall have the power to enter upon a Unit or any portion of the Community to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, the use restrictions, or the design guidelines. Except in the case of emergency situations and towing, the Board shall give the violating Owner ten (10) days written notice of its intent to exercise self help. All costs of self help, including reasonable attorney's fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law; provided, however, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provisions shall be automatically extended for successive periods of ten (10) years, unless such extension is disapproved (i) by at least sixty-six percent (66%) of the votes present, in person or by proxy, at a meeting duly called for such purpose and (ii) by the Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof. Such meeting must be held and a written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a ten (10) year renewal period. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant 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 or if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Further, so long as Declarant has

the right unilaterally to subject additional property to this Declaration as provided in Article IX hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment which is a material and adverse change to any Owner shall require the approval of sixty-six percent (66%) of the votes of Owners (exclusive of Declarant's votes attributed to unimproved Units, but inclusive of Declarant's votes attributed to Improved Units [as defined in Exhibit "D"]) represented at the meeting (in person or by proxy) of the membership called to vote on said amendment.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least sixty-six percent (66%) of the votes of all Owners (exclusive of Declarant's votes attributed to unimproved units, but inclusive of Declarant's votes attributed to Improved Units [as defined in Exhibit "D"]) represented at the meeting of the Membership (in person or by proxy) called to vote on said amendment, and so long as Declarant has no option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the consent of Declarant. A meeting may be called (but shall not be required to be called) to consider and vote upon any amendment. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written approval so long as the Declarant owns any property, primarily for development and/or sale, in the Community, or subject to annexation to the Community.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of the Declaration or By-Laws.

Section 5. Partition. The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community, the written consent of all holders of all Mortgages encumbering any portion of the property located within the Community, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the consent of the Declarant.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. Preparer. This Declaration was prepared by James G. Farris, Jr., Alston & Bird, LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, Georgia, 30309.

Section 10. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 11. Indemnification. In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed under Georgia law, and in accordance with the provisions contained therein, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be liable as members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is available at reasonable cost, as determined in the sole discretion of the Board.

Section 12. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the By-Laws, the Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article IX

terminates, it shall be expressly permissible for the Declarant and any developer or builder approved by the Declarant to maintain and carry on, upon such portion of the Community as the Declarant may deem necessary, such facilities and activities as in the sole opinion of the Declarant may be required, convenient, or incidental to the Declarant's and such developer's or builder's development, construction, and sales activities related to property described on Exhibit "B" and Exhibit "C" to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with streets, driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, models and sales offices. The Declarant and any such developer or builder may use Units or offices owned or leased by the Declarant or such developer or builder as model Units and sales offices.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the written consent of the Declarant so long as the Declarant owns any property primarily for development and/or sale in the Community or subject to annexation to the Community.

Notwithstanding anything to the contrary set forth in this Section 12, such easements and other rights created by this Section 12 shall not apply to nor encumber all or any portion of the Community conveyed by Declarant to SAR and Shawnee Ridge, L.L.C., by Limited Warranty Deed dated September 23, 1996.

Section 13. Books and Records. This Declaration, the By-Laws, the Articles of Incorporation, copies of rules and regulations, use restrictions, design guidelines, membership register, books of account, and minutes of meetings of the Members, of the Board and of committees shall be made available for inspection and copying by any Member of the Association or by his duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other reasonable place as the Board shall prescribe.

The Board shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of the records;
- (b) hours and days of the week when such an inspection can be made;
- (c) payment of the cost of reproducing copies of documents.

and

Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 14. Audit. Financial statements reflecting the accounts of the Association shall be compiled annually in such manner as the Board may decide; provided, however, after having received the Board's financial statements at the annual meeting, the Owners, by a Majority of the total Association vote entitled to vote thereon, may require that the financial statements of the Association be audited as an Association Expense by a certified public accountant.

Section 15. Estoppel Certificate. Upon the request of any Member, the Board or its designee shall furnish a written certificate signed by an officer or agent of the Association regarding unpaid assessments levied against that Member's property and any violations of the Declaration, By-Laws, use restrictions, rules and regulations, or design guidelines by any Owner or Occupant of such property. Such certificate shall bind the Association with respect to the foregoing matters. The Association may require the advance payment of a processing fee not to exceed Twenty-five Dollars (\$25.00) for the issuance of each such certificate.

Section 16. Agreements. Subject to the prior written approval of Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community; provided, no such agreement or determination shall impose personal liability on any Owner without his prior consent.

Section 17. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, the design guidelines and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 18. Use of Words "Shawnee Ridge". No Person shall use the words "Shawnee Ridge" or any derivative thereof in the name of any commercial building or any business or enterprise or in any printed or promotional material without the prior written consent of the Association and so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the consent of the Declarant. However, Owners or Occupants may use the term "Shawnee Ridge" in printed or promotional matter where such term is used solely to specify that the particular property is located within Shawnee Ridge.



Section 19. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors, and Declarant for so long as the Declarant has the right to appoint a majority of the members of the Board of Directors pursuant to Article III of the By-Laws, shall be authorized to grant individual variances from or waivers of any of the provisions of this Declaration or the By-Laws, except the provisions of Article IV of the Declaration regarding assessments, if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community,

Section 20. Copies of Amendments. Each month, Declarant or the Association shall provide to each Owner a copy of any recorded amendments to the Declaration received by Declarant or the Association during the prior month.

