After recording, return to:

Clifford A. Barshay, Esq.
Schreeder, Wheeler & Flint, LLP
1600 Candler Building
127 Peachtree Street, N.E.
Atlanta, GA 30303-1845

DECLARATION OF SAINT ANDREWS PARK SUBDIVISION AND SAINT ANDREWS PARK HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION is made as of the 14th day of December, 1999 by EAGLE HICKS LOWER ROSWELL DEVELOPMENT, LLC, a Georgia limited liability company (hereinafter called the "Declarant").

WITNESSETH:

WHEREAS, Declarant (or any person or entity who shall execute a consent hereto) owns all of the property (the "Restricted Property") more particularly described on Exhibit "A" attached hereto, known as Saint Andrews Park Subdivision and shown on that certain plat of survey (the "Recorded Plat") recorded on or about the date of the recording hereof in Cobb County, Georgia Records; and

WHEREAS, Declarant deems it desirable to create the Association (as hereinafter defined) for the benefit of future residents of the Restricted Property; and

WHEREAS, Declarant intends that every Owner (as hereinafter defined) of a Residential Unit (as hereinafter defined) which is made subject to this Declaration shall automatically and by reason of such ownership, and by reason of this Declaration, become a member of the Association and subject to its valid rules and regulations and subject to the assessment by the Association pursuant hereto;

NOW THEREFORE, the Declarant declares that the properties which are made subject to

this Declaration pursuant to Article 2 hereof are and shall be held, transferred, sold, conveyed and occupied subject to the covenants and restrictions hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of such property. Such covenants and restrictions are and shall be binding on all parties having and acquiring any or all right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof.

ARTICLE 1
DEFINITIONS

The following terms when used in this Declaration (unless the context shall clearly indicate to the contrary) shall have the following meaning:

(a) "ARC" or "Architectural Review Committee" shall refer to the architectural review committee established pursuant to Section 8.2 below.

(b) "Association" shall mean and refer to Saint Andrews Park Homeowners Association, Inc., a nonprofit corporation organized and existing under the laws of the State of Georgia.

(c) "Association Documents" shall mean and refer to the Articles of Incorporation and By-Laws of the Association as the same may be amended from time to time.

(d) "Board" shall refer to the Board of Directors of the Association.

(e) "Common Benefit Area" shall mean and refer to that portion of the Restricted Property identified on the Recorded Plat as Common Benefit Area, together with any other property and easements hereafter owned by the Association for the common use and benefit of the Owners and shall include property designated for public use until such time as the same is conveyed to and accepted by an appropriate governmental unit.

(f) "Community" shall refer to the subdivision that includes the real property that is made subject to this Declaration as the same may hereafter be supplemented.

(g) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(h) "Covenants and Restrictions" shall mean and refer to all covenants, restrictions, easements and charges and liens set forth in this Declaration.

(i) "Declarant" shall mean Eagle Hicks Lower Roswell Development, L.L.C., a Georgia limited liability company and any successor to the rights of the Declarant under this

Declaration.

(j) "Georgia Property Owners' Association Act" shall refer to the act by that name adopted in Georgia Laws 1994 at page 1879 codified as Article 6 of Chapter 3 of Title 44 of the Georgia Code as the same may be amended from time to time.

(k) "Initiation Fee" shall refer to the fee determined from time to time by the Board of Directors and which shall initially be $100.00.

(l) "Manager" shall mean and refer to any person with whom the Association contracts for the administration and operation of the Common Benefit Area.

(m) "Mortgage" shall mean any mortgage, security deed, deed of trust, and any and all other similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

(n) "Mortgagee" shall mean the holder of a Mortgage.

(o) "Owner" shall mean and refer to any Person (as hereinafter defined) who is or shall be a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Residential Unit (as hereinafter defined); provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

(p) "Person" shall mean and refer to any natural person, corporation, partnership, limited partnership, limited liability company, trust, joint venture association or any other such entity.

(q) "Restricted Property" shall mean and refer to all real property subjected to this Declaration as set forth in Article 2 of this Declaration.

(r) "Residential Units" shall mean and refer to each single family detached house and/or each single lot of subdivided property intended for a single family detached house or any other equivalent form of residential building located on the Restricted Property.

ARTICLE 2
PROPERTY SUBJECT TO DECLARATION; EFFECT THEREOF

Section 1. Property Hereby Subjected to This Declaration. This Declaration is hereby imposed upon the Restricted Property and the Declarant (and any person or entity that owns any of the Restricted Property and executes a consent hereto) hereby subjects the Restricted Property to this Declaration, which shall hereafter be held, transferred, sold, conveyed, used, leased, occupied and mortgaged or otherwise encumbered subject to this Declaration.

Section 2. Property Owner's Association Act. The right is reserved pursuant to Section

12.4 below to submit this Declaration, the Restricted Property and the Association to the rights and benefits and restrictions of the Georgia Property Owners' Association Act by recording of a supplemental declaration. Reference in this Declaration to the standards or procedures of the Georgia Property Owners' Association Act shall not be deemed to subject this Declaration, the Restricted Property or the Association to the provisions thereof until the date specified in such supplementary declaration as may hereafter be recorded for such purpose. There is no undertaking by the Declarant or the Association to submit this Declaration, the Restricted Property or the Association to the provisions of the Georgia Property Owners' Association Act.

Section 3. All Restricted Property Bears the Burden, and Enjoys the Benefits, of This Declaration. Every person who is or shall be a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in any portion of the Restricted Property or later added Restricted Property does agree and shall be deemed by reason of taking such record title to agree to all of the terms and provisions of this Declaration.

ARTICLE 3
THE HOMEOWNERS' ASSOCIATION; AUTOMATIC MEMBERSHIP AND VOTING RIGHTS THEREIN

Section 1. The Association. The Declarant will cause to be formed and incorporated under the laws of the State of Georgia and there will then exist the Saint Andrews Park Homeowners Association, Inc., a nonprofit Georgia corporation.

Section 2. Membership. Every person who is an Owner of a Residential Unit is and shall be a member of the Association; provided, however, that any Person who owns such interest merely as security for the performance of an obligation shall not be a member of the Association. The Declarant shall be a member so long as it is the owner of any of the Restricted Property.

Section 3. Voting Rights.

(a) Members shall be entitled to full voting privileges, subject to the right of the Declarant to appoint the members of the Association's Board until

(i) such time as the Declarant shall waive such right by notice in writing delivered to the Association, or

(ii) such time as three-quarters (3/4) of the Residential Units have been conveyed to Owners for occupancy (i.e. not for construction and sale), or

(iii) on the 31st day of December, 2005,

whichever shall first occur. Members shall be entitled to one vote for each Residential Unit in which they hold any interest required for membership under Section 2 of this Article 3. When more than one person holds an interest or interests in a Residential Unit, the vote for such Residential

Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Residential Unit. In the event of disagreement among such persons and an attempt by two or more persons to cast a vote for such Residential Unit, such persons shall not be recognized in the vote with respect to such Residential Unit. A member may vote either in person or by a proxy executed in writing by the member or by his duly authorized attorney-in-fact. Any proxy must be in writing, signed by the Residential Unit owner (or owners as provided below) and submitted to the President prior to the meeting. If any Residential Unit is owned by a corporation, partnership, trustee or other entity or by a group of owners in any form of joint tenancy, the vote allocated to such Residential Unit shall be exercisable by such owner or owners only as provided by the Declaration as amended from time to time. Unless the holder of a valid proxy, a mere lessee of any Residential Unit shall have no right to vote and shall in no respect be deemed a member of the Association.

(b) The Declarant membership shall be a full voting membership, and shall be entitled to vote on all matters and all events with one vote for each Residential Unit in which it holds any interest. Regardless of its ownership of any Residential Unit, the consent of the Declarant shall be nevertheless required for certain matters as are specified in this Declaration and the Association Documents. The membership rights of the Declarant specifically include the right, during the time specified in Section 3.3(a), to appoint the directors of the Association.

Section 4. Suspension of Membership Rights. The membership rights of any member, including the right to vote, may be suspended by the Association's Board of Directors in accordance with Section 5.7 below.

Section 5. Meetings of the Membership. All matters concerning meetings of members of the Association, including the time in which and the manner in which notice of any of said meetings shall be given to members of the quorum and percentage vote required for the transaction of business of any meetings, shall be specified in the Association Documents as amended from time to time or by law.

ARTICLE 4
COMMON BENEFIT AREA

Section 1. The Common Benefit Area; Member's Rights in the Common Benefit Area. The Declarant hereby covenants with the Association to convey the Common Benefit Area to the Association without cost to the Association free and clear of any Mortgage. The Association shall have the responsibility for maintaining the Common Benefit Area after it acquires the same. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Residential Unit of such Owner.

Section 2. Members' Easements of Enjoyment. Subject to the provisions contained in (a) through (g) of this Section, the use restrictions stated in Article 9 and the easements reserved in Article 11, every member of the Association shall have a right and easement of enjoyment in and to the Common Benefit Area and such easement shall be appurtenant to and shall pass with the title to all portions of the Restricted Property. The Common Benefit Area shall be used only for uses permitted in writing by the Association's Board of Directors. Rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant or its designees to the exclusive use of such portion of the Common Benefit Area as it, in the exercise of its sole discretion, may deem necessary or advisable, for, or as may be reasonably required, convenient or incidental to, the construction of improvements within the Restricted Property and Common Benefit Area, the sale of property contained in the Restricted Property including, but not limited to sales and business offices, storage areas, construction yards and signs. Such right of the Declarant shall and does exist notwithstanding any provision in this Declaration which might be construed to the contrary, and such right of the Declarant exists without affecting any member's obligation to pay assessment coming due during such period of time and without affecting the permanent charge and lien on any member's property in favor of the Association.

