



**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
WESTBURY COMMUNITY ASSOCIATION, INC.**

**This 2010 edition of the Covenants includes
Amendments 2-4**

(Amendment 1 is to the Bylaws governing the board which is not included in this document)

Amendment 1 - Changed Bylaws to support a 5 member board (used to be only 3 members)

Amendment 2 - Amended covenants to require a mandatory \$500 initiation fee for all home transfers.

Amendment 3 - Removed references to the expired declarant in Article 6.0 making 6.0 easier to read and understand. Modified the mailbox clause (7.24) so that the old original poor quality mailbox cannot be installed in the future.

Amendment 4 - Prohibits Rentals within Westbury in order to limit multi family occupancy. Appeals must be in writing to the Board of Directors.

For other updates and additional information, visit <http://westburyhoa.org>

THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNER'S ASSOCIATION ACT, O.C.G.A. § 44-3-220 *ET SEQ.*

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FOR

WESTBURY

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EXHIBIT "A"

Property Description

Legal Description

Tract 1A, Tract 1B, Tract 1C, Tract 2 & Tract 3

EXHIBIT "B"

Additional Property Which May Unilaterally
Be Submitted To This Declaration by Declarant

EXHIBIT "C"

Bylaws of Westbury Community Association, Inc.

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS

FOR

WESTBURY

THIS DECLARATION is made on the date hereinafter set forth by **ASHTON ATLANTA RESIDENTIAL, L.L.C.**, a Georgia limited liability company (hereinafter sometimes called "Declarant");

W I T N E S S E T H

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" hereof; and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to, the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

Article 1
Definitions

The following words, when used in this Declaration or in any Supplementary Declaration, shall have the following meanings:

1.1 “Articles of Incorporation” means the Articles of Incorporation of Westbury Community Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.2 “Association” means Westbury Community Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.3 “Board of Directors” or “Board” means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-101 *et seq.*

1.4 “Bylaws” means the Bylaws of Westbury Community Association, Inc., attached to this Declaration as Exhibit “C” and incorporated herein by this reference as may be amended from time to time.

1.5 “Common Property” means any and all real and personal property, including, without limitation, easements and other interests therein, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6 “Community” refers to that certain real property described in Exhibit “A”, attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.7 “Community-Wide Standard” means 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.

1.8 “Declarant” means **ASHTON ATLANTA RESIDENTIAL, L.L.C.**, a Georgia limited liability company and its successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as the Declarant hereunder by then holder of all of the rights of Declarant hereunder; and, provided, further, upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that there shall be only one holder of the rights of Declarant hereunder at any one point in time.

1.9 “Lot” means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes a single-family dwelling site as shown on a plat

recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with the title to each Lot as an appurtenance thereto, whether or not separately described, all of the rights and interest of an Owner in the Common Property, as herein provided, together with membership in the Association.

1.10 “Mortgage” means any and all instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.11 “Mortgagee” means the holder of a Mortgage.

1.12 “Occupant” means any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.13 “Owner” means the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.14 “Person” includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under Georgia law.

1.15 “Supplementary Declaration” means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.16 “Total Association Vote” means the votes attributable to the entire membership of the Association (including votes of Declarant) as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members entitled to vote on the matter.

* * *

Article 2

Property Subject To This Declaration

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

2.2 Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Declarant intends to annex hereto the property contained in Declarant's land plan for the development as amended from time to time which property is a portion of the property described in Exhibit "B". However, inclusion of property on Declarant's land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land plan bar Declarant from subjecting such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3 Other Annexation. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

* * *

Article 3
Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the spouse of a member, but in no event shall more than one office be held for each Lot owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.

3.2 Voting. Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Lot shall be suspended in the event more than one Person seeks to exercise it.

3.3 "Notice of Sale, Transfer or Acquisition. Prior to the sale and/or transfer of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser and/or transferee and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require."

Article 4
Assessments

4.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 4.12 Transfer Fee. In addition to the annual, special, and specific assessments provided for above, all Lots shall be assessed and subject to a Transfer Fee in the amount of Five Hundred and No/100 Dollars (\$500.00), or such other amount as determined from time to time by the Board of Directors; provided, however, in no event shall such Transfer Fee be equal to the then current annual assessment. Said Transfer Fee shall be paid by the transferee or transferees upon each and every conveyance of the Lot. The transfer fee shall be due and payable at the time of each such conveyance or transfer. The foregoing Transfer

Fee shall be personal obligation of the transferee or transferees of a Lot and a continuing lien against the Lot from the time it is due until it is paid in full. The Transfer Fee shall constitute an assessment against the Lot and the Lot Owner and may be collected by the Association in the same manner as any other unpaid assessment.

