

DECLARATION OF COVENANTS,
CONDITION AND RESTRICTIONS
FOR AUTUMN LAKE SUBDIVISION

THIS DECLARATION, made this 1st day of July, 1993, by AUTUMN LAKE PARTNERS, L.P., a Georgia limited partnership, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property commonly known as "Autumn Lake Subdivision", and lying and being in Land Lots 627 and, 628 of the 16th District, 2nd Section, Cobb County, Georgia which real property is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Declarant desires to provide for the preservation and enhancement of Autumn Lake Subdivision and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth;

NOW THEREFORE, Declarant hereby declares that all of the Property described in Exhibit A hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to ALHOA, Inc., a Georgia nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

~~Section 3. "Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.~~

Article I, Section 3 of the Declaration is hereby deleted in its entirety and the following new Article 1, Section 3 is substituted therefor:

Section 3. "Property" shall mean and refer to that certain real property hereinafter described further described on Exhibit "A" hereto, and such additional Lots as may hereinafter be brought within the jurisdiction of the Association; including, but not limited to, those lots contained within Exhibit "C" hereto and annexed into the Association by in accordance with Article VII hereof. Any such lots referenced in Exhibit "C" hereto shall not be subject to the terms and conditions hereof unless and until a consent form is executed by the respective lot owner and recorded in the Cobb County, Georgia land records. The Autumn Lake subdivision Property constitutes a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. 44-3-220, et seq. (Michie 1982), as such act may be amended from time to time. The Association shall have all rights and powers afforded under the Act.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is more particularly described on Exhibit B, attached hereto and incorporated herein by this reference.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Autumn Lake Partners, L.P., a Georgia limited partnership, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Structure" shall mean and refer to: (1) anything or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any residential dwelling, any building or part thereof, garage, porch, gazebo, shed, greenhouse or bathhouse, coop or fence, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, sign board, mailbox, driveway, temporary or permanent living quarters (including house trailers, or any temporary or permanent improvement to such lot); (2) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters any Lot, or which affects or alters the flow of waters in the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, was or drainage channel from, upon or across any Lot; (3) any change in grad at any point on a Lot of more than six (6) inches, whether or not subsection (2) of this Section 7 applies to such change. Any temporary construction office used in connection with the construction of any dwelling on a Lot or construction of amenities on the Common Area shall not be deemed a "Structure" as defined above, and any such temporary construction office shall be excluded from the covenants and restrictions set forth in Article VI hereof.

Article I of the Declaration is hereby amended by adding the following Section 8 to the end thereof:

Section 8. "Act" shall mean the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such act may be amended from time to time.

Article I of the Declaration is hereby amended by adding the following Section 9 to the end thereto:

Section 9. Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Board and the ACC.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area and to create and enforce reasonable rules and regulations related to the use and enjoyment of the Common Area and any recreational facilities situated thereon;

(b) the right of the Association to suspend the voting rights and rights to use of the recreational facilities by an Owner for any period during which any assessments against his Lot remains unpaid or for violations of rules and regulation created by the Association governing the Common Area and the recreational facilities thereon;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided, however, no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Grant and Reservation of Easements by Association. The Board of Directors of the Association shall have the authority to grant any easements over, across, under and through the common Area as it deems necessary or desirable in its sole and absolute discretion, including, without limitation, any and all utility easements necessary for service to the Property. Declarant, for and on behalf of the Association, hereby expressly reserves an easement for the benefit of the Association, over, across, under and through any Lot which is defined as one of these Lake Lots in Article VI, Section (ee) hereof, determined in the reasonable discretion of the Association as may be necessary to allow for the maintenance and repair by the Association of the lake and any improvements in the Common Area. Such maintenance and repair shall be performed with a minimum of interference to the quiet enjoyment of the Lake Lots and reasonable steps shall be taken to protect the Lake Lots from any damage.

Section 4. Insurance. The Board of Directors of the Association shall cause the Association to maintain such general liability and hazard insurance policies covering the Common Area as shall be deemed necessary or desirable in the sole discretion of the Board of Directors of the Association.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on September 15, 1996.

Notwithstanding the foregoing to the contrary, in the event additional land is annexed by the Declarant pursuant to Article VII, Section 4(b) hereof, the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership, including both original Owners and Owners of any lots on any land annexed by Declarant, equal the votes outstanding in the Class B membership, or

(b) the date which is three (3) years after the annexation of any additional land to the Property as evidenced by the recording date of an amendment to this Declaration reflecting such annexation.

Section 3. In the event additional land is annexed by the Declarant pursuant to Article VII, Section 4(b) hereof, the total votes outstanding in the Association shall automatically increase based upon the number of lots contained in any additional land annexed pursuant to the terms hereof. Nothing contained herein shall obligate the Declarant to develop or annex any such additional land.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

~~Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in the title unless expressly assumed by them.~~

~~Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of the Common Area.~~

~~Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred and Fifty Dollars (\$250.00) per Lot.~~

~~(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.~~

~~(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 10% by a vote of two thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.~~

~~(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.~~

~~Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.~~

~~Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meetings. No such subsequent meeting shall be held more than 60 days following the preceding meeting.~~

~~Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.~~

~~Section 7. Date of Commencement of Annual Assessments: Due Dates. The Annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.~~

~~Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of nine (9) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.~~

~~Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, this sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relive such Lot from liability for any assessments thereafter becoming due or from the lien thereof.~~

Article IV of the Declaration is hereby amended by deleting that Article in its entirety and substituting the following therefor:

Section 1. Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. 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 occupants of Lots, as may be authorized by the Board.

Section 2. Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(i) annual assessments or charges;

(ii) special assessments, to be established and collected as hereinafter provided; and

(iii) specific special assessments levied by the Board hereunder against any particular Lot, including, but not limited to, reasonable fines imposed hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Cobb County, Georgia records evidencing the lien created under the Act and this Declaration.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided, the annual assessments shall be paid one installment due on January 31 of each year. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The lien provided for herein shall have priority as provided in the Act.

Section 3. Individual Assessments. Except as provided below, or elsewhere in the Act or the Declaration or the Bylaws, the amount of all common expenses shall be assessed against all Lots equally.

(a) Notwithstanding the above, the Board of Directors shall have the power to assess specific special assessments pursuant to this Section and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority hereunder in the future.

(i) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility hereunder, any common expenses benefiting less than all of the Lots or significantly disproportionately benefiting all Lots may be specially assessed equitably among all of the Lots which are benefited according to the benefit received.

(ii) Any common expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot(s) may be specially assessed against such Lot(s), including attorney's fees incurred by the Association, in enforcing the Declaration, Bylaws or Association rules and regulations.

For purposes of this Section, nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among all Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

Section 4. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(a) If any assessments or any other charge, or any part thereof, is not paid in full within ten (10) days of the due date, or such later date as may be provided by the Board, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten (10%) percent per annum, or such higher rate as permitted by the Act, shall accrue from the due date.

If part payment of assessments and related charges is made, the amount received may be applied by the Board, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments.

(b) If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Common Property (provided, however, the Board may not deny ingress or egress to or from the Lot).

Section 5. Computation of Operating Budget and Assessment. Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Property during the coming year, and the Board shall establish the annual assessment or installments for the coming year. The maximum annual assessment may be increased by the Board at any time and from time to time during each assessment year, but no more than ten (10%) percent above the maximum annual assessment for the previous year; provided, however, the maximum annual assessment for each assessment year may at any time and from time to time be increased more than ten (10%) percent

above the maximum annual assessment for the previous assessment year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association and this Declaration.

The Board shall cause the budget and notice of the assessment(s) to be delivered to each Member at least thirty (30) days prior to the due date for such assessment, or the first installment thereof. The budget and the assessment shall become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

If the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. However, the Board may propose a new or adjusted budget at any time during the year by causing the proposed budget and assessment to be delivered to the Members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the Members, as provided in the Bylaws for special meetings, the new or adjusted budget and assessment shall take effect without a meeting of the Members.