(b) The right of the Association upon approval of the Declarant (so long as it owns any of the Restricted Property) and the Owners of more than two-thirds (2/3) of the Residential Units (exclusive of Residential Units owned by the Declarant) and subject to applicable zoning ordinances to borrow money for the purpose of improving the Common Benefit Area and in aid thereof to mortgage or otherwise burden or encumber the Common Benefit Area. The Association shall not mortgage any portion of the Common Benefit Area if loss of title to the same would eliminate ingress and egress to any Residential Unit. In the event of a default upon any such mortgage or other burden or encumbrance, the lender shall then only have the right,

(i) To take possession of such Common Benefit Area (where such right of possession exists),

(ii) To charge admission or other fees as a condition to continued enjoyment by the members, and

(iii) If necessary, to open the enjoyment of the Common Benefit Area to persons other than members until the mortgage or other debt is satisfied,

such rights being the exclusive remedy available to the lender; and at the time such mortgage or other debt is satisfied the title to and possession of the Common Benefit Area shall be returned to the Association, all rights or persons other than members shall terminate and all rights of members hereunder shall be fully restored; and

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Benefit Area against foreclosure; and

(d) The right of the Association, as provided in Section 5.7 below, to suspend the enjoyment of rights of any member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published rules and regulations; and

(e) The right of the Association to charge reasonable admission and other fees for the use of any facilities which may be constructed upon the Common Benefit Area; and

(f) The right of the Association at any time to transfer all or any part of Common Benefit Area if authorized by Declarant (so long as it owns any of the Restricted Property) and the Owners of more than two-thirds (2/3) of the vote of the Residential Units (exclusive of Residential Units owned by Declarant) except that consent of the Owners will not be required for exercise of the right granted to the Association in subsection 4.2(g) and no conveyance of Common Benefit Area shall deprive any Owner of any access to its Residential Units without consent of such Owner; and

(g) The right of the Association to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it may deem necessary or desirable for the proper servicing and maintenance of the Common Benefit Area.

Section 3. No Partition. Members shall have no rights to a partitioning or like kind pro rata distribution of the Common Benefit Area in connection with dissolution of the Association or otherwise.

ARTICLE 5
ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner, by acceptance of a deed or other conveyance for any Residential Unit in the Restricted Property, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant and agree to pay the Association:

(a) The Initiation Fee;

(b) Annual assessments and charges; and

(c) Special assessments;

such assessments to be fixed, established and collected from time to time as hereinafter provided.

Section 2. Purpose of Assessment. The assessments levied under this Article 5 shall be

used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members and, in particular, for the servicing, improvement and maintenance of the Common Benefit Area and facilities related thereto and related to the use and enjoyment of the Common Benefit Area, and for the maintenance of utilities, sidewalks, and roads owned by the Association and the entrance area or areas (the "Entrance Areas") and drainage areas, waterways, wetlands, and bodies of water in the Community (if any), including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 3. Basis for Annual Assessments.

(a) It shall be the duty of the Board of Directors to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a determination of the Initiation Fee to be charged during the term of the budget and a capital reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and notice of the assessments to be levied against each Residential Unit for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by the Owners of more than two-thirds (2/3) of the Residential Units. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

(b) For so long as the Declarant has the authority to appoint the directors of the Association, Declarant may: (i) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant; or (ii) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution.

Section 4. Special Assessments. The Board may levy and collect a specific special assessment so authorized for the purpose of defraying, in whole or in part, the cost of any reconstruction or unexpected repair or replacement of capital improvements upon the Common Benefit Area, including any necessary fixtures or personal property related thereto; or for the purpose of increasing the annual assessment by an amount in excess of what is authorized by approval of the Association budget pursuant to Section 3 of this Article in the event of any unanticipated operating deficiency.

Section 5. Equality of Assessment among Residential Units. Except as provided in this Section 5, no Residential Unit within the Restricted Property shall bear a higher assessment than

any other Residential Unit within the Restricted Property except that, until such time as the right of the Declarant to appoint the Board shall expire in accordance with Section 3.3(a) of this Declaration, the Declarant may bear a greater or lesser assessment burden than other members while the Declarant may be subsidizing the Association in accordance with Section 3(b) of this Article.