Section 21. Combined Units.

(a) The following adjoining parcels of land shall be considered as a single Unit for the purpose of determining set-back lines and for all other purposes under this Declaration:

(i) that certain parcel of land conveyed by Declarant to Bergen Brunswick Drug Company containing 6.098 acres, as more particularly described in Exhibit "G-1" attached hereto and by reference made a part hereof; and

(ii) that certain parcel of land conveyed by Declarant to Bergen Brunswick Drug Company containing 1.952 acres, as more particularly described in Exhibit "G-2" attached hereto and by reference made a part hereof.

(b) The following adjoining parcels of land shall be considered as a single Unit for the purpose of determining set-back lines and for all other purposes under this Declaration:

(i) that certain parcel of land conveyed by Declarant to Price Companies, Inc. containing .622 acres, as more particularly described in Exhibit "G-3" attached hereto and by reference made a part hereof; and

(ii) that certain parcel of land conveyed by Declarant to Price Companies, Inc. containing 7.721 acres, as more particularly described in Exhibit "G-4" attached hereto and by reference made a part hereof.

(c) The following adjoining parcels of land shall be considered as a single Unit for the purpose of determining set-back lines and for all other purposes under this Declaration:

(i) that certain parcel of land conveyed by Declarant and of which title is currently vested in W. Alexis Moscoso and Constance T. Moscoso,

containing approximately 1.496 acres, as more particularly described in Exhibit "G-5" attached hereto and by reference made a part hereof;

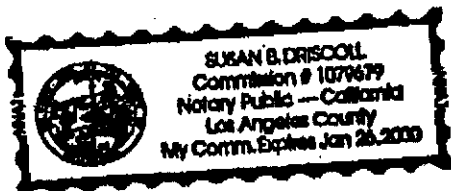
(ii) that certain parcel of land conveyed by Declarant to W. Alexis Moscoso containing approximately 0.443 acres, as more particularly described in Exhibit "G-6" attached hereto and by reference made a part hereof.

(d) Declarant hereby grants a variance for the sale of the property described in subparagraph (c)(ii) above from the minimum lot size requirements contained in Article VI, Section 16 herein. This variance is expressly conditioned on the use of such property as a single Unit with the parcel described in subparagraph (c)(i) above.

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California  
County of Los Angeles  
On October 28, 1997 before me, Susan B. Driscoll, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Richard M. Stein  
Name(s) of Signer(s)

☐ personally known to me — OR — ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Susan B. Driscoll  
Signature of Notary Public

### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

#### Description of Attached Document

Title or Type of Document: Restated Declaration of Protective Covenants

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

#### Capacity(ies) Claimed by Signer(s)

Signer's Name: Richard M. Stein

- ☐ Individual  
☒ Corporate Officer  
Title(s): President  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer is Representing:

Swansea Guinness, Inc.

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer  
Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer is Representing:

IN WITNESS WHEREOF, the undersigned has executed this instrument  
this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

**DECLARANT:**

**THE SHAWNEE RIDGE JOINT VENTURE,**  
a Georgia joint venture, by its two joint venturers, Suwanee  
Gwinnett Joint Venture and Industrial Developments International,  
Inc.

Signed, sealed and  
delivered in the presence of:

*Cheyl Misukovic*  
Witness

*Patricia Bennett*  
Witness

By: **SUWANEE GWINNETT JOINT  
VENTURE**, a Georgia joint venture,  
by its two joint venturers, Suwanee Gwinnett,  
L.P. and CMS Gwinnett County, L.P.

By: **SUWANEE GWINNETT, L.P.**,  
a Georgia limited partnership, by  
its general partner

By: **SUWANEE GWINNETT, INC.**,  
a Georgia corporation

By: *[Signature]*

Title: *President*

Attest: *[Signature]*

Title: *VICE PRES.*

(CORPORATE SEAL)

[Signatures continued on next page]

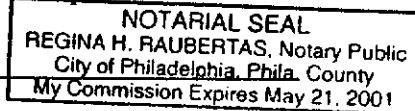
Signed, sealed and  
delivered in the presence of:

Cheryl Deliano  
Witness

Regina H. Raubertas  
Notary Public

(NOTARY PUBLIC)

My Commission Expires:



By: CMS GWINNETT COUNTY, L.P., a  
Delaware limited partnership, by its  
general partner

By: CMS GWINNETT COUNTY  
ASSOCIATES, L.P., a Delaware  
limited partnership, by its sole  
general partner

By: MSPS GWINNETT  
COUNTY ASSOCIATES,  
INC., a Delaware corporation

By: Richard A. H. H. H.  
Title: V.P.

Attest: Richard A. H. H. H.  
Title: Asst Secy

(CORPORATE SEAL)

[Signatures continued on next page]

Signed, sealed and  
delivered in the presence of:

Charlotte Robinson  
Witness

Dalene P. Rakestraw  
Notary Public

(NOTARY SEAL)

My Commission Expires: 3-9-99

By: INDUSTRIAL DEVELOPMENTS  
INTERNATIONAL, INC., a Delaware  
corporation

By: [Signature]  
Name: **TIMOTHY J. GUNTER**  
Title: **SECRETARY**

Attest: [Signature]  
Name: **LISA M. WARD**  
Title: **ASSISTANT SECRETARY**  
[CORPORATE SEAL]