The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of common expenses on which the Board may base the annual assessments.

Section 6. Special Assessments. In addition to other assessments authorized herein, the Board may at any time levy a special assessment against all Owners, provided that such special assessment shall have first been approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy at a duly called special or annual meeting of the Members, notice of which shall specify that purpose.

Section 7. Capital Budget and Contribution. The Board may prepare an annual or multi-year capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, MEM 338749-1 (10320) shall be fixed by the Board and included within the budget and assessment as provided in Section 5 above.

Section 8. Statement of Account. Any Owner, mortgagee, or a person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such

higher amount as may be authorized under the Act, as a prerequisite to the assessments due on the Lot as of the date specified therein. The Association may require an additional fee not to exceed twenty five (\$25.00) dollars if the Association provides a copy of the Declaration and Bylaws to any such Person in connection with a closing or otherwise upon request.

ARTICLE V
ARCHITECTURAL CONTROL

~~No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior additional to or change or alteration therein be made until the plans and specification showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to the Board of Directors of the Association or its designee (as hereinafter provided) by certified mail, and such plans and specifications are approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.~~

Article V is hereby amended by deleting that section in its entirety and substituting the following therefor:

ARTICLE V
ARCHITECTURAL CONTROLS.

Section 1. Architectural Standards. Except as provided herein, no Owner, Occupant, or any other person may make any encroachment onto the Common Area, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, clothesline, light (except for reasonable seasonal decorative lights displayed between Thanksgiving and January 15), storm door or window, artificial vegetation, exterior sculpture, fountains, flags, or other thing on the exterior of the buildings, in any windows (including the interior of windows which are visible from the exterior, subject to Article VI, subparagraph (I)), or on any Common Area, without first obtaining the written approval of the Architectural Control Committee ("ACC").

The standard for approval of such improvements shall include, but not be limited to: (1) aesthetic consideration, (2) materials to be used, (3) compliance with the Community-Wide Standard, this Declaration, or the design standards which may be adopted by the Board or ACC, (4) harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography, and (5) any other matter deemed to be relevant or appropriate by the Board or ACC.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the Board or the ACC may reasonably require. The ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and the Association, acting through the Board, shall be entitled to stop any

construction which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Area alterations or additions.

The ACC or the Board, subject to this subparagraph (a), may allow such encroachments on the Common Area as it deems acceptable.

If the ACC or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this subparagraph will be deemed complied with, unless such structure or improvement otherwise is in violation of the Declaration, the Bylaws, the design standards, the Association's rules and regulations, or applicable zoning ordinances.

Section 2. Architectural Control Committee. The Architectural Control Committee shall constitute a standing committee of the Association. The ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. **At all times, however, at least one member of the ACC shall be also be a Board member.** The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Lot for which plans and specifications have been submitted for approval. The Owner of any such Lot shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards.

Section 3. Appeal. In the event that the ACC or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the ACC's decision to the Board of Directors. The Board shall rule on the appeal within forty-five (45) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ACC, the decision of the ACC, and the application of the Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within fourteen (14) days from the date of the ACC's notice to the Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate and thereafter be void.

Section 4. Limitation of Liability. Review and approval of any application pursuant to this Paragraph may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ACC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modifications to any Lot, nor may any action be brought against the Association, the Board, the ACC, or any member thereof, for any such injury, damage or loss.

Section 5. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any

proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 6. Enforcement. Any construction, alteration or other work done in violation of this Paragraph, the Declaration, the Bylaws, the design standards or any applicable zoning regulations shall be deemed to be nonconforming. Upon written request from the Board, a violating Owner shall, at his or her own cost and expense, remove such nonconforming construction, alteration or other work and restore the property to substantially the same condition as existed prior to such construction, alteration or work. Should the Owner fail to do so, the Board or its designees shall have the right, in addition to all other available remedies, to enter the property, remove the violation and restore the property, or obtain a court order compelling the violating Owner to do so. All costs thereof, including reasonable attorney's fees, may be assessed against such Lot.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions or those of the ACC. All costs of any such action, including reasonable attorney's fees, may be assessed against such Lot. Furthermore, the Board shall have the authority to record in the Cobb County land records notices of violation of the provisions of this Paragraph.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Area in violation of this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remain on the Common Area without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

ARTICLE VI

COVENANTS AND RESTRICTIONS

The following restrictions shall apply to all Lots on the Property:

(a) Each Lot shall be restricted to residential use only and no commercial business, enterprise, or home retain business (such as beauty parlors, antique shops, etc.) shall be operated or conducted thereon.

(b) No Structure shall be built or constructed on any Lot that does not comply with the building set-back lines as shown on the recorded plat of the Property.

(c) No further subdivision of a Lot is allowed after said Lot is sold by Declarant, and only one residence shall be placed on each Lot.

(d) All driveways will be paved with concrete. No road or driveway shall be constructed or altered on any Lot without the prior written consent of the Board of Directors of any Association or its designated representative.

(e) No Structure shall be constructed on said Lot having less than 1200 square feet of heated floor space, exclusive of garages, porches and terraces.

(f) No mobile home, living trailer, modular home or prefabricated home shall be permitted on any of the Lots.

(g) No Structure shall be erected or placed on any Lot without complying with all of the Building Code Regulations of Cobb County or other governmental authorities.

(h) No livestock, chickens or other fowl shall be raised, kept or otherwise maintained on any Lot, with the exception of household pets, which must be kept under restraint and not allowed to wander about at will. No animals shall be raised for commercial use, including, but not limited to, selling for profit.

(i) No Owner shall allow any unsightly garbage, trash, debris, dirt, wood, construction materials, or household waste on any Lot, but shall sack, box or otherwise dispose of the same in a safe and sanitary manner. All garbage cans and wood piles shall be screened from view by adequate plant cover or approved fencing so as to conceal them from view from neighboring residence or streets. In the event that any Owner shall fail or refuse to keep such premises free from refuse or garbage piles or other unsightly objects, then the Association or its designated representative may enter upon such lands and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass, and in the event of such removal a lien shall arise and be created in favor of the Association, and against such Lot for the full amount chargeable to such Lot, and such amount shall be due and payable within thirty (30) days after the Owner is billed therefore. No incinerators for garbage, trash or other refuse shall be located or used on any lot.

Article VI, subsection (j) is hereby amended by deleting the words "good property management" therefrom and inserting the words "the Community-Wide Standard" therefor.

(j) No Owner shall allow junk cars or abandon cars, boats, trailers, campers or trucks to be or remain on any Lot. Each Owner shall keep his or her Lot and any Structure thereon in good order and repair including but not limited to the seeding, watering and moving of all lawns, the pruning and cutting of all trees and shrubbery, and the planting (or such appropriate external care) of the Structure all in a manner and with such frequency as is consistent with ~~good property management~~ **the Community-Wide Standard**. If any owner fails to maintain said Lot and any Structure in accordance with the foregoing, the Association shall have the right, but not the obligation, to enter upon any such Lot to perform such maintenance and repair work which may be reasonably required, all at the expense of said Owner, which expense shall be payable by such Owner to the Association.

(k) All recreational vehicles, boats, travel trailers, or similar such vehicles must be parked in garages or other covered Structures; provided, however, that such vehicles may be parked on a Lot for up to forty-eight (48) hours prior to being parked thereafter in such garages or covered structures. No fences, posts or other fencing materials shall be constructed in the front of any Structure. All such posted fencing must start at least half-way down the side of the Structure, unless

otherwise approved by the Board of Directors of the Association or its representative. No chain link fence is allowed except with prior, written permission from the Board of Directors of the Association or its representative.

(l) When any Owner shall commence construction of a Structure, or improvement to an existing Structure, the outside of said Structure shall and will be finished within six (6) months after the date construction first started. All window coverings which are visible from streets or neighboring residence shall be lined with or constructed from white or off-white materials.

~~(m) No obnoxious or offensive trade activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.~~

Article VI, subsection (m) of the Declaration is deleted in its entirety and the following is substituted therefor:

Without prior written Board consent, nothing shall be done or kept on the Property or any part thereof which would increase the rate of insurance on the Property **or any Lot or part thereof**, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

Noxious, destructive, offensive or unsanitary activity shall not be carried on upon the Property. No Owner or Occupant may use or allow the use of the Lot or any portion of the Property at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Property. In this regard, specific unauthorized and unreasonable annoyances or disturbances shall include, but not be limited to, the following:

(a) Any screaming, shouting, excessively loud talking, whistling, or playing of music or television either outside of a Lot at any time or within a Lot if such conduct can be heard in the normal course of activities in any other unit(s);

(b) Any fighting, raucous behavior or insobriety either outside of a Lot at any time or within a Lot if such conduct can be heard in the normal course of activities in any other Lot(s);

(c) The use of any alarm, equipment, or devise, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations either outside of a Lot at any time or within a Lot if such sounds can be heard or vibrations felt in the normal course of activities in any other Lot(s);

(d) Any threatening or intimidating conduct towards any resident, guest or pet at the Property;

(e) Any conduct which, in the Board's reasonable discretion, creates any danger or risk of injury to others or damage to property at the Property or which creates any threat to health or safety of any other resident or pet;

(f) Any excessively loud play or playground activities either outside of a Lot at any time or within a Lot if such conduct can be heard in the normal course of activities in any other Lot (s);

(g) Any conduct which creates any noxious or offensive odor either outside of a Lot at any time or within a Lot if such odors can be detected in the normal course of activities in any other Lot (s);

(h) Any similar action or activity outside of a Lot on the Property, or which occurs inside a Lot but which interferes with the peaceful use and enjoyment of other Lots or the Common Area by any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot; or

(i) Any construction or similar activities in a Lot which can be heard in other Lots between the hours of 9:00 p.m. and 7:30 a.m.

However, nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Georgia law.

No Lot Owner or Occupant may use or allow the use of the Lot or the Common Areas in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Lot that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the Board's reasonable opinion, would jeopardize the soundness or safety of the Property or any structure thereon, would reduce the value thereof, or would impair any easement or other interest in the Property, without prior written consent of all Association members and their Mortgagees.

No damage to or waste of the Common Areas, or any part thereof, shall be permitted by any Owner or any Occupant, guest or invitee of any Owner. Each Owner and Occupant shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting

from any such damage or waste caused by such Owner or Occupant, or the Owner's or Occupant's guest or invitee.

(n) No garage shall be constructed except as an integral part of the Structure it is intended to serve, unless it is of similar design and construction as the Structure. All garages must have doors, and each garage door must be coordinated in design, color and material with the Structure it is intended to serve. All garages must primarily serve the purpose of sheltering vehicles, and no garages may be used for living space or residential occupancy.

(o) No shed, tool storage area, workshop, garage, outbuilding for storage of yard implements, clotheslines or drying yards shall be placed upon any Lot.

(p) No concrete blocks shall be left exposed on any Structure, or on any area of the Lot.

(q) No commercial trucks or commercial vehicles shall be stored or parked on any Lot except while engaged in transporting to or from a Structure on any such Lot.

(r) No recreational equipment and playground equipment shall be displayed or installed on any Lot which is visible from the street abutting such Lot. No above ground swimming pools shall be constructed or located on any lot.

(s) Mailbox posts shall be simple and unobtrusive and shall be approved by the board of directors of the Association or its representative prior to being placed on any Lot. Mailboxes shall be number one and one-half (1 ½) black aluminum boxes approved by the U.S. Postal Service. No haphazard or unprofessional fences or other stone work or wooden appurtenances shall be erected without the aforesaid prior approval.

(t) All yards must be landscaped within one (1) month of completion of a home on any Lot. Sidewalks as required by Cobb County and a sodded front yard lawn shall be installed for each residence located on any lot at the sole cost and expense of the builder of any such residence.

(u) After construction of the Structure and yard preparation is completed by any builder, the elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade or drainage of the surrounding Lots. No rocks, gravel or clay shall be excavated or removed from any Lot except in connection with building the Structure on said Lot and/or landscaping same, except as approved by the Board of Directors of the Association or its representative.

(v) No signs or other advertising shall be displayed on any Lot except for the purpose of the sale of the Lot or Structure thereon, unless first approved in writing by the Board of Directors of the Association or its representative.

(w) No antennae, satellite dish or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on the exterior of any Structure without the prior written approval of the Board of

Directors of the Association or its representative. In no event shall freestanding transmission or receiving towers be permitted.

(x) No exposed, above ground tanks for the storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to the use of solar energy, the location and design of which must first be approved by the Board of Directors of the Association or by its representatives.

(y) No window air conditioning unit may be located in any part of any Structure which is visible from any street, and all exterior compressor units shall be ground mounted and screened by fencing or planting of a density and height sufficient to screen the unit effectively, which fencing or planting shall first be approved by the Board of Directors of the Association or its representatives.

(z) Any screen porch which is part of any Structure must have a dark color screen.

(aa) No plumbing vent or heating vent shall be placed on the front side of the roof of any Structure.

(bb) Any construction on a Lot shall be at the risk of the Owner of such Lot and the Owner of such Lot shall be responsible for any damage to any curbing or street resulting from construction of such Lot. Repairs of any such damage must be completed within thirty (30) days after the damage occurs, provided, however, that if such damage is of a nature requiring immediate repair in the sole discretion of the Board of Directors of the Association, such repair shall be performed within seven (7) days of notice thereof.

(cc) Roofing materials for all residential dwellings shall be limited to asphalt shingles.

(dd) No trees measuring twelve (12) inches or more in diameter at a point two (2) feet above ground level, no flowering trees or shrubs, nor any evergreens on any Lot may be removed without the prior approval of the Board of Directors of the Association or its representatives unless located within ten (10) feet of the approved site for a dwelling or within the right-of-way or walkways. Excepted herefrom shall be damaged or dead trees and trees which must be removed due to an emergency.

(ee) (i) This declaration and the rules, use restrictions, and other regulations issued by the Board of Directors or its designee shall govern the use of such lakes as may exist, if any, on the Property, or such lakes as are made available for the use of all Owners. Fishing shall be permitted so long as a license is obtained from the appropriate governmental authority. Ice skating and swimming shall not be permitted. Except as may be approved by the Board of the Association or its designee, boats shall not be permitted on any lake. No Owner shall have any right to pump or otherwise remove water from such lake or lakes for the purpose of irrigation or other use, nor to place rocks stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in such lake or lakes on the Property.

(ii) The Board of Directors of the Association shall have the sole and absolute right and responsibility to control the water level of such lake(s), to clean debris from such lake(s), perform all preventative and remedial maintenance work required to the lake(s) and lake beds to insure that the lake(s) and adjacent areas are in a safe and functional condition, to preserve the aesthetics of such lake(s), and to control the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in and on such lake(s). Owners of Lots which may now, or may hereafter, be adjacent to any lake on the Property (the "Lake Lots") shall be required to sod the front, side and rear yards of said Lake Lots at the sole cost and expense of the builder of any Structure on said Lake Lot. Each Owner of any of said Lake Lots shall maintain such grass, planting or other lateral support to prevent erosion of the embankment adjacent to the lake, including, without limitation, mowing and watering of all sodded areas and pruning and cutting off all shrubbery and trees, and the height, grade and contour of such embankment shall not be changed without prior written permission of the Board of Directors of the Association or its designee. If any Owner of a Lake Lot fails to maintain said embankment in accordance with the foregoing, the Association shall have the right, but not the obligation, to enter upon any such Lake Lot to perform such maintenance work which may be reasonably required, all at the expense of the Owner of the Lake Lot, which expense shall be payable by such Owner to the Association. No docks, piers or other similar facility shall be constructed unless and until same shall have been approved by the Board of Directors of the Association. No bulkhead shall be permitted to be constructed without the prior written consent of the Board of Directors of the Association.