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges, interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause the budget and the assessments to be levied against each Lot for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in one annual installment. General assessments include any sums the Board

determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4 Special Assessments. The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. Special assessments shall be

paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5 Specific Assessments. The Board shall have the power to levy specific assessments 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 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 this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all Lots which are benefitted according to the benefit received; and (b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

4.6 Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Lot if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates 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 Lot pursuant to any proceeding in lieu of foreclosure or the sale of transfer of the Lot pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Lot of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such Lot from the lien provided for herein (except to the extent a subordinated lien 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 Lot 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 Lot of any personal obligation or relieve such Lot or the then Owner of such Lot from liability for any assessment authorized hereunder become due after such sale and transfer.

4.7 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between

such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of the county where the Lot is located, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. Each Owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and recreational facilities and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such members obligation to pay assessments coming due during the period of such suspension and shall not effect the permanent lien on such Lot in favor of the Association.

4.8 Date of Commencement of Assessments. Assessments shall commence when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a Lot on the first to occur of the date that the Lot is first occupied for residential purposes; or is conveyed by Declarant to an owner who is not a successor Declarant. A Lot shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy.

4.9 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (a) 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 (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

4.10 Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such

event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

4.11 Estoppel Letter. The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association.

Article 5 Maintenance; Common Property

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) all Community entry features; (b) Community landscaping originally installed by the Declarant, whether or not such landscaping is on a Lot, privately owned property or public right-of-way; (c) all storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent such facilities are not maintained by a governmental entity; (d) all property outside of Lots which was originally maintained by Declarant; (e) all Community green space; (f) any pedestrian and/or bicycle paths located within the Community; and (g) all Community recreational facilities. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. 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 Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard.

5.2 Owner's Responsibility. Except for maintenance performed on a Lot by the Association pursuant to Section 5.1, if any, all maintenance of the Lot and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors determines that any Owner has failed or refused to discharge property 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, repair or replacement deemed necessary. The Owner shall have ten 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-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 and all costs thereof shall be assessed against the Owner and the Lot as a specific assessment.

5.3 Conveyance of Common Property by Declarant to Association: No Implied Rights. The Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and maintained by the Association for the benefit of its members. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the real estate records of the County where the property is located.

5.4 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Community.

5.5 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within 60 days after such taking, an alternative plan is approved by at least 75% of the Total Association Vote and the consent of Declarant. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern

the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

Article 6
Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvements and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless, installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Lot without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Lot 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. This Article shall not apply to the activities of the Declarant, affiliates of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the Declarant. Such plans and specifications shall be of sufficient detail to allow the Declarant to make its review and to the extent required by the Declarant shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Declarant may adopt written design and development guidelines and application and review procedures, which may provide for a review fee. The Declarant shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the architectural guidelines. The Declarant shall make the architectural guidelines available to Owners and builders who seek to engage in construction upon all or any portion of the Community and such Owners and builders shall conduct their operations strictly in accordance therewith. If the Declarant fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the Declarant, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Declarant

shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. The Declarant and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Declarant for reconsideration.

6.3 Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Declarant assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, nor the officers, directors, members, employees and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association 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.

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

6.5 Variances. Notwithstanding anything to the contrary contained herein, the Declarant shall be authorized to grant individual variances from any of the provisions of this Declaration and the architectural guidelines if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) estop the Declarant from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain

approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.6 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the Declarant from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the Declarant, the Association or the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the Declarant, in the event of noncompliance with this Article, the Declarant may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Declarant shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

6.7 Architectural Review Committee. The Board shall appoint an Architectural Review Committee ("ARC") of the Association which then shall have, together with the Board, jurisdiction over architectural control under this Article. The ARC, together with the Board, shall have all right power and authority to review and approve the construction, alteration and addition of improvements within the Community as provided in this Article 6 and this Article shall be read and interpreted as if any reference to the Declarant in this Article were a reference to the ARC and the Board.

Article 7 Use Restrictions and Rules

7.1 Rules and Regulations. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the consent of Declarant.

7.2 Residential Use. Each Lot shall be used for residential purposes exclusively. Leasing of a Lot for residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant in residence at the Lot may conduct business activities within the house so long as the

business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms “business” and “trade,” as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

7.3 Signs. No sign of any kind shall be erected within the Community without the prior written consent of the Declarant or, after the termination of the rights of Declarant hereunder, the Architectural Review Committee. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure.

