DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

ECHO MILL

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HYATT & STUBBLEFIELD, P.C.

Attorneys and Counselors

1200 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, Georgia 30303

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

ECHO MILL

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made by Cousins Real Estate Corporation, a Georgia corporation (the "Declarant") as of the date set forth on the signature page hereof.

Declarant is the owner of the real property described in Exhibit "A," which is attached and incorporated by reference. By this Declaration, Declarant imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, Declarant has caused or intends to cause the Echo Mill Neighborhood Association, Inc., to be formed as a Georgia non-profit corporation to own, operate and maintain the Common Area, as defined below, and to administer and enforce the provisions of this Declaration, the By-Laws, Design Guidelines and Use Restrictions and Rules (as further described in Article I) promulgated pursuant to this Declaration.

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

This document does not and is not intended to create a condominium within the meaning of the O.C.G.A. § 44-3-70, et seq.

Article I
DEFINITIONS

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

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

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Echo Mill Neighborhood Association, Inc., as filed with the Secretary of State of the State of Georgia.

1.3. "Association": Echo Mill Neighborhood Association, Inc., a Georgia non-profit corporation, its successors or assigns.

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

1.5. "Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person's business.

1.6. "By-Laws": The By-Laws of Echo Mill Neighborhood Association, Inc., attached as Exhibit "E," as they may be amended.

1.7. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.

1.8. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

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

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

1.11. "Declarant": Cousins Real Estate Corporation, a Georgia corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" or "B" for the purpose of development and/or resale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, there shall be only one Declarant at any time.

1.12. "Design Guidelines": The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article IX.

1.13. "General Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.2.

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1.14. "Governing Documents": The Declaration, any Supplemental Declaration, the By-Laws, Articles of Incorporation, Design Guidelines, and the Use Restrictions and Rules, or any of the above, as each may be amended from time to time.

1.15. "Master Plan": The preliminary land use plan for the development of "Echo Mill" prepared by Franzman/Davis & Associates, Inc. dated June 26, 1994, as it may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article VII.

1.16. "Member": A Person subject to membership in the Association pursuant to Section 3.2.

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

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

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

1.20. "Neighborhood-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Architectural Review Committee.

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

1.22. "Person": A human being, a corporation, a partnership, a trustee, or any other legal entity.

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

1.24. "Public Records": The Office of Clerk of the Superior Court of Cobb County, Georgia, or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.25. "Special Assessment": Assessments levied in accordance with Section 8.5.

1.26. "Specific Assessment": Assessments levied in accordance with Section 8.6.

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1.27. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.28. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Public Records with respect to any portion of the Properties, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common Areas or property dedicated to the public.

In the case of a portion of the Properties intended and suitable for subdivision into single-family lots but as to which no subdivision plat has been filed, such property shall be deemed to be a single Unit until such time as a subdivision plat is filed of record with respect to all or a portion of the property. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not platted shall continue to be treated as a single Unit.

1.29. "Use Restrictions and Rules": Those use restrictions and rules affecting the Properties, which may be adopted, modified and repealed as set forth in Article X. The initial Use Restrictions and Rules are set forth on Exhibit "C."

Article II
PROPERTY RIGHTS

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

(a) this Declaration and any other applicable covenants;

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

(c) the right of the Board and the membership to adopt, amend and repeal rules pursuant to Article X regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) the right of the Board to impose reasonable membership requirements, adopt a code of rules governing use of any structure or improvement on the Common Area, and charge reasonable admission or other use fees for the use of any recreational or social facilities situated upon the Common Area;

(e) the right of the Board to permit use of any recreational or social facilities situated on the Common Area by persons other than Owners,

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their families, lessees and guests upon payment of such use fees as the Board may establish;

(f) the right of the Board to suspend the right of an Owner, his or her family, lessees, and social invitees to use recreational and social facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, (ii) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents, and (iii) for a period not to exceed 30 days for conduct deemed, in the discretion of the Board, to be unacceptable or abusive, which causes damage to the Common Area, or which interferes with the ability of the Declarant to sell Units;

(g) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration; and

(h) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

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

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3. Condemnation. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to written notice prior to disbursement of the condemnation award or proceeds of conveyance. The award made for such taking or proceeds of such conveyance shall be payable to the Association to be disbursed as follows:

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

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

2.4. Actions Requiring Owner Approval. If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs is insuring or guaranteeing the Mortgage on any Unit, then the following actions shall require the prior approval of Members representing not less than two-thirds (2/3) of the total Class "A" votes in the Association and the consent of the Class "B" Member, if such exists: merger, consolidation or dissolution of the Association, annexation of additional property other than that described on Exhibit "B"; and dedication, conveyance or mortgaging of Common Area. Notwithstanding anything to the contrary in Section 2.3 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

Article III
MEMBERSHIP AND VOTING RIGHTS

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

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

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

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

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Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Unit. In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under the Governing Documents, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint members of the Board of Directors during the Class "B" Control Period, as specified in Sections 3.3 and 3.5 of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Section 3.19 of the By-Laws.

The Class "B" membership shall terminate upon the earlier of:

(i) two years after termination of the Class "B" Control Period; or

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

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

Article IV
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, landscaping, furnishings, equipment, and other personal property of the Association used in connection with the Common Area), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Neighborhood-Wide Standard. The Board is specifically authorized, but not be obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits "A" or "B," personal property and leasehold and other property

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interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3. Enforcement. The Association may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational or social facilities within the Common Area. In addition, in accordance with Section 3.24 of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or stop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit local governments to enforce their ordinances within the Properties for the benefit of the Association and its Members.

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

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

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member, including members of the committees

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established under Article IX, against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Georgia law.

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

4.7. Dedication of Common Area. The Association may dedicate portions of the Common Area to the City of Marietta or to Cobb County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity.

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

4.9. Utility Lines. **Each Owner, occupant, guest, and invitee acknowledges that neither the Association, the Board nor Declarant shall in any way be considered insurers or guarantors of health within the Properties and neither the Association, the Board, nor Declarant shall be held liable for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to,**

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near, over, or on the Properties. Each Owner, occupant, guest, and invitee assumes all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that neither Declarant nor the Association have made any representations or warranties, nor has any Owner, occupant, guest, or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

Article V
MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all Common Area;

(ii) all landscaping and other flora, parks, bridges, swimming pools, tennis courts, recreational centers and other structures and improvements, including any parking areas, situated upon the Common Area;

(iii) all landscaping, entry features and signage within or adjacent to public rights-of-way within or abutting the Properties; and

(iv) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

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

(b) There are hereby reserved to the Association perpetual, non-exclusive easements over the Properties as necessary to enable the Association to fulfill such responsibilities.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment. Notwithstanding the foregoing, the Board may, within its sole discretion, allocate the expense of maintenance, repair, and replacement which benefits one or more, but less than all Units, as a Specific Assessment in accordance with the benefit so received by such Units, pursuant to Section 8.6.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the

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Unit in a manner consistent with the Neighborhood-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Unit.

To ensure consistency in scheduling and compliance with the Neighborhood-Wide Standard, the Association, in the discretion of the Board, shall have the right to designate a trash collection service to be used by all Owners. Notwithstanding this right of the Association, the cost of trash collection for each Unit shall be borne by the Unit Owner.

Owners shall not permit any structures, equipment or other items on the exterior portions of a Unit to become rusty, dilapidated or otherwise fall into disrepair. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. All maintenance shall be performed in a manner consistent with the Neighborhood-Wide Standard and all applicable covenants. Maintenance shall include the responsibility for repair and replacement as necessary. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

Article VI
INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

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

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

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(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least $1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, if additional coverage and higher limits are available at a reasonable cost such that a reasonably prudent person would obtain it, the Association shall obtain such additional coverage or limits;

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

(iv) Directors and officers liability coverage;

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

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, which may include, without limitation, flood insurance and building ordinance coverage.