(iii) No structure, fences, storage facilities, wood piles, garbage cans, or any other objects which would affect the aesthetics of the lake(s) shall be built or placed upon any of the Lake Lots without prior written consent of the Board of Directors of the Association, which consent shall be granted or withheld in the sole and absolute discretion of the Board of Directors of the Association. The Association shall have the right to enforce the foregoing restrictions, at law or in equity, and failure by the Association to enforce the foregoing restrictions shall in no event be deemed a waiver of the right to do so thereafter.

(iv) Declarant shall have no duty or obligation whatsoever to carry any form of hazard or liability insurance with respect to the Common Areas, the improvements to the Common Area, the lake(s) located on such Common Area, or the Lake Lots. Each Owner of any of the Lake Lots shall be responsible for carrying such fire and extended coverage and general liability insurance as such Owner may deem necessary or desirable, giving due regard for the fact that a portion of any such Lake Lot lies within or adjacent to the bounds of any of the lake(s). Neither the Declarant, the Association, nor any other Owner of any of the Lake Lots shall ever have any duty, liability, or obligation to any other Owner of the Lake Lots in connection with any personal injury or death which may occur on or allegedly as a result of the lake(s).

(ff) Adequate off street parking shall be provided by the Owner of each Lot for the parking of two vehicles, and no owner shall park any vehicle (including, without limitation, boats, campers, motorcycles, scooters and vehicles of any and every description) on the streets of the Property as a matter of course. No vehicles may be left upon any portion of the Property for a period longer than five (5) days except in a garage or other area designated by the Board of Directors of the Association.

No vehicles shall be parked on the grass areas or driven off of the driveways or streets. No vehicles shall be parked within a front yard unless such front yard is part of a driveway, turnaround, garage or carport approved by the Board of Directors of the Association or its representatives.

ARTICLE VII

GENERAL PROVISIONS

Article VII, Section 1 of the Declaration is hereby amended by inserting the following sentence after the first sentence therein:

The Association also shall have all rights to levy assessments, charges, fines and fees provided for under Sections 44-3-223 and 44-3-225(a) of the Act.

Article VII, Section 1 of the Declaration is hereby further amended by adding the following to the end thereto:

All costs of enforcing the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred by the Association, shall be assessed against the violating Member and his or her Lot.

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. The Association also shall have all rights to levy assessments, charges, fines and fees provided for under Sections 44-3-223 and 44-3-225(a) of the Act. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. All costs of enforcing the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred by the Association, shall be assessed against the violating Member and his or her Lot.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

~~Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the Property, for a term of twenty (20) years from the date this Declaration is recorded, after which time they may be extended for successive periods by the recording of an instrument signed by not less than two-thirds (2/3) of the Lot Owners. This Declaration may be amended at any time and from time to time by an instrument signed by not less than two-thirds (2/3) of the Lot Owners. Any amendment must be recorded.~~

Article VII, Section 3 of the Declaration is hereby deleted in its entirety and the following new section 3 is substituted therefor:

Section 3. Duration and Amendment. The covenants and conditions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act. This Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Members of the Association holding two-thirds (2/3) of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective

until certified by the President and Secretary of the Association and filed in the Cobb County, Georgia land records.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the Cobb County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

Section 4. Annexation.

(a) Additional residential property and Common Area may be annexed to the Property with the consent of two-thirds (2/3) of each class of members.

(b) Additional land within the area described (i) on that certain Rezoning Plan for Knight Davidson Companies Incorporated, by B.K. Rochester, Jr., Ga. R.L.S. No. 1534, of Rochester & Associates, Inc., dated June 16, 1993 and (ii) as that certain tract or parcel of land adjacent to the property shown on the foregoing Rezoning Plan and being approximately 4.5 acres owned by Anita D. Ashcraft on the date hereof, may be annexed by the Declarant without the consent of members of the Association within three (3) years of the date of this instrument, provided, however, that the FHA and VA determine that the annexation is in accord with the general plan heretofore approved by them.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 1st day of July, 1993