The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Section 12.6 of this Declaration and the costs of maintenance performed by the Association which the Owner is responsible for under Sections 4.1 and 9.22 of this Declaration shall be specific assessments. The Board may also specifically assess Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein):

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

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

Section 6. Due Date of Initiation Fees and Annual Assessments.

(a) The Association's Board of Directors shall send written notice of the annual assessment and the amount of such assessment to every member subject thereto at least thirty (30) days in advance of each annual assessment. Unless otherwise provided by the Association's Board of Directors, the entire amount of the annual assessment for each Residential Unit shall become due and payable to the Association on the first day of February each year and shall be paid to the Association without further notice from the Association; provided, however that in the event the Board of Directors shall fail to send written notice of the annual assessment to members at least thirty (30) days prior to the annual assessment period the payment for the annual assessment shall not be due until thirty (30) days after such notice is given; the failure to notify thirty (30) days prior to the annual assessment period shall not however reduce the amount of the assessment due and payable.

The annual assessment shall be established on a calendar year basis. The assessments provided for herein shall commence as to a Residential Unit subject to this Declaration and the first Initiation Fee shall be due on the first day of the month following the earliest to occur of the following events: (i) the conveyance of the Residential Unit by Declarant to an owner or tenant for

residential occupancy; or (ii) upon the conveyance of the Residential Unit by Declarant to an owner or tenant for residential occupancy; or (iii) upon the conveyance of the Residential Unit by a builder who purchased the land from Declarant for the purpose of erecting a dwelling thereon to an Owner or tenant for residential occupancy. The Initiation Fee shall be due on each transfer of a Residential Unit to a new Owner except for transfers that occur by will or intestacy or foreclosure of (or exercise of power of sale or deed in lieu of foreclosure with respect to) any Mortgage. The first annual assessment (but not the Initiation Fee) for any Residential Unit shall be adjusted according to the number of months then remaining in that fiscal year after the Residential Unit first is subject to assessment.

(b) The Association shall, upon demand at any time, furnish to any prospective purchaser of a Residential Unit and to any member liable for any assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. A reasonable charge, as determined by the Board of Directors may be made for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Nonpayment of Assessment; the Personal Obligation; the Lien; Remedies of the Association.

(a) The Initiation Fee, annual and special assessments, together with interest thereon, late charges and the cost of the collection thereof shall be a continuing lien on the Residential Unit of the member. Such lien shall bind such property in the hands of the then member, his heirs, designees, personal representatives, successors and assigns. In addition, the personal obligation of the member to pay such assessments shall remain his personal obligation and shall also bind his successors in title upon transfer of his Residential Unit. Such transferring member shall nevertheless remain as fully obligated as before such transfer to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer, and such member and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such members and successors in title creating any indemnification of the member or any relationship of principal and surety as between themselves.

(b) If any Initiation Fee or assessment or installment thereof is not paid within fifteen (15) days after the due date, (i) the Association may impose a late charge equal to the greater of $10.00 or ten percent (10%) of the amount of the assessment or installment not paid when due, (ii) such assessment or installment shall bear interest from the date of the delinquency at the greater of the highest rate permitted by the Georgia Property Owners' Association Act or ten percent (10%) per annum, and (iii) the Association may bring legal action against any current or prior member personally obligated to pay the same and foreclose its lien against such member's Residential Unit, in which event, interest, late charges, costs and reasonable attorney's fees actually incurred shall be added to the amount of such assessment or installment thereof as may then be due. Each Owner of a Residential Unit by acceptance of a deed or other conveyance of his or her property, invests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of such charges as a debt and to foreclose the aforesaid lien in an appropriate

proceeding in law or equity. The lien provided for in this Article 5 shall be in favor of the Association and shall be for the benefit of all other members. The Association acting on behalf of the other members shall have the power to bid at any foreclosure sale with a credit for the amount of the lien and to acquire, hold, lease, mortgage and convey the same.

(c) If the assessment is not paid within fifteen (15) days after the due date, the Board of Directors of the Association may also suspend the membership rights of the delinquent member, including the right to vote, the right of enjoyment in and to the Common Benefit Area and facilities thereon and the right to receive and enjoy such services and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments due during the period of such suspension and shall not affect the permanent charge and lien on such member's property in favor of the Association. No member may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Benefit Area.

Section 8. Subordination of Charges and Liens to Mortgages.

(a) The liability of any Mortgagee for assessments shall be governed by this Declaration. The liens and permanent charges of all assessments and charges authorized herein (annual, special or otherwise) with respect to any Restricted Property is hereby made subordinate to the lien of any Mortgage placed on any portion of such property if, but only if all assessments and charges with respect to such property authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid and the Mortgage is either (i) a first in priority Mortgage or (ii) a secondary purchase money Mortgage provided that neither the grantee nor any successor grantee of such secondary purchase money Mortgage conveyed the Residential Unit to the grantor of such secondary purchase money Mortgage. The liens and permanent charges hereby subordinated are only such liens or charges as relate to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged property pursuant to a sale under power contained in such Mortgage.

(b) Such subordination is merely a lien subordination and shall not relieve the owner of the mortgaged property of his personal obligation to pay all assessments and charges coming due at any time when he is the owner of such property; shall not relieve such property from the liens and permanent charges provided for herein (except to the extent a subordinated lien or permanent charge is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the Mortgagee or to any other person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous owner of such property of any personal obligation or relieve such property or the then owner of such property from liability for any assessment or charges authorized hereunder which become due after such sale and transfer.

ARTICLE 6
ADMINISTRATION

Section 1. Responsibility for Administration. The administration of the Association, the maintenance, repair and operation of the Common Benefit Area and facilities thereon shall be the responsibility of the Association.

Section 2. Management and Maintenance Agreement. The Association may enter into such management and maintenance agreements as are necessary or desirable for the administration and maintenance of the Common Benefit Area and facilities thereon. In the event the Association shall determine to place improvements on the Common Benefit Area pursuant to this Declaration and enters into a management agreement for the operation of such facilities and improvements, the Manager shall exercise all the powers and shall be responsible for the performance of all the duties of the Association, except those powers and duties specifically and exclusively assigned to the officers directly from members of the Association by this Declaration. Any management agreement which is to be entered into, after approval by a majority of the Board of Directors, shall provide for the compensation to be paid, the term thereof (which shall not exceed one year) and the manner in which and the terms upon which such agreement may be terminated.

Section 3. Limitations of Liability; Indemnification. Notwithstanding the duties of the Association to maintain and operate the Common Benefit Area, neither the Association nor the Declarant nor the officers and directors of either shall be liable for injury or damage caused by the latent condition of the Common Benefit Area nor for injury caused by the elements, members or other persons; nor shall any officer or director of the Association be liable to any person for injury or damage by such officer or director in performance of the duties hereunder unless due to willful misfeasance or malfeasance or gross negligence of such officer or director. The liability of the Declarant and the Association and the officers and directors of each is further limited as stated in Sections 8.5 and 11.7 below. Each officer and director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, to the fullest extent allowed by the Georgia Non-Profit Corporation Code in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association, and any settlement, whether or not he is an officer or director of the Association at the time such expenses and liabilities are incurred, except in such cases where the officer and director are adjudged guilty of willful misfeasance or malfeasance or gross negligence in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves of such settlement and reimbursement as being for and in the best interest of the Association.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership registers, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by the duly appointed representative of any member and by

holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;
(ii) hours and days of the week when such an inspection may be made; and
(iii) payment of the cost of reproducing copies of documents.

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

Section 5. Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board may decide; provided, however, after having received the Board's financial statements at the annual meeting, the Owners of a majority of the Residential Units may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

Section 6. Notice of Sale. Lease or Acquisition. In the event an Owner sells or leases such Owner's Residential Unit, the Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Residential Unit and such other information as the Board may reasonably require. Upon acquisition of a Residential Unit, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

ARTICLE 7
INSURANCE AND CASUALTY LOSSES

Section 1. Association Insurance.

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

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Benefit Area to the extent that it has assumed

responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance, insuring the Association and its members for damage or injury caused by the negligence of the Association or any of its members, employees, agent, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least $1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

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

(iv) Directors and officers liability coverage;

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

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

(b) Policy Requirements. The Association shall periodically cause a review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Atlanta, Georgia area, and the Board shall review the Association's insurance coverage at least annually.

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

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.1. In the event of an insured loss, the deductible shall be treated as a common expense of the Association; provided, if the Board reasonably determines, after notice and a reasonable opportunity to be heard, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Residential Units pursuant to Section 5.5.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Community covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and, within sixty (60) days, obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the improvements on the Common Benefit Area shall be repaired or reconstructed unless the Declarant (while it owns any of the Restricted Property) and the Owners of at least three-quarters (3/4) of the vote of the Residential Units otherwise agree not to repair or reconstruct.

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

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

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

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the board may, without a vote of the members, levy a special assessment to cover the shortfall.

Section 2. Owners' Insurance. By virtue of taking title to a Residential Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements for his or her Residential Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Residential Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 8. Alternatively, the Owner shall clear the Residential Unit of all debris and ruins and maintain the Residential Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE 8
ARCHITECTURAL STANDARDS

Section 1. General. No structure shall be placed, erected, or installed for any Residential Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article, and with the approval of the Architectural Review Committee ("ARC").

No work subject to this Article shall commence unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by the ARC. Any Owner may remodel, paint or redecorate the interior of structures on a Residential Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Residential Unit visible from outside the structures for the Residential Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

Dwellings shall meet or exceed the minimum square feet (heated living area) requirements established by the county zoning ordinance conditions for the Community. Any accessory building permitted for a Residential Unit shall be limited to one story in height. All dwellings constructed on any portion of the Community shall be designed by and built in accordance with the plans and specifications of a licensed architect and by a builder approved by the ARC taking into account financial stability and building experience, unless otherwise acceptable to the ARC, in its sole discretion. All plans and specifications shall be subject to review as provided herein. This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Benefit Area by or on behalf of the Association. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration.

Section 2. Architectural Review. Review of all applications for construction and modifications under this Article shall be handled by the ARC using such subcommittees, if any, as

the Board of Directors of the Association may authorize from time to time. Until the right granted to the Declarant to appoint the Association's Board in accordance with Article 3.3 shall expire, or such earlier time as the Declarant shall designate in writing, the Declarant shall have the right to appoint all members of the ARC. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the ARC. Written design guidelines and procedures may be promulgated for the exercise of this review. The ARC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. The Board may employ architects, engineers, or other Persons as it deems necessary to enable the ARC to perform its review. The ARC may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

In reviewing each submission, the ARC may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. The ARC shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

In the event that the ARC fails to approve or to disapprove in writing any application within 45 days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with established design guidelines for the Community unless a variance has been granted in writing by the ARC.

All work shall be completed within one year of commencement or such shorter period as the ARC may specify in the notice of approval. Work not completed within the stated time period will be subject to resubmission for new approval by the ARC under its then existing standards, which may differ from the standards employed for initial approval. As a condition of approval under this Section, each Owner and all successors-in-interest shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. The ARC may require an Owner to acknowledge such responsibilities in a recordable written instrument.

Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any Residential Unit to verify compliance with these restrictive covenants. Such person or persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Section 12.6, record in the appropriate land records a notice of violation naming the violating Owner.

Section 3. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter

requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 4. Variance. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of any financing shall not be considered a hardship warranting a variance.

Section 5. Limitation of Liability. Plans and specifications are not approved by the ARC for engineering or structural design or quality of materials. By approving such plans and specifications or the use of a builder or architect, neither the ARC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications or any inadequate performance by such builder or architect. Neither Declarant, the Association, the ARC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications, builders or architects, to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications, builders or architects. Every person who submits plans or specifications and every Owner agrees that such person or Owner will not bring any action or suit against Declarant, the Association, the ARC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

ARTICLE 9
USE RESTRICTIONS AND RULES

Section 1. General. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Residential Unit. These use restrictions may only be amended in the manner provided in Section 12.4 regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners and occupants prior to the date that there are to become effective and shall thereafter be binding upon all Owners and occupants until and unless rescinded or modified by the Board of Directors.

Section 2. Residential Use. All Residential Units shall be used exclusively for residential purposes of a single family. No business or business activity shall be carried on, in, or upon any Residential Unit at any time except with the written approval of the Board. Leasing of a Residential Unit shall not be considered a business or business activity. The Board may permit a Residential Unit to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, does not create a disturbance and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities.

Section 3. Signs. No sign of any kind shall be erected by an Owner or occupant within the Community without the prior written consent of the ARC. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. "For Sale" and "For Rent" signs and security signs consistent with the Community-Wide Standard and reasonable signs required by legal proceedings or pursuant to a first Mortgage may be erected upon any Residential Unit. Permitted signs shall not exceed 36 x 48 inches in size except that the Community entrance signs shall be of such size and design as is approved by the ARC.

Section 4. Vehicles. The term "vehicles", as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles. All single-family homes shall contain a garage of a size to accommodate not less than two automobiles; carports shall not be permitted. All vehicles shall be parked in designated parking spaces. "Parking areas" shall refer to the number of garage parking spaces. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. No motorized vehicles shall be permitted on pathways or unpaved portions of the Common Benefit Area except for public safety reasons.

No vehicle may be left upon any portion of the Community (except in a garage) for a period longer than five days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle shall be considered a nuisance and may be removed from the Community. Any towed vehicle, boat, recreational vehicle, motor homes, or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than 24 hours each shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or occupant's primary means of transportation shall not be considered recreational vehicles if they are used on a regular basis for transportation and the camper is stored out of public view.

Section 5. Leasing. Residential Units may be leased for residential purposes only. All leases shall have a minimum term of at least six months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rule and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

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

Section 7. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Residential Unit, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No pets shall be kept, bred or maintained for any commercial purpose.

Section 8. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Residential Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be retained or stored that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARC, shall be located, installed or maintained upon the exterior of any Residential Unit unless required by law.

Section 9. Unsightly or Unkept Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in the public view in any part of the Community.

Section 10. Prohibited Conditions. The following conditions, structures, or activities are prohibited within the Community unless prior approval in writing is obtained from the ARC by the Owner or occupant;

(a) Antennas. No exterior antennas of any kind, including, without limitation, satellite dishes;

(b) Tree Removal. No living, healthy trees that are more than six inches in diameter at

a point two feet above the ground shall be removed, and no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed; except for any trees, regardless of their diameter, that are located within fifteen (15) feet of a drainage area, a sidewalk, a residence, or a driveway or that must be removed due to damage posed to person or property or to ameliorate the effects of storm damage.

(c) Air-Conditioning Units. No window air-conditioning units shall be installed;

(d) Lighting. Exterior lighting visible from the street shall not be permitted except for (i) approved lighting as originally installed on a Residential Unit; (ii) one decorative post light (iii) street lights in conformity with an established street lighting program for the Community; (iv) seasonal decorative lights during the usual and common season; or (v) front house illumination of model homes.

(e) Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, statuary, play equipment (including, without limitation, stationary or movable basketball goals), planters, gardens, window boxes and similar items must be approved by the ARC;

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

(g) Clotheslines. No exterior clotheslines of any type shall be permitted upon any Residential Unit.

(h) Exterior Security Devices. No exterior security devices, including, without limitation, window bars or security doors, shall be permitted on any residence or Residential Unit. Signs placed on the Residential Unit or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

(i) Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(j) Underground Storage Tanks. No underground storage tanks shall be permitted for any Residential Unit.

(k) Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Residential Unit without the prior written consent of the ARC. Under no circumstances shall any fence be placed, erected, allowed, or maintained upon any Residential Unit closer to the street than the rear one-third of the residence located on the Residential Unit. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Residential Unit during the period that such Residential Unit is

being used by Declarant as a model home. The Board shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Benefit Area.

Section 11. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves to the Declarant and the Association a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 12. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped so as to permit safe sight across such areas. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 13. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks removed from a building site.

Section 14. Subdivision of Residential Unit. No Residential Unit shall be subdivided or its boundary lines changed except with the prior written approval of the ARC. Declarant, however, hereby expressly reserves the right to replat any Residential Unit or Residential Units owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Section 15. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types.

Section 16. Mailboxes. All mailboxes located on Residential Units shall be of a similar style approved by the ARC. Replacement mailboxes may be installed after the type has been approved in writing by the ARC.

Section 17. Exteriors. Any change to the exterior color of any improvement for on a Residential Unit, including, without limitation, the dwelling, must be approved by the ARC.

Section 18. Entry Features and Boundary Fences. Owners shall not alter, remove or add improvements to any entry features or boundary fence constructed by the Declarant on any Residential Unit, or located on the Common Benefit Area without the prior written consent of the

ARC or the Board.

Section 19. Swimming Pools. Swimming pools, hot tubs and portable spas shall not be permitted without the prior written consent of the Architectural Review Committee and then only if enclosed by an approved fence.

Section 20. Wetlands and Other Water Bodies. All wetlands, storm water retention or detention ponds and streams now or hereafter within the Community shall be aesthetic amenities used for storm water drainage only, no other use thereof, including, without limitation, fishing, swimming, boating, playing, or use of personal floatation devices, and other recreation, shall be permitted. For the purpose of this Declaration, "wetlands" means any area labeled as wetlands on a recorded plat for the Community or otherwise designated as wetlands by the Declarant or the Board of Directors. No structures of any kind, including, without limitation, decks, fences, storage buildings, docks, or piers shall be constructed in, on or over any wetland or body of water within the Community. After the original construction of utilities in wetlands, such areas shall thereafter be maintained as undisturbed natural areas. No Owner shall have any right to pump or otherwise remove water from, nor to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuge in, any wetlands, lakes, ponds, storm water retention ponds and streams within the Community. Applicable governmental agencies and the Declarant, so long as the Declarant owns any property subject to the Declaration, and thereafter the Association (but in either event as an expense of the Association), shall have the sole right to control the water level of any body of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any wetlands, lakes, ponds, storm water retention ponds and streams within the Community.

Section 22. Owner's Responsibility. All maintenance of the Residential Unit and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Residential Unit in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Residential Unit.

ARTICLE 10
MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Residential Units in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. Any institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Residential Unit address, therefore becoming an "eligible holder") will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Common Benefit Area or which affects any Residential Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

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

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

Section 2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Residential Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Benefit Area.

Section 3. Notice to Association. Upon request, each Residential Unit Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Residential Unit.

Section 4. Applicability of Article 10. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

Section 5. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 5. Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes, sidewalks, highway buffers and fences for the Community, over and upon each Residential Unit as more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

Section 6. Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto so long as Declarant owns any of the Restricted Property for development and/or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to the Restricted Property, including, but without limitation, the right to access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Residential Unit; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to construct recreational facilities on the Common Benefit Area; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices and may also use recreational facilities available for use by the Community as a sales office without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as hereinabove provided.

Section 7. Scenic Easements. There is hereby reserved to the Declarant and the Association a scenic easement over all ponds and other bodies of water located within the Association and the shore areas thereof within 25 feet of the high water mark limiting the use thereof in accordance with Article 9 of this Declaration. Neither the Association nor the Declarant nor the officers or directors of either shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of wetlands, ponds, or streams within the Community regardless of whether the same shall constitute Common Benefit Area or be located all or part within any Residential Unit.

ARTICLE 12
MISCELLANEOUS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community and the Restricted Property subject to this Declaration, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision shall be automatically extended for successive periods of ten (10) years. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Theodore Roosevelt, former President of the United States of America.

Section 2. Notices. Any notice required or permitted to be sent to any member pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member or Owner to whom it is intended at his last known place of residence, or to such other address as may be furnished to the secretary of the Association, and such service shall be deemed sufficient. The date of service shall be the date of mailing.

Section 3. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or 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 revision or application, and to this end, the provisions of this Declaration are declared to be severable.

Section 4. Amendment. This Declaration may be amended as provided in this Section. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

(a) By Declarant. So long as Declarant owns a Residential Unit for sale in the Community, it may unilaterally amend this Declaration to (a) bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) enable any title insurance company to issue title insurance coverage; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans. However, any such amendment shall not adversely affect the title to any Owner's Residential Unit unless any such Residential Unit Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to appoint the directors of the Association as provided in Section 3.3(a), Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect

the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Residential Unit without the consent of the affected Residential Unit Owner.

(b) By the Board. The Board, by two-thirds (2/3) vote of the directors, shall be authorized to amend this Declaration without the consent of the Owners, to submit the Community to the Georgia Property Owners' Association Act and to conform this Declaration to any mandatory provisions thereof. Any such amendment shall require the consent of the Declarant so long as the Declarant owns any property within the Community.

(c) By the Owners. This Declaration and the Articles of Incorporation of the Association may be amended upon the consent of the Owners of more than two-thirds (2/3) of the Residential Units and (so long as the Declarant owns any property for development and/or sale in the Community the consent of Declarant.

Section 5. Preparer. This Declaration was prepared by Clifford A. Barshay, Esq., Schreeder, Wheeler & Flint, LLP, 1600 Candler Building, 127 Peachtree Street, N.E. Atlanta, Georgia 30303-1845.

Section 6. Enforcement. Each Owner and occupant shall comply strictly with the Bylaws, rules and regulations, and use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to such Owner's Residential Unit, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose occupants are responsible) for violating the foregoing.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

Signed, sealed, and delivered

Witness

Notary Public

My Commission Expires:
Notary Public, Rockdale County, Georgia
My Commission Expires June 19, 2001

(NOTARY SEAL)

N. P. SEAL

EAGLE HICKS LOWER ROSWELL DEVELOPMENT, LLC
a Georgia limited liability company

By: Eagle Real Estate Advisors, Inc.,
its Manager

By: _____
Title: President

Attest: _____
Title: Executive Vice President

(CORPORATE SEAL)

CORPORATE SEAL

EXHIBIT "A"

LEGAL DESCRIPTION

ALL THAT TRACT or parcel of land lying and being in Land Lots 213 and 214 of the 1st District, 2nd Section of Cobb County, Georgia and being more particularly described as follows:

BEGINNING at a point on the southeastern right-of-way of Lower Roswell Road (a fifty (50) foot right of way) at the point where the southeastern right-of-way of Lower Roswell Road intersects the western right-of-way of Hyde Road (a fifty (50) foot right-of-way); thence running along the western right-of-way of Hyde Road S 01°14'42"W a distance of 445.60 feet to a point located on the line dividing Land Lots 213 and 214; thence continuing along the western right-of-way of Hyde Road S 31°59'57"E a distance of 32.90 feet to a point located on the eastern line of Land Lot 214; thence running along the eastern line of Land Lot 214 S 01°28'44"W a distance of 1136.90 feet to an iron pin found located on the northeastern right-of-way of a 125 foot Georgia Power Company right-of-way; thence running along the northeastern boundary of said 125 foot Georgia Power Company right-of-way N 36°26'40"W a distance of 1,412.47 feet to an iron pin found located at the intersection of the northeastern line of said Georgia Power Company right-of-way and the southeastern right-of-way of Lower Roswell Road; thence running along the southeastern right-of-way of Lower Roswell Road N 61°10'22"E a distance of 982.40 feet to a point, said point being the POINT OF BEGINNING.

Deed Book 13177 Pg 33

Jay C. Stephenson

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.