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

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

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.6.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

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(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

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

(iv) contain an inflation guard endorsement; and

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

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

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

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

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

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

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

(vi) a cross liability provision; and

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

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

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Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

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

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

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

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

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

Article VII
ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation Without Approval of Membership. Declarant may from time to time within 20 years of recording this Declaration in the Public Records unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." The Declarant may transfer or assign this right to annex property, provided that the transferee

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or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Such annexation shall be accomplished by filing in the Public Records a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to Section 7.1, for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

7.4. Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements by filing a Supplemental Declaration in the Public Records, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the subject property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

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

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Article VIII
ASSESSMENTS

8.1. Creation of and Obligation for Assessments.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy, assessments for the Common Expenses of the Association. There shall be three types of assessments: (a) General Assessments as described in Section 8.2; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate of 18% per annum, or the maximum rate permitted by Georgia law if less than 18% per annum), late charges in such amount as the Board may establish by resolution (subject to the limitations of Georgia law), costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.7. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

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

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; provided, the Board may by resolution permit payment in two or more installments. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each

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Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

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

8.2. Computation of General Assessments. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4.

Except as otherwise provided in Section 8.8, General Assessments shall be fixed at a uniform rate for all Units. Such assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to partial or full assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the upcoming year to each Owner at least 30 days prior to the effective date of such budget. Such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if any. If the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year, which revised budget shall become effective unless disapproved at a meeting by Members in the same manner as prescribed for the initial budget. There shall be no obligation to call a meeting for the purpose of considering the budget or any revised budget except on petition of the Members as required for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

8.3. Declarant's Subsidy Option. So long as the Declarant has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may, but shall not be obligated to, reduce the General Assessment or fund any budget deficit for any fiscal year by payment of a subsidy which may be treated as either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such

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subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

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

8.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted, extraordinary or other expenses which the Board determines, in its sole discretion, to more appropriately be handled outside of the regular operating budget. Except as provided in Section 6.1(c), any Special Assessment which would cause the amount of Special Assessments allocable to any Unit to exceed $250.00 per Unit in any year may be disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if any. There shall be no obligation to call a meeting for the purpose of considering such a Special Assessment except on petition of the Members as required for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of Special Assessment.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied equally on all Units. Nothing in this Section 8.5 shall be construed as a limitation on the Board's power to revise the operating budget pursuant to Section 8.2 above.

8.6. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws, Design Guidelines, or Use Restrictions and Rules, or costs

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incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.24 of the By-Laws, before levying any Specific Assessment under this subsection (b).

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

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

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.8, including such acquirer, its successors and assigns.

8.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the earlier of: (a) the month in which the Unit is first occupied for residential purposes, or (b) the one year anniversary of conveyance of the Unit from the Declarant to a Builder or Owner; provided, however, no assessments shall be due prior to the month in which the Board first determines a budget and levies assessments pursuant to this Article. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the

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obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls.

8.10. Exempt Property. The following property shall be exempt from payment of assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and

(b) Any property dedicated to and accepted by any governmental authority or public utility.

Article IX
ARCHITECTURAL STANDARDS

9.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines promulgated pursuant to Section 9.3.

Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect, unless otherwise acceptable to the Declarant or Architectural Review Committee, as appropriate, in their sole discretion. All plans and specifications shall be subject to review as provided herein.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

9.2. Architectural Review. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for construction and modifications within the Properties. There shall be no surrender of this

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authority prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such authority, the Board shall appoint an Architectural Review Committee ("ARC"), the members of which shall thereafter serve and may be removed in the Board's discretion. The ARC shall have no rights or authority until the Declarant's authority under this Article expires or is surrendered.

Notwithstanding the above, until the formation of the ARC, Declarant may delegate responsibility for review of applications for approval of modifications to improved Units to the Advisory Committee, the members of which shall be appointed and shall serve as set forth in the By-Laws. If so delegated, the Advisory Committee shall have jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space. The Declarant shall have the right to veto any action taken by the Advisory Committee which the Declarant determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the Declarant. (For purposes of this Article, "Reviewing Body" shall refer to either the Declarant, the Advisory Committee, or the ARC, as appropriate under the circumstances.)

The Declarant or, upon formation of the ARC, the Board, may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

9.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare Design Guidelines for the Properties and shall have sole and full authority to amend them as long as it owns any portion of the Properties or has a right to annex any property described on Exhibit "B." Thereafter, the ARC shall have the authority to amend the Design Guidelines. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as landscape plans and other specific provisions which vary from one portion of the Properties to another depending upon the location and unique characteristics. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewing Body and compliance with the Design Guidelines does not guarantee approval of any application.

Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the Declarant or, upon its formation, the ARC, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

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

All structures and improvements constructed upon a Unit shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the appropriate committee, unless the Reviewing Body has granted a variance in writing pursuant to Section 9.5. So long as the Reviewing Body has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

(b) Procedures. No activities within the scope of Section 9.1 shall commence on any portion of the Properties until an application for approval of the proposed work has been submitted to and approved by the Reviewing Body. Such application shall be in the form required by the Reviewing Body and shall include plans and specifications ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor, and other features of proposed construction, as applicable. The Reviewing Body may require the submission of such additional information as it deems necessary to consider any application. The Plans shall be in such form and shall contain such information as may be reasonably required pursuant to the Design Guidelines, including, without being limited to:

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

(ii) a foundation plan;

(iii) a floor plan;

(iv) exterior elevations of all proposed structures and alterations to existing structures, as such structures will appear after all back-filling and landscaping are completed;

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

(vi) plans for landscaping and grading.

In reviewing each submission, the Reviewing Body may consider (but shall not be limited to consideration of) the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation,

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among other things. Decisions of the Reviewing Body may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as the Reviewing Bodies and their members change over time.

In the event that any application is not approved or disapproved in writing within 30 days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing pursuant to Section 9.5.

All work shall be completed within one year of commencement or such shorter period as the Reviewing Body may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Reviewing Body.

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

9.5. Variance. The Reviewing Body may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewing Body from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the Advisory Committee may not authorize variances without the written consent of the Declarant.

9.6. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Neither the Declarant, the Association, the Board, the ARC or the Advisory Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARC, or the Advisory Committee or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the ARC and the Advisory Committee and their members shall be defended and indemnified by the Association as provided in Section 4.6.

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

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Declarant or the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

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

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

Article X
USE RESTRICTIONS AND RULES

10.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the community and to regulate and control the Area of Common Responsibility. The Properties are subject to the land development, architectural, and design provisions set forth in Article IX, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

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

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

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

Such action shall become effective unless, at a meeting of the Association, it is challenged and overturned by a vote of at least 51% of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing at least 51% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

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

(d) Notwithstanding the above, after termination of the Class "B" Membership, no amendment to or modification of any Use Restrictions and Rules shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Properties.

(e) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines. In the event of any inconsistency between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

10.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and

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Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules may change from time to time.

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

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

(b) Speech. The freedom of speech rights of Owners and occupants shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants of Units.

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

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

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

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

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

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

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

The limitations in this Section 10.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 15.2.

Article XI
EASEMENTS

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

11.2. Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna

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systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; wetlands and drainage systems; irrigation systems, street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plats of the Properties.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section 11.2, or (ii) to define the limits of any such easements; provided, however, Declarant shall relocate, at its own expense, any utility lines or facilities located on or under that portion of the Properties being released.

11.3. Easements for Maintenance and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement over the Properties for access, ingress and egress to creeks, streams, and wetlands located within the Area of Common Responsibility and for (a) installing, keeping, maintaining, repairing, and replacing pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) constructing, maintaining, and repairing any bulkhead, retaining wall, levee, or other structure retaining water; and (c) removing trash and other debris therefrom. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant, the Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

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11.4. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of this easement.

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

Article XII
MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties.

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

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

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

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

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

12.3. 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.

12.4. HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veteran Affairs, if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation or dissolution of the Association; annexation of additional property other than that described on Exhibit "B"; dedication, conveyance or mortgaging of Common Area; or material amendment of this Declaration.

Article XIII
DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

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

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

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

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design

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Guidelines made after termination of the Class "B" Control Period shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Properties primarily for development and sale.

The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, as long as it owns any property described in Exhibit "A" or "B," to establish separately developed residential neighborhoods ("Neighborhoods"), recreational, nonresidential, and amenity areas, or some, all or none of these, within the Properties, to designate portions of the Common Area for the exclusive use of one or more, but less than all, Neighborhoods ("Exclusive Common Areas") and to designate groups of Owners to vote on separate slates for the election of representatives to the Board. Every Unit situated within a designated Neighborhood may be subjected to additional covenants, conditions, easements, restrictions, and additional assessments for services provided to Units within such designated Neighborhood. Neighborhood assessments to fund Association expenses for one or more, but less than all, Neighborhoods, if any, shall be subject to the lien provisions for General Assessments provided in Article VIII. Every Unit situated within a designated Neighborhood may be subjected to assessments for premiums for insurance on Exclusive Common Areas.

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

Article XIV
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

14.1. Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 14.2 ("Claims") shall be resolved using the procedures set forth in Section 14.3 in lieu of filing suit in any court.

14.2. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 14.3.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 14.3:

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

(b) any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief, and such other ancillary relief as permitted to enforce the provisions of Article IX (Architectural Standards) or Article X (Use Restrictions and Rules);

(c) any suit by an Owner to challenge the actions of the Declarant, the Association, the ARC, the Advisory Committee, or any other committee with respect to the approval or disapproval of plans and specifications in accordance with Article IX (Architectural Standards);

(d) any suit by an Owner to challenge the enforcement or application of specific use restrictions promulgated in accordance with the procedures set forth in Article X (Use Restrictions);

(e) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(f) any suit in which any indispensable party is not a Bound Parry; and

(g) any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 14.3.

14.3. Mandatory Procedures.

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

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

3. Claimant's proposed remedy; and

4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith

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negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent dispute resolution center, the Neighborhood Justice Center of Atlanta, or such other independent agency providing dispute resolution services in the Cobb County or Metropolitan Atlanta, Georgia area upon which the Parties may mutually agree.

3. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

1. If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

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

14.4. Allocation of Costs of Resolving Claims.

(a) Subject to Section 14.4(b), each Party shall bear its own costs, including any attorneys fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

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

14.5. Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 14.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

Article XV
GENERAL PROVISIONS

15.1. Duration.

(a) Unless terminated as provided in Section 15.1(b) or unless otherwise limited by Georgia law, this Declaration shall have perpetual duration. If Georgia law hereafter limits the period during which covenants may run with the land, then, unless terminated as provided herein or, if such termination method is not consistent with Georgia law, in such other manner as required by Georgia law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Georgia law, in which case such law shall control, this Declaration may be terminated within the first 20 years after the date of recording by an instrument signed by Owners of at least 90% of the total Units within the Properties, which instrument is recorded in the Public Records; provided, regardless of the provisions of Georgia law, this Declaration may not be terminated without the prior consent of the Declarant if the Declarant owns any portion of the Properties. After twenty years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least 51% of the Units and constituting at least 51% of the total number of Owners, and by the Declarant,

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if the Declarant owns any portion of the Properties, which instrument complies with the requirements of O.C.G.A. § 44-5-60(d) and is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

15.2. Amendment. Until conveyance of the first Unit to a Person other than a Builder, the Declarant may unilaterally amend this Declaration. Thereafter, the Class "B" Member may amend this Declaration if such amendment is specifically required to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units. In addition, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of not less than 75% of the total number of Units within the Properties and the consent of the Declarant, so long as the Declarant owns any property subject to this Declaration or has an option to subject additional property to this Declaration pursuant to Section 7.1.

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

After the effective date of any statute regulating property owners associations in the State of Georgia ("POA Act"), the Board shall be authorized to amend this Declaration, without the consent of the Members, for the purpose of submitting the Properties to such POA Act and conforming this Declaration to any mandatory provisions thereof. Any such amendment shall require the consent of the Class "B" Member, if any.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

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

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

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

15.4. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members holding 75% of the total Class "A" votes in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIV, if applicable.

15.5. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

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

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

15.8. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall

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continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.9. Exhibits. Exhibits "A," "B," and "D" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 15.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 22nd day of September, 1994.

DECLARANT: COUSINS REAL ESTATE CORPORATION, a Georgia corporation

CORPORATE SEAL

By: _____ [SEAL]

Its: V.P.

Attest: _____ [SEAL]

Its: Asst. Sec.

Signed, sealed, and delivered this 23 day of September, 1994, in the presence of:

_____
WITNESS

_____
NOTARY PUBLIC

Notary Public, Fulton County, Georgia
My Commission Expires March 3, 1995

DOCS3906 -- 08/31/94

CAROLE O'BRIEN NOTARY PUBLIC FULTON COUNTY, GA.

N.P. SEAL

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EXHIBIT A

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 288, 289 and 304 of the 19th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at a point on the western right of way of Corner Road (a 50 foot right of way) where said right of way intersects the western line of Land Lot 288, said point being the TRUE POINT OF BEGINNING; THENCE running along the western right of way line of Corner Road in a generally southeasterly direction the following courses and distances: THENCE running along the arc of a 1204.53 foot radius curve an arc distance of 202.98 feet to a point (said arc being subtended by a chord lying to the southeast thereof bearing South 22°49'26" East and having a chord length of 202.74 feet); THENCE running South 27°39'05" East a distance of 184.55 feet to a point; THENCE running along the arc of a 1063.84 foot radius curve an arc distance of 187.33 feet to a point (said arc being subtended by a chord lying to the southeast thereof bearing South 22°36'24" East and having a chord length of 187.33 feet); THENCE running South 17°33'43" East a distance of 194.38 feet to a point; THENCE leaving said right of way and running North 87°36' West a distance of 399.14 feet to a point; THENCE running South 59°00' West a distance of 58.16 feet to a point; THENCE running South 20°40' East a distance of 330.00 feet to a point; THENCE running South 46°37' West a distance of 250.00 feet to a point; THENCE running South 13°45' West a distance of 400.00 feet to a point; THENCE running South 54°00' East a distance of 125.00 feet to a point; THENCE running South 00°00' West a distance of 70.00 feet to a point; THENCE running South 63°10' West a distance of 220.00 feet to a point; THENCE running South 02°17'20" West a distance of 110.00 feet to a point common to the line of Land Lots 304 and 363; THENCE running along said Land Lot line North 87°42'40" West a distance of 311.86 feet to a point; THENCE continuing along said Land Lot line North 87°43'48" West a distance of 623.02 feet to a point; THENCE leaving said common Land Lot line and running North 20°03'43" East a distance of 177.91 feet to a point; THENCE running North 40°36'05" East a distance of 54.09 feet to a point; THENCE running North 16°08'23" East a distance of 155.52 feet to a point; THENCE running North 51°00' East a distance of 64.17 feet to a point; THENCE running North 01°26' West a distance of 200.00 feet to a point; THENCE running North 22°00' West a distance of 74.00 feet to a point; THENCE running North 24°50' East a distance of 152.00 feet to a point; THENCE running North 39°00' East a distance of 50.00 feet to a point; THENCE running North 75°00' East a distance of 60.00 feet to a point; THENCE running North 00°12' West a distance of 137.00 feet to a point; THENCE running North 35°38'58" East a distance of 61.69 feet

to a point; THENCE running North 00°12' West a distance of 150.00 feet to a point; THENCE running North 89°48' East a distance of 100.03 feet to a point; THENCE running North 48°00' East a distance of 72.00 feet to a point; THENCE running North 13°00' East a distance of 107.00 feet to a point; THENCE running North 02°00' East a distance of 198.78 feet to a point; THENCE running South 86°07' East a distance of 94.97 feet to a point; THENCE running North 13°00' East a distance of 148.69 feet to a point; THENCE running North 60°18'25" East a distance of 66.74 feet to a point; THENCE running North 06°43'09" East a distance of 156.18 feet to a point; THENCE running South 83°16'51" East a distance of 612.62 feet to a point; THENCE running North 03°05'09" East a distance of 104.00 feet to a point, said point being the TRUE POINT OF BEGINNING.

Said tract contains 39.95 acres, as shown on and described according to that certain Preliminary Plat for Echo Mill Subdivision, Unit I dated March 29, 1994 and last revised July 18, 1994, prepared by Gaskins Surveying Co. and bearing signature and seal of John C. Gaskins, Georgia Registered Land Surveyor No. 2060, which Plat is incorporated herein by this reference and made a part of this description.

EXHIBIT B

REAL PROPERTY SUBJECT TO ANNEXATION

ALL THAT PARCEL AND TRACT OF LAND lying and being in Land Lots 288, 289, 303, and 304 of the 19th District, 2nd Section, Cobb County, Georgia, and more particularly described as follows:

BEGINNING at the intersection of the western boundary of Corner Road (50-foot right-of-way) with the point common to Land Lots 289 and 288; traveling thence along the western boundary of Corner Road the following courses and distances: along the arc of a 1204.53 foot radius curve an arc distance of 202.98 feet (being subtended by a chord bearing South 22° 49' 26" East, a chord distance of 202.74 feet) to a point; thence South 27° 39' 05" East a distance of 184.55 feet to a point; thence along the arc of a 1063.84 foot radius curve an arc distance of 187.33 feet (being subtended by a chord bearing South 22° 36' 24" East, a chord distance of 187.09 feet) to a point; thence South 17° 33' 43" East a distance of 194.38 feet to a #4 rebar set; thence leaving said right-of-way and traveling North 87° 36' West a distance of 399.14 feet to a #4 rebar set; thence South 59° 00' West a distance of 58.16 feet to a #4 rebar set; thence South 20° 40' East a distance of 330.00 feet to a #4 rebar set; thence South 46° 37' West a distance of 250.00 feet to a #4 rebar set; thence South 13° 45' West a distance of 400.00 feet to a #4 rebar set; thence South 54° 00' East a distance of 125.00 feet to a #4 rebar set; thence South 00° 00' West a distance of 70.00 feet to a #4 rebar set; thence South 63° 10' West a distance of 220.00 feet to a #4 rebar set; thence South 02° 17' 20" West a distance of 110.00 feet to a point located on the line common to Land Lots 304 and 363; travelling thence along said common land lot line the following courses and distances: North 87° 42' 40" West a distance of 311.86 feet to a 4x6 marble monument; thence North 87° 44' 30" West a distance of 492.48 feet to a 1¼ otf; thence North 87° 41' 09" West a distance of 209.01 feet to a 4x6 marble monument; thence North 02° 32' 10" East a distance of 146.92 feet to a #4 rebar found; thence North 02° 18' 13" East a distance of 480.13 feet to a #4 rebar found; thence North 88° 00' 48" West a distance of 1050.92 feet to a #4 rebar set; then North 89° 56' 01" West a distance of 312.21 feet to a #4 rebar found; then North 02° 20' 32" East a distance of 649.08 feet to a #4 rebar set at the point common to Land Lots 290, 291, 302 and 303; thence South 87° 31' 01" East a distance of 1363.02 feet to a #4 rebar found at the point common to Land Lots 289, 290, 303 and 304; thence North 02° 21' 29" East a distance of 704.85 feet to a 1" ctf; thence South 83° 16' 51" East a distance of 1349.32 feet to a 3/4-inch otf located at a point on the line common to Land Lots 289 and 288; thence along said common land lot line North 03° 05' 09" East a distance of 104.00 feet to a #4 rebar set, being the TRUE POINT OF BEGINNING.

G:\COUSINS\DECLARAT.LEG

Said tract containing 76.83 acres and being shown as Tract 1 on that certain survey for Cousins Properties, dated January 25, 1994, last revised April 15, 1994, by Gaskins Surveying Co., John C. Gaskins, Registered Land Surveyor No. 2060, said survey incorporated herein by reference.

TOGETHER WITH:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 290 and 291 of the 19th District, 2nd Section, Cobb County, Georgia and be more particularly described as follows:

BEGINNING at the point common to Land Lots 290, 291, 302 and 303 of said district and section, Cobb County, Georgia; continuing thence North 87°31'01" West a distance of 153.06 feet to a #5 rebar found; thence North 15°15'52" East a distance of 688.49 to a point common to Land Lots 290 and 291; continuing thence South 88°55'20" East a distance of 1362.63 feet to 1" CTF located at the point common to Land Lots 289 and 290; continuing thence along said common line South 02°21"29' West a distance of 704.85 feet to a #4 rebar found at the point common to Land Lots 289, 290, 303, and 304; continuing thence along the line common to Land Lots 290 and 304 North 87°31'01" West a distance of 1363.02 feet to a #4 rebar found at the POINT OF BEGINNING.

Said tract contains 22.71 acres and is shown as Tract 4 on that certain survey for Cousins Properties, prepared by Gaskins Surveying Co., dated January 25, 1994, last revised June 2, 1994, said survey incorporated herein by reference.

TOGETHER WITH:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 303 and 364 of the 19th District, 2nd Section, Cobb County, Georgia and being more particularly described as follows:

BEGINNING at the point common to Land Lots 303, 304, 363 and 364, traveling thence South 02° 16' 14" West a distance of 672.48 feet to a point located on the eastern right-of-way of Wright Road (50-foot right-of-way), traveling thence along said right-of-way the following courses and distances: North 77° 44' 43" West a distance of 269.69 feet to a point; thence along the arc of a 1702.13 foot radius curve an arc distance of 263.47 feet (being subtended by a chord bearing North 82° 10' 47" West a distance of 263.20 feet) to a point; thence North 86° 36' 50" West a distance of 149.32 feet to a point; thence along the arc of a 2199.07 foot radius curve an arc distance of 360.50 feet (being subtended by a chord bearing South 88° 41' 23" West a distance of 360.09 feet) to a point; thence leaving said right-of-way and traveling North 17° 23' 44" East a distance of 161.39 feet to a point; thence North 07° 35' 44" East a distance of 181.09 feet to a point; thence North 05° 06' 16" West a distance of 187.59 feet to a point; thence North 38° 11' 26" West a distance of 91.85 feet to a point; thence North 16° 32' 07" West

a distance of 191.88 feet to a point; thence North 01° 07' 46" West a distance of 142.69 feet to a point; thence North 11° 59' 54" East a distance of 107.98 feet to a point; thence North 63° 13' 54" East a distance of 87.39 feet to a point; thence North 02° 01' 06" West a distance of 177.23 feet to a #4 rebar set; thence South 88° 00' 48" East a distance of 1050.92 feet to a #4 rebar found; thence South 02° 18' 13" West a distance of 480.13 feet to a #4 rebar set; thence South 02° 32' 10" West a distance of 146.92 feet to a 4x6 marble monument located at the POINT OF BEGINNING.

EXHIBIT "C"

Initial Use Restrictions and Rules

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

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

2. Prohibited Activities and Conditions. The following activities and conditions are prohibited within the Properties:

(a) Any occupation, work or activity undertaken on a regular, ongoing basis which involves the conducting of a day-care operation. For purposes of this paragraph, "day-care operation" is defined as providing supervision and care for two or more persons who are unrelated to the care-giver and who do not permanently reside in the Unit where the care is provided in exchange for any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. This prohibition shall apply to any day-care operation, whether (i) it is engaged in full or part-time, (ii) it is intended to or does generate a profit, or (iii) a license is required; and

(b) Any construction, erection or placement of any clothesline, or antenna, satellite dish, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind, permanently or temporarily, on the outside portion of the Unit, whether such portion is improved or unimproved.

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

(a) Parking of any vehicles on streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages except on a temporary basis for such period of time as is reasonably necessary to load, unload, or prepare such vehicles for imminent use;

(b) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted on a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet, in addition to imposing such other sanctions as are authorized by the Declaration and By-Laws. Dog owners shall keep their dogs on a leash at all times when outside the boundaries of the Unit;

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

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

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

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

(g) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Public Records, except that the Declarant shall be permitted to subdivide, combine, or replat Units which it owns;

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

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

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

(i) Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IX of the Declaration. This shall include, without limitation, mailboxes, signs, basketball hoops, swing sets and similar sports and play equipment; garbage cans; above-ground swimming pools; and hedges, walls, dog runs, animal pens, or fences of any kind including, without limitation, invisible pet fences.

4. Leasing of Units. "Leasing," for purposes of this paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. Leases shall have a minimum initial term of not less than six months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Use Restrictions and Rules.

EXHIBIT "D"

Rules of Arbitration

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

2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all the Claimants shall agree upon one (1) Party Appointed Arbitrator, and all the Respondents shall agree upon one (1) Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three (3) arbitrators.

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Properties, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

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

5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.

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

Arbitrator shall determine any relevant legal issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.

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

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

10. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator.

11. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

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

13. There will be no posthearing briefs.

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