7.4 Vehicles; Parking. Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated areas, if any. No on-street parking, other than in connection with special events as approved by the Board of Directors, shall be permitted within the Community. All parking shall be subject to such rules and regulations as the Board may adopt. The term “vehicles,” as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term “parking areas” shall refer to the number of garage parking spaces and the spaces located in the driveway of each Lot. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five days if it is not licensed 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 may be removed from the Community by the Board of Directors. Any towed vehicle, boat, personal water craft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus 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 may be removed from the Community by the Board of Directors. Trucks with mounted campers which

are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

7.5 LEASING OF LOTS. In order to maintain the character of the Community as a primarily residential development with the Lots being primarily utilized by owner/occupants thereof, and to enhance the financing of Lots in the future, leasing of the Lots in the Community shall be prohibited, except for Emergency Leasing as provided in Section 7.5(a) hereinbelow:

(a) **Definition of Leasing.** “Leasing” shall mean the regular, exclusive occupancy of a Lot by any person(s) other than the Owner, with or without a written lease agreement, for which the Owner, any relative of the Owner or any other agent or affiliate of the Owner, receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. The term leasing shall expressly include, without limitation, occupancy of a Lot by any individual or entity under a house sitting arrangement for the purpose of maintaining occupancy of the Lot pending the sale of the Lot. For purposes hereof, occupancy by a roommate of an Owner/Occupant shall not constitute leasing.

(b) **Prohibition on Leasing.** Except as set forth in Section 7.5(c) entitled “Emergency Leasing Approval”, leasing of Lots within Westbury shall be strictly prohibited.

(c) **Emergency Leasing Approval.** Notwithstanding the provisions of subparagraph (b) above, the Board of Directors of the Association shall have the authority to issue, in its sole discretion, emergency approvals for the lease of a Lot (an “Emergency Leasing Approval”) due to situations arising from death or catastrophic illness, job transfers or other extraordinary or emergency situations that would reasonably warrant the issuance of an Emergency Leasing Approval. Each Emergency Leasing Approval shall be valid only for the period of time specified by the Board at the time such Emergency Leasing Approval is granted and the Owner shall immediately discontinue leasing of the Lot at the end of such time period unless an additional Emergency Leasing Approval is first obtained.

(d) **General Leasing Provisions.** Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Bylaws and rules and regulations of the Association and that any failure by the lessee (or other Occupant) to comply with the terms of such documents shall be in default under the lease. All leases shall be required to be in writing. No Owner shall be permitted to lease the Lot of such Owner for transient or hotel purposes. No lease shall be for less than the entire Lot. Prior to the commencement of any lease, the Lot Owner shall give the Association written notice of the name of the lessee and the term of the lease and a true and correct copy of the lease. The Association shall have the right to limit the number of persons occupying a leased Lot. No Lot may be subleased without the prior written consent of the Board of Directors, which consent may be arbitrarily withheld. No Lot shall be used as a corporate apartment (i.e. for short term use by the employees, customers or clients of any Owner).

(e) Specific Leasing Provisions. Any lease of a Lot in the Community shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Lot Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by the existence of this covenant. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following provisions into any lease:

(i) Liability for Fines and Other Charges. The lessee acknowledges and agrees that lessee is personally obligated to the Association for the payment of all fines and other charges which become due as a consequence of the lessee's activities, including, but not limited to, activities which violate provisions of the Governing Documents, notwithstanding the fact that the Lot Owner is also personally liable for such charges and fines.

(ii) Compliance with Governing Documents. The lessee agrees to abide and comply with all provisions of the Declaration, Bylaws and other Rules and Regulations of the Association (the "Governing Documents"). Any lessee charged with a violation of the Governing Documents is entitled to the same procedure to which a Lot Owner is entitled prior to the imposition of a fine or other sanction.

(iii) Violations. Any violations by the lessee of the Governing Documents constitute a default under the lease which entitles the Owner to evict the lessee in accordance with Georgia law.

(v) Association as Third Party Beneficiary. The Association is a third party beneficiary of the provisions set forth in this subparagraph (e).

(g) Owner Responsibility. Each Owner is responsible for assuring that all lessees and other Occupants of the Owner's Lot shall comply with the Governing Documents and for all violations and losses caused by such lessees and/or Occupants. Each Owner is jointly and severally liable for all fines and other charges assessed against any lessee or Occupant of his or her Lot. All such fines and charges shall constitute an assessment and lien against the Lot as provided in the Declaration.

(h) