

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR COUNTRY CLUB OF GWINNETT**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR COUNTRY CLUB OF GWINNETT

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COUNTRY CLUB OF GWINNETT is made this 27th day of __, 1993, by Southland Development Corporation, a Georgia corporation, hereinafter referred to as “Developer,” and joined in by the undersigned parties as owners of previously conveyed residential Lots.

DEVELOPER’S PREAMBLE

Developer has acquired certain property in Gwinnett County, Georgia, for development into a residential community known as COUNTRY CLUB OF GWINNETT. In conjunction with development of this residential community, Developer has transferred a portion of this property to private Golf Club Developer-Owner-Operator who is developing on other portions of its property certain amenities consisting of lakes, an eighteen-hole golf course, clubhouse, and related recreational facilities to be known initially as Champions Club of Gwinnett. Developer further intends to develop or transfer to a Developer-Owner-Operator a portion of this property for the development of amenities consisting of a swimming pool, tennis courts and other amenities. Developer has caused to be prepared a conceptual rendering styled Provisional Development Plan for COUNTRY CLUB OF GWINNETT which reflects a general and common development scheme and geographical layout of the residential community, and the interrelated private recreational facilities. Developer desires to establish and provide for a coordinated set of covenants, easements and controls which shall be applicable to that portion of its property to be developed as a residential community and to that portion to be developed and

operated as private recreational facilities, but not to the balance of Developer's property. Developer desire to provide for the basis upon which owners of residences within COUNTRY CLUB OF GWINNETT may have the option but not be obligated to acquire the right to use, enjoy and benefit from the Swim and tennis recreational facilities through club memberships. Developer also desire to make known to all owners of residences within COUNTRY CLUB OF GWINNETT that the right to use, enjoy and benefit from the golf facilities is at the sole discretion of the golf course owner without limitation. Developer also desires to reserve the right, privilege and option, at a later date, to add additional property as part of the residential community and additional property as part of the private recreational facilities. Developer believes the owners of any residence within COUNTRY CLUB OF GWINNETT shall benefit from the covenants, easements, restrictions, charges, liens and agreements established herein and from the responsible development, use, administration and ownership of the private recreational facilities in a manner designed to complement and enhance the adjoining residential community. To implement its purposes and intentions, Developer deems it necessary to establish this Declaration.

STATEMENT OF DECLARATION

NOW, THEREFORE, Southland Development Corporation, as Developer, and the undersigned owners of lots within the Property (collectively as Declarant); do hereby declare that all of their respective properties described in Exhibit "A" shall be, together with any additional property described in Exhibit "B" which is by subsequent amendment hereto subjected to this Declaration, held, transferred, sold, conveyed, leased, occupied and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the real property subjected to this Declaration, and which shall be binding on all parties having any right, title or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner thereof, and where provided herein, shall benefit the property on which the recreational facilities shall be developed and located.

ARTICLE I

DEFINITIONS

- 1.1 Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words when used with initial capital letters shall have all the following meanings, and all definitions shall be applicable to the singular and plural forms of such terms:
- (a) "Additional Property" shall mean and refer to the real property described in Exhibit "B" and all improvements thereon, together with such other additional property and all improvements thereon as Declarant shall acquire from time to time and by amendment to Exhibit "B" hereto recorded in the Records of the Clerk of the Superior Court of Gwinnett County, Georgia, include within the property described in Exhibit "B".
 - (b) "Architectural Review Committee" or "ARC" shall mean and refer to the committee which shall be appointed initially by the developer and, after Developer relinquishes such right, by the Association's Board of Directors, to approve exterior and structural improvements, additions and changes within the Residential Development.
 - (c) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of COUNTRY CLUB OF GWINNETT Owners Associations, Inc., as amended from time to time.
 - (d) "Assessment" shall mean and refer to an Owner's share of the Common Expense or other charges from time to time assessed against an Owner by the Association in the manner herein provided.
 - (e) "Association" shall mean and refer to COUNTRY CLUB OF GWINNETT Owners Association, Inc., a Georgia nonprofit corporation.
 - (f) "Builder" shall mean and refer to any person engaged principally in the business of constructing for sale to homeowners Dwellings to whom the developer has sold one or more Lots for the purpose of constructing thereon a Dwelling in accordance with this Declaration.
 - (g) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.
 - (h) "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of COUNTRY CLUB OF GWINNETT Owners Association, Inc., which govern the administration and operation of the Association, as the same

may be amended from time to time.

- (i) "Common Areas" shall mean and refer to any portion of the Property now or hereafter owned by the Association for the common use and enjoyment of the Owners which is designated and identified by the developer on any plat, in any deed or in this Declaration as "Common Areas". Included within the Common Areas are the entranceways, walls, gates, fencing, project and street identification signs and landscaping and facilities appurtenant thereto. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein.
- (j) "Common Expense" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.
- (k) "Declarant" shall mean and refer to the parties who have executed this Declaration as Owners of the Property, or any successors-in-title to the entire interest of Developer with respect to the Property and the Additional Property at the time of such transfer to said successors-in-title, provided any such successors-in-title or assigns shall acquire for the purpose of development or sale all or any portion of the Property remaining undeveloped or unsold, and provided that in the instrument of conveyance or assignment, such successor-in-title or assignee is designated as the "Declarant" under this Declaration by the grantor of such conveyance, which grantor shall be the "Declarant" at the time of the conveyance, or the purchaser at foreclosure sale of the First Union Mortgage. All rights and obligations of the former Declarant in and to the status of Declarant and under this Declaration then shall be deemed transferred to the successor Declarant.
- (l) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for COUNTRY CLUB OF GWINNETT and all amendments thereof filed for record in the Records of the Clerk of the Superior Court of Gwinnett County, Georgia.
- (m) "Dwelling" shall mean and refer to any improved property intended for use as a single-family detached dwelling or as a patio or cluster home, located within the Residential Development.
- (n) "First Union Mortgage" shall mean, collectively, the following: Those instruments owned and held by First Union National Bank of Georgia, a national banking association, as successor by bank merger to Decatur Federal Savings and Loan Association.
- (o) "Foreclosure" shall mean and refer to, without limitation, the foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a foreclosure.
- (p) "Golf Club" shall mean and refer to the golf course and related club facilities developed in conjunction with and adjacent to the Residential Development, including the eighteen-hole golf course and any future additions thereto, parks, ponds, lakes, retainage facilities, dams, causeways, putting green golf cart paths, bridges, clubhouse, golf pro shop, locker room facilities, food and beverage facilities and other related facilities. At no time shall the Golf Club be part of the Common Areas nor is or shall the Golf Club be governed by the provisions of this Declaration except as specifically provided herein. No Owner or Occupant nor the Association shall have any rights in and to, or obligations with respect to, the Golf Club except as expressly and specifically provided herein.
- (q) "Golf Club Owner" shall mean and refer to the owner of the property on which the Golf Club is located, and its successors, assigns and successors-in-title with respect thereto. Said Golf Club Owner is initially Gwinnett Champions, L.P.
- (r) "Golf Club Property" shall mean and refer to that certain property on which the Golf Club is located, being more particularly described on Exhibit "C" attached hereto and incorporated herein by this reference, together with any additions thereto which may be made from the Additional Property.
- (s) "Institutional Mortgage" shall be deemed to mean a Mortgagee held by a bank, trust company, savings and loan association, insurance company or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.
- (t) "Lease" shall mean and refer to any lease, sublease or rental contract, whether oral or written.
- (u) "Living Space" shall mean and refer to enclosed and covered areas within a Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

- (v) "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling shall be constructed, and shown on any plat filed by Declarant in the plat records of the Clerk of Superior Court of Gwinnett County, Georgia as contemplated by Section 2.05. A parcel of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such parcel and the improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.
- (w) "Mortgage" shall mean and refer to a security deed, deed of trust, mortgage or other similar security instrument granting, creating or conveying a lien upon, a security interest in, or a security title to a Lot or Dwelling.
- (x) "Mortgagee" shall mean and refer to the holder of a Mortgage.
- (y) "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, leasee, tenant or family member of an Owner, occupying or otherwise using a Dwelling within the Residential Development.
- (z) "Owner" shall mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot or Dwelling excluding, however, those persons having such an interest under a Mortgage.
- (aa) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.
- (bb) "Property" shall mean and refer to those tracts or parcels of land described on Exhibit "A", together with all improvements thereon, including the Common Areas, roads, utility systems, drainage systems and other improvements serving the Lots and dwellings and, upon submission to the provisions of this Declaration, the tracts or parcels of land described in Exhibit "B" or any portion thereof, or any tracts or parcels of land hereafter added thereto, together with all improvements thereon.
- (cc) "Residential Development" shall mean and refer to only that portion of the Property which is subdivided into Lots designed for the construction thereon of Dwellings, together with all improvements located or constructed thereon, and any portion of the Additional Property submitted to the provisions hereof which is similarly subdivided into lots, all of which Lots are reflected on any plat filed by Declarant in the plat records of the Clerk of Superior Court of Gwinnett County, Georgia.
- (dd) "Swim and Tennis Club" shall mean and refer to the tennis courts, swimming pool, clubhouse, parking areas, driveways, tennis pro shops, locker room facilities, food and beverage facilities and other related facilities. Upon completion of development of the Swim and tennis club, Developer expects to transfer ownership thereof to a separate corporation which shall then become the Swim and Tennis club Owner. At no time shall the Swim and Tennis Club be part of the Common Areas nor is or shall the Swim and Tennis club be governed by the provisions of this Declaration except as specifically provided herein. No Owner or Occupant nor the Association shall have any rights in and to, or obligations with respect to the Swim and Tennis Club except as expressly and specifically provided herein.
- (ee) "Swim and Tennis Club Owner" shall mean and refer to the owner of the property on which the Swim and Tennis Club is located, and its successors, assigns and successors-in-title with respect thereto.
- (ff) "Swim and Tennis Club Property" shall mean and refer to that certain property on which the Swim and Tennis Club is located, being more particularly described on Exhibit "D" attached hereto and incorporated herein by this reference, together with any additions thereto which may be made from the Additional Property.

ARTICLE II

DEVELOPMENT

- 2.1 Development of Property. All Lots within the residential Development shall be and are hereby restrict exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in Article X hereof. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option (as defined to Section 2.2) to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by Declarant or of the Common Areas, (iii) changes in the boundaries between the Golf Club Property, Swim and Tennis Club Property, and any portion of the Property owned by Declarant, whether or not subdivide into Lots for any of the Additional Property submitted to the terms hereof), and (iv) installation and maintenance of any water, sewer and other utility systems and facilities.

2.2 Development of Additional Property. Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time the Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property, or, alternatively, to become part of the Golf Club Property or the Swim and Tennis club Property. This option may be exercised by Declarant in accordance with the following rights, conditions and limitations which are the only conditions and limitations on such option.

- (a) The option may be exercised from time to time during a period of twelve (12) years from the date of this Declaration; provided, however, that Declarant reserves the right to terminate such option at any time prior to the expiration of such twelve (12) year period by executing and filing an agreement evidencing each termination in the deed records of the Clerk of the Superior Court of Gwinnett County, Georgia.
- (b) The legal description of the Additional property as of the date hereof is set forth in Exhibit "B"; portions of the Additional Property (together with additions thereto made in accordance herewith) may be added to the Residential Development or to the Golf Club Property, on the Swim and Tennis Club Property, at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence or location in which any of such portions may be so added. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.
- (c) If the Additional Property or any portion thereof is so added, Declarant reserves the right to designate the boundaries of the portion added to the Golf Club Property or the Swim and Tennis Club Property, if any, or Lots and Dwellings, as well as the Common Areas, if any, to be added to the Residential Development in connection therewith.
- (d) Should the option to add the Additional Property, or any portion thereof, not be exercised within the terms specified herein or be terminated by Declarant, such option shall in all respects expire and be of no further force and effect. In the event that such option expires or is terminated, as aforesaid, Declarant shall not be obligated to impose on the Additional Property or any portion thereof any covenants, conditions, or restrictions whatsoever.
- (e) The option reserved by Declarant to cause all or any portion of the Additional Property to become part of the Golf Course Property or the Swim and Tennis Club Property or the Residential Development shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property to the Residential Development or to construct thereon any improvements of any nature whatsoever.

The option reserved under this Section 2.2 may be exercised by Declarant only by the execution of an amendment to this Declaration which shall be filed in the deed records of the Clerk of the Superior Court of Gwinnett County, Georgia, together with a legal description of the Additional Property or such portion or portions thereof as are being added to the Swim and Tennis Club Property, the Golf Club Property or the Residential Development by such amendment. Thereafter, Declarant shall convey to the Association the Common Areas, if any, contained within the Additional Property, or such portion thereof so submitted, such conveyance to be subject to the lien of taxes not yet due and payable, all easements and restrictions and/or the Additional Property, and any exceptions which would be disclosed by a survey or physical inspection of such parcel(s). From and after the addition to the Residential Development of the Additional Property or such portion or portions thereof by such amendment to this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings to be located on the Additional Property or such portion or portions thereof as are added so that there shall continue to be one vote in the Association per Lot or Dwelling in the Residential Development. In no portion thereof, to the provisions of this Declaration or to impose upon the Additional property, or any portion thereof, any covenants, conditions or restrictions whatsoever.

2.3 Swim and Tennis Club. Developer, as the initial Swim and Tennis Club Owner, intends to develop the Swim and Tennis club, including tennis courts and swimming pool on the swim and tennis Club Property substantially in the manner reflected on the Provisional Development Plan for COUNTRY CLUB OF GWINNETT. The Swim and Tennis club shall be a private club, separate and distinct from the Association, and governed by its own rules, regulations and requirements. The Swim and Tennis club and the Swim and Tennis Club Property shall not be part of the Common Areas, and neither the Association nor any Owner shall have any right, easement or privilege in and to the Swim and Tennis club or the amenities contained therein, including the right to enter upon or use the swim and tennis club facilities, except under such conditions and requirements as may be established by the Swim and Tennis Club Owner from time to time. Only members of the Swim and tennis club may use club facilities upon payment of the membership fees and dues established from time to time by the Swim and Tennis club Owner. The initial membership fee is \$ _____ and shall be fixed at such amount for a period of two (2) years after recording of this Declaration, but may be increased thereafter without notice. Payment of such additional dues and fees as the Swim and Tennis Club owner may deem appropriate from time to time are the responsibility of the individual member and nonpayment shall be just cause for termination of membership. Membership shall be open to both members of the Association and non-residents of COUNTRY CLUB OF GWINNETT, but maximum membership capacity, the ratio of non-resident and resident

memberships, whether to renew non-resident memberships, and all other terms and conditions of membership status and the rights, privileges and obligations appurtenance thereto shall be determined by the Swim and Tennis Club Owner.

2.4 Golf Club. Champions Club, L.P., as Golf Club Owner, intends to construct on the property described in Exhibit “ “ attached hereto an 18-hole daily-fee golf course and driving range and certain other club amenities. Said Club amenities to include a clubhouse, necessary equipment and supplies for the operation of a golf course, covered golf cart storage facility, maintenance facility and irrigation system. Golf Club Owner shall have sole discretion to establish, and to revise periodically, club membership structure, cart and green fees to be charged for same. The Golf Club shall be separate and distinct from the Association, and governed by its own rules, regulations and requirements. The Golf Club and the Golf Club Property shall not be part of the Common Areas, and neither the Association nor any Owner shall have any right, easement or privilege in and to the golf club or the amenities contained therein, including the right to enter upon or use the Golf Club facilities, except under such conditions and requirements as may be established by the Golf club Owner from time to time.

2.5 Subdivision Plats. Declarant reserves the right to record, modify, amend, revise and add to, at any time and from time to time, subdivision plats setting forth such information as Declarant may deem necessary with regard to the Residential Development, including, without limitation, the locations and dimensions of the Lots, Dwellings, Common Areas, Additional Property, roads, utility systems, drainage systems, utility easements, drainage easements, access easements and set-back line restrictions. The Golf club Owner shall have the right to record, modify, amend, revise and add to, at any time and from time to time, subdivision plats setting forth such information as the Golf Club Owner may deem necessary with regard to the Golf Club Property. The Swim and Tennis Club Owner shall have the right to record, modify, amend, revise and add to, at any time and from time to time, subdivision plats setting forth such information as the Swim and tennis Club Owner may deem necessary with regard to the Swim and Tennis Club Property, including, without limitation, the location of the tennis courts, swimming pool and related facilities and their relationship to the Residential Development and the Golf Club Property.

ARTICLE III

PROPERTY RIGHTS

3.1 General. Each Lot and Dwelling shall for all purposes constitute real property which shall be owned in fee simple and which; subject to the provisions of: 1) this Declaration and 2) the terms and provisions of the RECIPROCAL EASEMENT AGREEMENT dated January 8, 1993, between Declarant and Golf Course Owner (which shall be superior to this agreement) as recorded at Gwinnett County Deed Book 8289, Pages 228 through 260, a copy of which is attached and by reference made apart hereof; may be conveyed, transferred and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot or Dwelling, subject to the provisions of this Declaration, including, without limitation, the provisions of this Article III. The ownership of each Lot and Dwelling shall include, and there shall pass with each Lot and Dwelling as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, which shall include, but not limited to, membership in the Association. Each owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot or Dwelling. Lots shall not be subdivided, and, except as provided in Sections 2.1, 2.5 and 3.6 hereof, the boundaries between Lots shall not be relocated. Notwithstanding the foregoing, nothing herein shall prohibit the combination of the two or more lots into a larger parcel in order to create a Dwelling site larger than one Lot.

3.2 Owner's Easement of Enjoyment. Subject to the provisions of this Declaration, the RECIPROCAL EASEMENT AGREEMENT between Developer and Golf Course Owner dated January 8, 1993, recorded at Gwinnett County Deed Book 8289, Pages 228 through 260, and the rules, regulations, fees and charges from time to time established by the board of Trustees in accordance with the By-Laws and the terms hereof, every Owner, his family, tenants and guests shall have a non-exclusive right, privilege and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass and run with title to each Lot and Dwelling, subject to the following provisions:

- (a) The right of the Association to borrow money (I) for the purpose of improving the Common Areas, or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Common Areas, or (iv) for providing the services authorized herein and to give as security for the payment of any such loan a security deed or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interest, options, licenses, easements and privileges herein reserved or established for the benefit of Declarant, any Owner, the Swim and Tennis Club Owner, the Golf Club Owner, or the holder of any

Mortgage, irrespective of when such Mortgage is executed or given.

- (b) The rights and easements reserved to Declarant in this Article.
 - (c) The right of the Association to grant and accept easements and to dedicate or transfer fee simple title to all or any portion of the Common Areas to Gwinnett County, Georgia, or to any other public agency or authority, public service district, public or private utility or other person for so long as Declarant owns any lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Residential Development.
 - (d) The rights and easements reserved in Section 3.9 hereof for the benefit of the Association, its trustees, officers, agents and employees.
 - (e) The rights and easements reserved in Section 3.11 hereof for the benefit of the Additional Property.
 - (f) The rights and easements reserved to the Golf Club Owner with respect to the Golf Club in Section 3.14.
- 3.3 Release From Liability By Owner. Notwithstanding anything contained herein to the contrary Owners of lots and dwellings, for themselves and for all successors in title to any portion thereof, hereby release Golf Club Owner, Declarant, Builders and any Lenders holding security title to the Golf Club property or any portion hereof, from any and all liabilities or damages resulting from the normal hazards associated with the operation of a golf course on the Golf Club Property. Every Owner shall, by acceptance of a deed to any portion of the property burdened by this Declaration, be deemed (i) to have agreed to assume the risk of such normal hazards associated with a golf course, (ii) to have consented to the foregoing release of liability and damage, and (iii) to have covenanted not to sue Golf Club Owner, Declarant or Builder or any Lender holding security title to the Golf Club property, or any portion thereof, and to refrain forever from instituting, pressing, collecting or anyway proceeding upon any or all claims, judgments, debts, causes of action, suits or proceedings of any kind or nature whatsoever, whether known or unknown, which such owner has or may have in the future, arising from, on account of or in any way connected with the risk of normal hazards associated with the operation of a golf course on Golf Club Property.
- 3.4 Swim and Tennis Club Facilities. Subject to the terms and provisions of this Declaration and the rules and regulations and payment of the memberships fees, dues and charges from time to time established by the Swim and Tennis Club Owner, every Owner and his family, tenants and guests shall have the non-exclusive right and privilege to and the use and enjoyment of the Swim and Tennis Club and recreational facilities and amenities as are now or hereafter located on the Swim and Tennis Club Property.
- 3.5 Golf Club Facilities. Nothing contained in this agreement shall be deemed to bestow, grant, give or convey in any manner or way to owner of all or any portion of the property or any lot in the subdivision any rights or privileges to use the Golf Club Property. Owners and their families do not have any right or privilege to the use and enjoyment of the Golf Club and recreational facilities and amenities as are now or hereafter located on the Golf Club Property except at the sole discretion of the Golf Course Owner to establish, and to revise periodically, club membership structure, cart and green fees to be charged for same.
- 3.6 Easements for Declarant. During the period that Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Residential Development, Declarant shall have an alienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing Dwellings and other improvements in and to the Lots and the Additional property and for installing, maintaining, repairing and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and property in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.
- 3.7 Changes in Boundaries, Additions to Common Areas. Declarant expressly, reserves for itself and its successors and assigns the right to change and realign the boundaries of the Common Areas, any Lots and Dwellings owned by Declarant, and, if Declarant is no longer the Swim and Tennis Club Owner or the Golf Club Owner, with the written consent of such Club Owners, the Swim and Tennis Club Property and the Golf Club Property, including the realignment of boundaries between adjacent Lots and Dwellings owned by Declarant. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any portion of the Additional property. Furthermore, Declarant reserves for itself, its affiliates, successors and assigns the right, but shall not have the obligation, to convey by quit-claim deed to the Association at any time and from time to time, as an

addition to the Common Areas, such other portion of the Residential Development owned by Declarant as it, in its discretion, shall choose.

- 3.8 Easements for Utilities and Public Services. There is hereby reserved for the benefit of Declarant, the Swim and Tennis Club Owner, the Golf Club Owner, the Association and their respective properties and their respective successors and assigns, the alienable, transferable, non-exclusive, and perpetual right and easement, as well as the power to grant and accept easements to and from Glin County, Georgia or any other public authority or agency, public service district, public or private utility or other person upon, over, under and across (I) all of the Common Areas, (ii) all portions of the Swim and Tennis Club Property, and (iii) those portions of all Lots and all Dwellings as are reasonably necessary for the purpose of installing, replacing, repairing, maintaining and using all utilities, including, but not limited to, storm sewers, dams, drainage systems, lakes and retention ponds and facilities for the Residential Development, the Swim and Tennis Club Property, the Golf Club Property or any portions thereof, and electrical, gas, telephone, water and sewer lines, provided that such easements shall not unreasonably affect the developability, marketability or value of any such Lot or dwelling. Such easements may be granted or accepted by Declarant, its successors or assigns. To the extent possible, all utility lines and facilities serving the Residential Development, the Swim and Tennis Club Property and the Golf Club Property and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier of services, with respect to the portions of the Property so encumbered, (I) to erect and maintain pipes, lines; manholes, pumps and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes or shrubbery, (iii) to grade, excavate or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems; provided, however, that such utility company or other supplier or servicer shall take reasonable actions to repair any damage caused by such utility company or other supplier or servicer during the exercise of any rights conveyed under any easement granted hereunder.
- 3.9 Easement for Perimeter Wall. There is hereby reserved for the benefit of Declarant, the Association and their respective successors and assigns, the alienable, transferable and perpetual right and easement upon, over and across those strips of land fifteen (15) feet in width located along those boundaries of all Lots and Dwellings that constitute part of the perimeter boundary of the Residential Development, such easement to be for the purpose of constructing, installing, replacing, repairing and maintaining a perimeter wall or fence around the perimeter boundary of the Residential Development, provided that Declarant shall have no obligation to construct any such perimeter wall or fence.
- 3.10 Easements for Association. There is hereby reserved a general right and non-exclusive easement for the benefit of the Association, its directors, officers, agents and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or Dwelling, or any portion thereof, in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or occupant of the Lot or Dwelling directly affected thereby.
- 3.11 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns the alienable and transferable right and non-exclusive easement in and to the Property for the maintenance of signs, sales offices, construction offices, businesses offices and model Dwellings, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion, improvement and/or sale of Lots and Dwellings, the Swim and Tennis Club, the Golf Club, Common Areas or the Additional Property, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Residential Development.
- 3.12 Easements for Additional Property. There is hereby reserved in Declarant and its successors, assigns and successors-in-title to the Additional Property (if said rights are granted by Declarant to such successors, assigns and successors-in-title), for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for (I) pedestrian and vehicular ingress, egress across, with and on all roads, sidewalks, and trails from time to time located within the Property, (ii) the installation, maintenance, repair, replacement and use within the Swim and Tennis Club Property, the Common Areas and those portions of the Lots and Dwellings encumbered pursuant to Section 3.8 hereof of utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers and electrical, gas, telephone, water and sanitary sewer lines, and (iii) drainage and discharge of surface water onto and across the Property and into the lakes and retention ponds located thereon, provided that such drainage and discharge shall not materially damage or affect the Property or any improvements from time to time located thereon.

- 3.13 Maintenance Easement There is hereby reserved for the benefit of Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and non-exclusive easement to enter upon any lot and upon unimproved portions of any Dwelling for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Residential Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.
- 3.14 Easements for Swim and Tennis Club Property. There is hereby reserved for the benefit of the Swim and Tennis Club Owner, its successors, assigns and successors-in-title with respect to the Swim and Tennis Club Property, the following transferable, alienable and perpetual rights and easements:
- (a) Utility Easements. The right and easement for the installation, maintenance, repair, replacement and use within the Common Areas and those portions of Lots and Dwellings encumbered pursuant to Section 3.8 hereof of utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers and electrical, gas, telephone, water and sanitary sewer lines.
- 3.15 Easements for golf club Property. There is hereby reserved for the benefit of the Golf Club Owner, its successors, assigns and successors-in-title with respect to the Golf Club Property, the following transferable, alienable and perpetual rights and easements:
- (a) Utility Easements. The right and easement for the installation, maintenance, repair, replacement and use within the Swim and Tennis Club Property, the Common Areas and those portions of Lots and Dwellings encumbered pursuant to Section 3.8 hereof of utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers and electrical, gas, telephone, water and sanitary sewer lines, and the right and easement for the drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall be channeled primarily into the lakes and Gold Course Property from other portions of the Property and shall not materially damage or affect such other portions of the Property or any improvements from time to time located thereon.
- (b) Pedestrian and Golf cart Paths. The right and easement on, over and across the Common Areas and such portions of the Lots and Dwellings within five (5) feet of any boundary line of any Lot for all members, guests and other authorized users of the golf course located on the Golf Club Property for the use of pedestrian and gold cart paths located in such portions of the Residential Development and serving the golf course located on the Golf Club Property.
- (c) Construction, Maintenance and Repair. The right an easement on, over, through, under and across the Common Areas, the Swim and Tennis Club Property, and such portions of the Lots and Dwellings as are described in section 3.8 above for the purpose of constructing such improvements on the golf Club Property or such portions of the Residential Development as the golf club Owner shall desire from time to time and for maintaining, repairing and replacing such improvements, provided that the only such improvements to be constructed on such portion of the Residential development shall be pedestrian and gold cart paths and related directional signage, and provided further the Golf Club Owner shall not use such easement so as to unreasonably interrupt or interfere with any Owner's use of the Common Areas and such portions of the Lots and Dwellings and shall promptly repair and restore any damage to said Common Areas and such portions of the Lots and the Dwellings caused by the use of the right and easement granted herein. In addition, there is hereby reserved for the benefit of the Golf Club Owner, its agents, employees, successors and assigns, the right and easement to enter upon any unimproved portions of Lots and Dwellings which are located within Thirty (30) feet from the water's edge of any lake, pond or other body of water located on the Golf Club Property, for the purpose of mowing such area and keeping the same free and clear from unsightly growth and trash, as well as for the purpose of maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards, the lake, lakebeds and shorelines, and lake elevation.
- (d) Golf Course Maintenance. A non-exclusive right and landscape easement over and across the portions of the Swim and tennis Club Property, the Common Areas, each Lot and all unimproved portions of each Dwelling which are adjacent to the fairways and greens of the golf course or courses located on the Golf Club Property. This reserved right and easement shall permit, but shall not obligate, the Gold Club Owner and its agents, employees, successors and assigns with respect to the Gold Club Property, to go upon any such portions of the Swim and Tennis club Property, the Common Areas and such Lot and Dwelling to maintain or landscape the area encumbered by such easement. Such maintenance and landscaping shall include planting of grass, watering, application of fertilizer, mowing and the removal of underbrush, stumps, trash or debris, and trees of

less than two (2) inches in diameter. The area encumbered by this easement shall be limited to the portion of the Swim and Tennis club Property, the Common Areas and such Lots and Dwellings within thirty (30) feet of those boundary lines of the swim and Tennis Club Property, the Common Areas, and such Lots and Dwellings which are adjacent to such fairways or greens or adjacent to lakes, ponds or other bodies of water abutting the golf course.

- (e) Entry by Golfers. Each Lot, Dwelling and any portion of the Swim and Tennis club Property and the Common Areas which are adjacent to a golf fairway or green located on the golf Club Property shall be subject to the right and easement on the part of registered golf course players and their caddies to enter upon the unimproved portion of any such Lot, Dwelling, the Swim and Tennis Club Property or Common Area which is within thirty (30) feet of any such golf course to remove a ball, subject to the official rules of the golf course, players or their caddies shall not be entitled to enter on any such Lots, Dwelling, the Swim and tennis Club Property or portions of the Common Areas with a golf cart or other vehicle, nor to spend an unreasonable amount of time on any such Lot, Dwelling, the Swim and Tennis Club Property or the Common Area, or in any way commit a nuisance while on any such properties.
- (f) Landscaping Plan Approval. In addition to the provisions of Article X hereof, the landscaping plan for any Lots, Dwellings or the Swim and Tennis Club Property and the portions of the Common Area adjacent to any golf course located on the Golf Club Property shall, for that portion of such Lot, Dwelling, Swim and Tennis Club Property or Common Areas which is within thirty (30) feet of any such golf course, be in general conformity with the overall landscaping plan of such golf course, and shall be subject to the Golf Club Owner's prior right of approval, which approval shall not be unreasonably withheld. To promote a suitable and attractive open space atmosphere, no fence, wall, shrubbery, building or other structure will be permitted within said thirty (30) foot portion of those Lots, Dwellings, Swim and Tennis Club Property or portions of the Common Areas which are adjacent to the fairways or greens of such golf course, without the prior written approval of the Golf Club Owner.
- (g) Reciprocal Easement Agreement. Owners of lots, dwellings and unimproved property as contemplated by this agreement shall be subject to the easements, restrictions and responsibilities described in the RECIPROCAL EASEMENT AGREEMENT dated January 8, 1993, between Declarant and golf Club Owner as recorded in Gwinnett County Deed Book 8289, Pages 228 through 260.

ARTICLE IV

MEMBERSHIP

- 4.1 Membership. Every Owner shall have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling, and ownership of a Lot or Dwelling shall be the sole qualification for such membership. In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect and Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no owner, whether one or more persons, shall have more than one membership per Lot or Dwelling. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse, but in no event shall more than one vote be cast or more than one office held for each Lot or Dwelling, and further provided that a member casting a vote or holding an office with respect to his Dwelling shall not be entitled to cast an additional vote or to hold an additional office for the Lot upon which his residential unit is located. When more than one person holds an interest in any Lot or Dwelling, the vote for such Lot or Dwelling shall be exercised as those Owners of such Lot or Dwelling themselves determine and advise the Secretary or an Assistant Secretary of the Association prior to any meeting. In the absence of such advice, the vote appurtenant to such Lot or Dwelling shall be suspended in the event more than one person seeks to exercise it. The voting weight appurtenant to each Lot or Dwelling is equal, and each Lot and each Dwelling shall have one vote. Such voting weight shall continue to be equal upon the addition of all or a portion of the Additional Property to the Residential Development, and each Lot or Dwelling therein shall have one vote. Each Owner, by acceptance of a deed or other conveyance for a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the submission from time to time of the Additional Property or any portion thereof to the terms of this Declaration as provided herein.

ARTICLE V

MAINTENANCE

5.1 Responsibilities of Owners. Unless specifically identified herein as being the responsibility of the Association or the Swim and Tennis Club Owner, or the golf Club Owner, all maintenance and repair of Lots and Dwellings, together with all other improvements thereon or therein, and all lawns, landscaping and grounds on and within a Lot or Dwelling, shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his Lot or Dwelling in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all lawns, trees, shrubs, hedges, grass and other landscaping. As provided in Section 5.2(b) hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. No Owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the Architectural Review Committee as provided in Article X hereof.

5.2 Association's Responsibility.

- (a) The Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of all fences, walls, entranceways, entrance features, streets and development identification signs, directional signs, traffic islands, landscaped areas and other improvements situated within the Common Areas.
- (b) In the event Declarant or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair or replacement of items for which he is responsible hereunder, or (ii) that the need for maintenance, cleaning repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Associations' intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure to any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement, without such action being deemed a trespass, at the sole cost and expense of such Owner, as the case may be, and said cost shall be added to and become a part of the assessment to which such Owner and his Lot or Dwelling are subject, and shall become a lien against such Lot or Dwelling.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

6.1 Insurance.

- (a) The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the board) of any repair or reconstruction in the event of damage or destruction from any such hazard.
- (b) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of

the Association, its members, its directors and officers, or any of its agents,. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.

- (c) The Board or its duly authorized agents shall have the authority and may obtain (I) worker's compensation insurance to the extent necessary to comply with any applicable laws, and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.
 - (d) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Residential Development shall be vested in the Board of Directors; provided, however, that no mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
 - (e) It shall be the individual responsibility of each Owner, at his own expense, to provide public liability, property damage, title and other insurance with respect to his own Lot and Dwelling.
 - (f) It shall be the responsibility of the Golf Club Owner and Swim and Tennis Club Owner, respectively, at their expense, to obtain and maintain such insurance with respect to the Golf Club Property and Swim and Tennis Club Property as from time to time they deem necessary and appropriate.
- 6.2 Damage or Destruction to Common Areas. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Areas, Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, shall otherwise agree, the Association shall restore or replace such damage improvement. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners in an amount sufficient to provide funds to pay such excess costs of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. If it is determined that the damage or destruction for which insurance proceeds are paid shall not be repair or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas left in a clean, orderly, safe and sightly condition.
- 6.3 Damage or Destruction to Lots and Dwellings. In the event of damage or destruction by fire or other casualty to any Lot or Dwellings, and in the further event that either the Owner of such Lot or Dwelling elects not to repair or rebuild the damaged or destroyed Lot or Dwelling, such Owner making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot or Dwelling in a clean, orderly, safe and sightly condition. Should such Owner elect to repair or rebuild such Lot o Dwelling or other improvements in accordance with all applicable standards, restrictions and provisions of this Declaration (including, without limitation, Article X hereof) and all applicable zoning, subdivision, building and other governmental regulations. All such work or repair or construction shall be commenced promptly following such damage or repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

ARTICLE VII

RULE MAKING

- 7.1 Rules and Regulations. Subject to the provisions hereof, the board of Directors may establish reasonable rules and regulations concerning the use of Lots and Dwelling and the Common Areas and facilities located thereon. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, cancelled or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

- 7.2 Authority and enforcement. Subject to the provisions of section 7.3 hereof, upon the violation of this Declaration, the By-laws or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the board shall have the power (I) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, the Owners or Occupants of which are guilty of such violation, (ii) to suspend an Owner's right (and the right of such Owner's family, guests and tenants and of the co-Owners of such Owner and their respective families, guests and tenants) to use any recreation facilities that might be located in Common Areas, and the board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the following sanctions in the event of such a violation by such Owner, his family, guests or tenants, or by his co-Owners or the family, guests or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days per violation.
- 7.3 Procedure. Except with respect to the failure of an Owner to pay assessments, the board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner or other occupant of the Residential Development for violations of the Declaration, the By-laws or any rules and regulations of the Association, unless and until the following procedure is followed:
- (a) Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying:
 - (i) The alleged violation;
 - (ii) The action required to abate the violation; and
 - (iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this declaration, the By-Laws or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.
 - (b) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the board may serve such Owner with written notice of a hearing to be held by the board in executive session. The notice shall contain:
 - (i) The nature of the alleged violation;
 - (ii) The time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice;
 - (iii) An invitation to attend the hearing and produce any statement, evidence and witnesses on his behalf; and
 - (iv) The proposed sanction to be imposed.
- © The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE VIII

ADMINISTRATION

- 8.1 Common Areas. The Association, subject to the rights Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon. Except the extent otherwise required by the provisions of the Official Code of Georgia relating to nonprofit corporations, this Declaration, the By-laws or the Articles of Incorporation, the powers herein or otherwise granted to the Association, may be exercised by the Board of Directors acting through the officers of the Association without any further consent or action on the part of the Owners.
- 8.2 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the Official code of Georgia relating to nonprofit corporations, this Declaration, the By-Laws and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Official Code of Georgia, this Declaration, the By-Laws or the Articles of Incorporation, the provisions of the Official Code of Georgia, this Declaration and the By-Laws, in that order, shall prevail. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include,

but shall not be limited to, the power to purchase one or more Lots and/or Dwellings and to hold, lease, mortgage, sell and convey the same. For so long as Declarant shall own any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Residential Development, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage or hypothecate all or any portion of the Common Areas.

- 8.3 Agreements. Subject to the prior approval of Declarant for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the residential Development, all agreements and determinations lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representative, successors and assigns. In performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers or members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the enforcement of this Declaration, the By-Laws or the rules and regulations of the Association.
- 8.4 Indemnification. The Association shall indemnify every officer and director of the Association against any and all expenses, including court costs and reasonable attorney fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the Board of Directors) to which he may be made a party by reason of being or having been an officer or director at the time such expenses are incurred. The officers and directors shall not be liable for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or nonfeasance. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain liability insurance to fund this obligation.

ARTICLE IX

ASSESSMENTS

- 9.1 Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and maintaining the Common Areas and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.
- 9.2 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot or Dwelling by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments, such assessments to be established and collected as provided in Section 9.3 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 9.4 hereof, and (c) individual or specific assessments against any particular Lot or Dwelling which are established pursuant to the terms of this Declaration. Any such assessments, together with late charges, simple interest at the rate of eighteen percent (18%) per annum and court costs and attorney's fees incurred to enforce or collect such assessments, shall be an equitable charge and a continuing lien upon the Lot or Dwelling, the Owner of which is responsible for payment. Each Owner shall be personally liable for assessments coming due while he is the Owner of a Lot or Dwelling, and his grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefore, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefore; provided, however, the lien for unpaid assessments shall not apply to the holder of any first priority Institutional Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors or assigns who takes title to a Lot or Dwelling through foreclosure, or to any purchaser of such Lot or Dwelling at such foreclosure sale. In the event of co-ownership of any Lot or Dwelling, all of such co-Owners shall be jointly and severally liable for the entire amount of such assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors.

9.3 Computation of Annual Assessments. It shall be the duty of the Board, at least thirty (30) days prior to the Association's annual meeting, to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The board shall cause the budget and the proposed total of the annual assessments to be levied against Lots and Dwellings for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The total annual assessments shall be divided among the Lots and Dwellings equally so that each Lot and Dwelling shall be subject to equal annual assessments. Upon the addition of the Additional Property or any portion thereof to the Residential Development, assessment shall continue to be equal, and the Lots and Dwellings being added to the Residential Development shall thenceforth pay assessments which are equal to those imposed upon Lots and Dwellings previously in the Development. In such event, the Association's budget shall be accordingly revised by the board, without the necessity or approval by the Owners, to include Common Expenses and assessments related to such additional Lots and Dwellings. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by Declarant, for so long as Declarant has the authority to appoint and remove directors and officers of the Association. In the event the Board fails for any reason to determine the budget of the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessments in effect for the then current year shall be increased in proportion to the percentage increase, if any, for the then current year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items 1967=69=100), or its successors index, and such increased budget shall be implemented for the succeeding year until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, the board may call a meeting of the Association for the approval of a special assessment as provided in Section 9.4 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to the following:

- (i) management fees and expenses of administration, including legal and accounting fees;
- (ii) utility charges for utilities serving the Common Areas and charges for other common services if any such services or charges are provided or paid by the Association;
- (iii) the cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire, flood and other hazard coverage, public liability coverage and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;
- (iv) the expenses of maintenance, operation and repair of those portions of the Common Areas which are the responsibility of the Association under the provisions of this Declaration;
- (v) the expenses of the Architectural Review Committee which are not defrayed by plan review charges;
- (vi) ad valorem real and personal property taxes assessed and levied against the Common Areas;
- (vii) such other expenses as may be determined from time to time by the board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and
- (viii) the establishment and maintenance of a reasonable reserve fund or funds (A) for inspections, maintenance, repair and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be inspected, maintained, repaired or replaced on a periodic basis, (B) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (C) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the board of Directors.

9.4 Special Assessments. In addition to the annual assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, special assessments for Common Expenses applicable to that year only, provided that except as otherwise permitted in Section 6.2, any such assessment shall be approved by (I) Declarant for so long as Declarant owns any lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, and (ii) by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 9.6 hereof. The Board may make such special assessments payable in installments over a period which may, in the board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be prorated among the Lots and Dwellings equally as provided with respect to annual assessments.

- 9.5 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any Owner shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual assessments provided for in this Section 9.5 shall be levied by the Board of Directors, and the amount and due date of such assessment so levied by the Board shall be as specified by the board.
- 9.6 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 9.3 and 9.4 hereof, shall be sent to all members not less than ten (10) days nor more than twenty-five (25) days in advance of such meetings. With respect to annual meetings, the presence of members or proxies entitled to cast over fifty percent (50%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the presence in person or by proxy of members having twenty-five (25%) of the total votes of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.
- 9.7 Liens. All sums assessed against any Lot or Dwelling pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or Dwelling in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot or Dwelling except on for (i) liens of ad valorem taxes, and (ii) liens for all sums unpaid on a first priority Institutional Mortgage or on any Mortgage to Declarant, or its affiliates, successors or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument and (iii) the First Union Mortgage. Notwithstanding the foregoing to the contrary, the subordination of assessments to the lien of such Mortgages shall only apply to such assessments which have become due and payable prior to foreclosure. All other persons acquiring liens or encumbrances on any Lot or Dwelling after this Declaration shall have been recorded shall be deemed to consent that such liens and encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.
- 9.8 Effect of Nonpayment: Remedies of the Association. Any assessments of an Owner or any portions thereof which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days after the date when due shall incur a later charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum. A lien and equitable charge as herein provided for each assessment shall attach simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days, the entire unpaid balance of the assessment may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment shall include the late charge established by the Board of Directors, interest on the principal amount due at the rate of eighteen (18%) percent per annum, all costs of collection (including reasonable attorneys fees and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot or Dwelling, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot or Dwelling at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot or Dwelling, and an Owner shall remain personally liable for assessments, interest and late charges which accrue prior to a sale, transfer or other conveyance of his Lot or Dwelling.
- 9.9 Certificate. The Treasurer, any Assistant Treasurer or the manager of the Association shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Board, furnish to any Owner or such Owner's Mortgagee which requests the same, a written certificate setting forth whether the assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest and other penalty charges.
- 9.10 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Lot and Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Declarant provided that assessments on any Lot conveyed by Developer to a builder shall not commence until the first to occur of either one year after such conveyance, or conveyance to a person not a building. Assessments shall be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual assessments and any outstanding special assessments shall be adjusted for such Lot or Dwelling according to the number of months then remaining in the then

fiscal year of the Association and the number of days then remaining in the month in which such Lot or Dwelling is first conveyed to a person not a Builder. Annual and special assessments for Lots and Dwellings in portions of the additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot and Dwelling on the later of (I) the day on which such Lot or Dwelling is conveyed to a person other than Declarant or Builder, or (ii) the day of recording of the amendment to the Declaration so submitting such parcels, and annual and special assessments for each such Lot and Dwelling shall be adjusted according to the number of months then remaining in the month in which such assessments commence. Anything contained herein to the contrary notwithstanding, Declarant shall not be responsible for the payment of annual or special assessments on Lots or Dwellings which it or its affiliates own and which do not contain occupied residence (except as hereinafter provided), provided that Declarant covenants and agrees to pay annual and special assessments for each Lot and Dwelling owned by Declarant or an affiliate and containing occupied residences. Furthermore, Declarant shall have the option to either pay annual assessments on Lots and Dwellings owned by Declarant or fund any deficit which may exist between assessments and the annual budget of the Association for so long as Declarant has the authority hereunder to appoint and remove directors of the Association, Declarant shall be obligated only to pay assessments on Lots and Dwellings owned by Declarant.

ARTICLE X

ARCHITECTURAL STANDARDS AND USE RESTRICTIONS.

- 10.1 Purpose. In order to preserve the natural setting and beauty of the Property, to establish and preserve a harmonious and aesthetically pleasing design for the Residential development, and to protect and promote the value of the Property, the Lots and Dwellings and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article X.
- 10.2 Architectural Review Committee. The Developer shall establish the Architectural Review Committee (the "ARC"), which shall consist of up to five (5) (but not less than three (3)) members who may be or may not be Owners or members of the Board. After termination of Declarant's right to appoint and remove officers and directors of the Association, such members shall be appointed by the Board. The regular terms of office for each member shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The ARC shall elect a chairman who shall preside at its meetings. The ARC shall meet at least once in each calendar quarter as well as upon call of the chairman, and all meetings shall be held at such places as may be designated by the chairman. Three (3) members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or a proxy shall constitute the action of the ARC on any matter before it. The ARC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist in performing its functions. In consideration for the performance of the duties required hereby, each ARC member may be paid a stipend or honorariums as from time to time determined by the Board.
- 10.3 Permitted Improvements; Standards; Variances.
- (a) No improvements of any nature whatsoever shall be constructed, altered, added to or maintained upon any part of the Residential Development, except for (I) Dwellings and other improvements which are constructed by Declarant or any affiliate, (ii) such improvements as are approved by the ARC in accordance with this Article X or (iii) improvements which pursuant to this Article X do not require the consent of the ARC.
 - (b) The ARC is hereby authorized to promulgate from time to time written architectural standards, policies and guidelines (the "Standards") governing the construction, location, landscaping and design of improvements, the contents of submissions of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to Sections 10.5, 10.6 and 10.8 hereof. Any such Standards published by the ARC shall be binding and enforceable on all Owners with respect to all improvements in the Residential Development requiring the approval of the ARC.

- (c) In discharging its responsibilities under this Article and reviewing any matter presented to the ARC, the ARC shall apply to the Standards in a uniform, non-discriminatory manner. Notwithstanding this requirement, the ARC may waive compliance with or authorize a variance with respect to application of the Standards to any Lot or Dwelling, if in the discretion of the ARC, its members determine that the strict application of the Standards would cause undue hardship, or the benefits to be realized therefore in or the resulting harm for failing to require strict compliance would not be material.

10.4 Construction of Improvements; Use Restrictions.

- (a) No construction of improvements on any Lots or Dwellings shall be undertaken or conducted on Sundays, except for (i) construction activities of Declarant, (ii) emergency situations involving the potential loss, injury or damage to persons or property, and (iii) as otherwise permitted by the ARC.
- (b) Dwellings may not be temporarily or permanently occupied until the exteriors thereof and the landscaping of the Lot on which the Dwelling is located have been completed and a certificate of occupancy for such Dwelling has been issued. No temporary house, shack, tent, barn or other out building shall be permitted on any lot or Dwelling at any time, except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board, nor shall any stable, poultry house or yard, rabbit hut or other similar yard structure be constructed or allowed to remain on any lot or Dwelling. Construction of all Dwellings shall be completed within eighteen (18) months of the commencement date of said construction. During the continuance of construction by an Owner or builder, such Owner or Builder shall require its contractors to maintain the Lot or Dwelling in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, such Owner or Builder, as the case may be, shall cause its contractors to immediately remove all equipment, tools and construction material and debris from the Lot or Dwelling.

10.5 Architectural Approval. To preserve the architectural and aesthetic appearance of the Residential Development, no construction of improvements of any nature whatsoever shall be commenced or maintained by any Owner other than Declarant, with respect to the construction or affecting the exterior appearance of any Dwelling or with respect to any other portions of the Property, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters or other outbuildings, nor shall any exterior additional to or change or alternation therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data showing the nature, color, type, shape, height, materials and location of the same shall have been submitted to and approved in writing by the ARC as to the compliance of such plans and specifications and related data showing the nature, color, type, shape, height, materials and location of the same shall have been submitted to and approved in writing by the ARC as to the compliance of such plans and specifications with such Standards as may be published by the ARC from time to time, including the harmony of external design, location appearance in relation to surrounding structures and topography. One copy of such plans, specifications and related data so submitted shall be retained in the records of the ARC and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved". Declarant shall have the authority to exempt any builder from their requirement of submitting plans to the ARC for the initial construction of any Dwelling, if such Builder has previously demonstrated to Declarant satisfactory performance with respect to design, construction and layout considerations in connection with completion of existing dwellings within COUNTRY CLUB OF GWINNETT. Any exemption from the plan review and approval process which is granted to any builder shall not exempt the builder and the Dwelling from compliance with the Standards promulgated by the ARC. The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors or attorneys retained in accordance with the terms hereof. The fee initially established for such review shall be \$50.00 for each submission, and the Arc shall have the right to increase this amount from time to time. Notwithstanding the foregoing, an Owner may make interior improvements and alterations with his Dwelling that do not affect the exterior appearance.. Following approval of any plans and specifications, representatives of the ARC shall have the right during reasonable hours to enter upon and inspect any lot or Dwelling or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefore have been approved and are being complied with. In the event the ARC shall determine that such plans and specifications have not been complied with, the ARC shall be entitled to enjoin further construction and to

require the removal or corrections of any work in place which does not comply with approved plans and specifications. In the event the ARC fails to approve or disapprove in writing any proposed plans and specifications within thirty (30) days after such plans and specifications shall have been submitted such plans and specifications will be deemed to have been expressly approved. Upon approval of plans and specifications, no further approval under this Article X shall be required with respect thereto unless such construction has not substantially commenced within in (9) months of the approval of such plans and specifications (e.g., clearing and grading, pouring of footings, etc.), or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the ARC upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

- 10.6 Landscaping Approval. To preserve the aesthetic appearance of the Residential Development, no landscaping, grading, excavation or filling of any nature whatsoever shall be implemented and installed by any owner other than Declarant, Builders specifically approved by Declarant, or any Builder who is a part of the Developer, unless and until the plans therefore have been submitted to and approved in writing by the ARC. The provisions of Section 10.5 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc., shall also be applicable to any proposed landscaping, clearing, grading, excavation filling. Such plans shall include a calculation of the ratio of the area to be covered by grass lawns versus the area to be left in a natural state, and the ARC shall be entitled to promulgate standards with respect to such ratios. The landscaping plan for any lots or dwellings adjacent to golf courses located on the Golf Club Property shall, in addition, be subject to the rights of the Golf Club Owner set forth in Section 3.14(g) hereof. No hedge or shrubbery planting or tree which obstructs sight-lines of streets and roadways within the Residential development shall be placed or permitted to remain on any lot where such hedge, shrubbery or tree interferes with traffic sight-lines, including sight-lines at the intersection of a driveway and a road or street in the development. Unless located within (10) feet of a building or a recreational or parking facility, no Owner other than Declarant shall be entitled to cut, remove or mutilate any trees, shrubs, bushes or other vegetation having a trunk diameter of six (6) inches or more at a point of four (4) feet above ground level, without obtaining the prior approval of the Arc provided, however, dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any Lot or Dwelling by the Owner of such Lot or Dwelling.
- 10.7 Approval Not a Guarantee. No approval of plans and specifications and no publication of Standards shall be construed as representing or implying that such plans, specifications or Standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association nor the Arc shall be responsible for liable for any defects in any plans or specifications submitted, revised or approved pursuant to the terms of this Article X, any loss or damages to any person arising out of the approval or the noncompliance of such plans and specifications with any governmental ordinances and regulations, no any defects in construction undertaken pursuant to such plans and specifications.
- 10.8 Building Restrictions. All Dwellings and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. The ARC is authorized to promulgate from time to time as part of the Standards described in 10.3(b) hereof additional restrictions applicable to the Residential Development, including, without limitation, restrictions relating to height of improvements above grade, roof pitch and minimum square footage or Living Space in each Dwelling. No exterior portion of any building, structure or other improvement (excepting sidewalks and driveways) located on or with respect to any Lot or Dwelling shall be located other than as permitted by the applicable set-back line restrictions as set forth in the Standards; provided that the ARC shall be empowered to grant variances with respect to such set-back line restrictions, including variances for any lot or dwelling in its sole and absolute discretion. To assure that Dwellings and other structures will be located so that the maximum view, privacy and breeze will be available to each Dwelling or structure, Dwellings and structures will be located with regard to the topography of each Lot or Dwelling, taking into consideration the location of trees and vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other Dwellings or structures within the Residential Development.
- 10.9 Use of Lots and Dwellings. Except as permitted by Section 3.10, each Lot and Dwelling shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. No more than one (1) Dwelling shall be located on any Lot. The use of a portion of a Dwelling as an office by Owner or his tenant shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. The use of a Dwelling or a portion thereof for business meetings, entertainment or the enjoyment or business of the Owner's employees, agents, clients or customers shall not be considered to be a

violation of this covenant if such use does not create regular customer, client or employee traffic. Lease or rental of a Dwelling for residential purposes shall also not be considered to be a violation of this covenant so long as the lease (i) is for not less than the entire Dwelling and all the improvements thereon, (ii) is for a term of at least six (6) months, and (iii) is otherwise in compliance with rules and regulations as may be promulgated and published from time to time by the board of Directors. All leases shall be required to be in writing, and, prior to the commencement of any such lease, the Owner shall provide the secretary of the Association and the managing agent of the Association, if any, with copies of such lease. Any lease or tenant shall in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder.

- 10.10 Exterior Appearance. No chain link fences shall be permitted within the Residential Development, except with regard to maintenance areas within the Common Areas, the Swim and Tennis Club Property, the Golf Club Property, and those fences erected by Declarant. Except within screened service yards, outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained, nor shall any clothing, rugs or other items be hung on any railing, fence, hedge or wall. When not in use, all garage doors shall be kept closed. No projections of any type shall be placed or permitted to remain above the roof of any improvements except chimneys or vent stacks.
- 10.11 Signs. Except as may be required by legal proceedings, no signs or advertising posters of any kind shall be maintained or permitted within any windows, on the exterior of any improvements located within the Residential Development, or elsewhere on any portion of the Property, without the express written permission of the Declarant or the AFC. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by Declarant or the ARC and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 10.11 shall not apply to Declarant. In addition, the Board of Directors, on behalf of the Association, shall have either right to erect reasonable and appropriate signs on any portion of the Common Areas and within those easement areas established in Section 3.8 hereof.
- 10.12 Antennas. No television antenna, radio receiver, satellite dish or other similar device shall be attached to or installed on any portion of the Residential Development unless contained entirely within the interior of a building or other structure; provided, however, that Declarant and the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio or other similar systems within the Residential Development, and should cable television services be unavailable, then an Owner may make written application to the ARC for permission to install a television antenna.
- 10.13 Pets. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept by any Owner upon any portion of the Residential Development provided that generally recognized house pets may be kept in Dwellings, subject to rules and regulations adopted by the Association through its Board of Directors, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Areas. Pets shall be under leash at all times when walked or exercised in any portion of the Common Areas, and no pet shall be permitted to leave its excrement on any portion of the Common Areas, and the Owner of such pet shall immediately remove the same. Upon the written request of any Owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purpose of this Section, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the Owner of a particular pet to remove such pet from the Residential Development if such pet is found to be a nuisance or to be in violation of these restrictions.
- 10.14 Nuisances. No rubbish or debris of any kind shall be dumped placed or permitted to accumulate upon any portion of the Residential Development, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Residential Development, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying any other portions of the Residential Development. Noxious or offensive activities shall not be carried on in any Lot or Dwelling or in any part of the Common Areas, and each Owner, his family, tenants, guests, invitees, servants and agents shall refrain from any act or use of a Lot or Dwelling or of the Common Areas which could cause disorderly, unsightly or unkempt conditions, or which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Residential Development or which could result in a cancellation of any insurance for any portion of the Residential Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Residential Development. Any Owner or his family,

tenants, guests, invitees, servants or agents who dumps or places any trash or debris upon any portion of the Residential Development shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, which is greater, and such sum shall be added to and become a part of that portion of any assessment next become due to which such Owner and his Lot or Dwelling are subject.

10.15 Golf Course Areas. Owners of Lots and Dwellings adjacent to all golf course fairways and greens, as well as their families, tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would distract from the playing qualities of any golf courses on the Golf Club Property. Such prohibited activities shall include, but not be limited to, burning materials where the smoke will cross the golf course, maintenance of dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions, playing of loud radios, televisions, stereos or musical instruments, running or walking on the fairways, picking up balls, or similar interference with play.

10.16 Motor Vehicles, Trailers, Boats, etc. No Owners or other occupants of any portion of the Residential Development shall repair or restore any vehicle of any kind upon or within any Lot or Dwelling or within any portion of the common Areas, except (i) within enclosed garages or workshops, (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

ARTICLE XI

GENERAL PROVISIONS

11.1 Control By Declarant: Termination of Control. Notwithstanding any provisions to the contrary in this Declaration, or the Bylaws or Articles of Incorporation of the Association, Declarant hereby reserves unto itself the right to appoint and remove any members of the board of Directors of the Association and any members of the ARC, and any officer of the Association until such time as the first of the following events shall occur: (i) the expiration of twelve (12) years after the date of recording of this Declaration or (ii) the surrender by Declarant of such authority to appoint and remove by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Dwellings, and a special meeting of the Association shall be called within a reasonable time thereafter. At such meeting, the Owners shall elect a new board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

11.2 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the deed records of the Office of the Clerk of the Superior court of Gwinnett County, Georgia, without the approval of any Owner or Mortgagee, other than the owner and holder of the First Union mortgage; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, (i) in the event that such amendment materially alters or changes any owner's right to the use and enjoyment of his Lot or Dwelling or the Common Areas as set forth in this Declaration, or adversely affects the title to any lot or dwelling, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment which materially alters or changes any rights and easements granted herein to the Swim and Tennis Club Owner or the Golf Club Owner or with respect to the Swim and Tennis Club Property or the Golf Club Property shall only be valid upon the written consent respectively of the Swim and Tennis Club Owner or the Golf Club Owner. The expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration as provided in Section 2.2 hereof. Any amendment made pursuant to this Section 11.2 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, agrees to be bound by such amendments as are permitted by this Section 11.2 and further agrees that, if requires to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Residential Development (A) if such amendment is necessary to bring any provision hereof or thereof into compliance

or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (B) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any lots or Dwellings subject to this Declaration, © if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any lot or dwelling, or other improvements subject to this declaration, or (D) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgages on the Lots, Dwellings or other improvements subject to this.

11.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 11.2 hereof, shall be proposed and adopted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.
- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by members of the Association. Such amendment must be approved by Owners holding at least sixty percent (6%) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee, and (ii) during any period in which Declarant owns a Lot or dwelling primarily for the purpose of sale or has the unexpired option under this Declaration to add the Additional Property or any portion thereof to the development, such amendment must be approved by Declarant.
- (c) The agreement of the required percentage of the Owner and, where required, Declarant and any Mortgagee, to any amendment of this Declaration, shall be evidence by their execution of such amendment or, in the alternative, the sworn statement of the President of the Association attached or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself. Any amendment to this declaration under this section 11.3 which affects any of the rights or easements granted herein to the Swim and Tennis Club Owner or the golf club Owner shall receive the notice specified in section 11.3(a) hereof, and any such amendment shall only be valid upon the written consent thereto of such club Owner.

11.4 Enforcement. Each Owner shall comply strictly with the By-Laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot or Dwelling, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the recreational facilities located in the Common Areas, or for instituting an action to recover sums due for damages and/or for injunctive relief, such actions to be maintainable by Declarant, the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction or restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as a acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws or any rules and regulations of the Association, however long continued.

11.5 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of twenty (20) years from and after the date of the recording of this Declaration, after which time this Declaration shall be automatically renewed for an unlimited number of successive ten (10) year periods; provided, however, that there shall be no renewal or extension of this Declaration if during the last

year of the initial twenty (20) year period or the last year of any ten (10) year renewal period, a majority of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed in the deed records of the clerk of the Superior court of Gwinnett County, Georgia, such instrument to contain a certificate wherein adopted by the requisite number of votes. Every purchaser or grantee of any interests in any property, by acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this declaration shall run with and bind the title to the Property as provided hereby.

- 11.6 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or avoidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.
- 11.7 Interpretations. In all cases, the provisions set forth or provided for in this declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board or Directors will best effect the intent of the Provisional Development Plan for COUNTRY CLUB OF GWINNETT, as the same may be modified by Developer. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The effective date of this Declaration shall be the date of its filing in the deed records of the Clerk of the Superior Court of Gwinnett County, Georgia. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Georgia.
- 11.8 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.
- 11.9 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this declaration are declared to be severable.
- 11.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Owners and their Mortgagees as herein provided, and the Golf club Owner and Swim and tennis club Owner, and by such recording no adjoining property owner or their party shall have any right, title or interest whatsoever in the Residential Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof.
- 11.11 Notice of Sale, Lease or Mortgage. In the event an Owner sells, leases, mortgages or otherwise disposes of any Lot or Dwelling, the owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgage or transferee.
- 11.12 No Trespass. Whenever the Association, Declarant, the ARC and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve or do any other action within any portion of the Residential Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.
- 11.13 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots or Dwellings. All notices to the Association shall be delivered or sent in care of Declarant at the following address:

Southland Development Corporation, 4953 Presidents Way, Tucker, GA 30084

Attn: William Bradley Bryant

or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant at the above address or to such other address as Declarant may from time to time notify the Association. All notices to the Swim and Tennis Club Owner shall be delivered or sent to such club Owner at Declarant's

address provided above or to such other address as such Club Owner may from time to time notify the Association. All notices to the golf Club Owner shall be delivered or sent to such club Owner at the following address:

Gwinnett Champions, L.P., c/o Riverside Golf Company, Inc., 645 Riverside Avenue, Suite 630,
Jacksonville, Florida 32204

Attn: Kim Bosaw

Notices or Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association.

IN WITNESS WHEREOF, duly authorized officers of the Undersigned Declarant have executed this Declaration under seal, as of the day and year first written.

DECLARANT:

Southland Development Corporation

Bryant Properties, Inc.

English Properties, Inc.

Key Development & Construction

Prestwick Properties, Inc.

Townsend Builder, Inc.

Pat Dotson Properties, Inc.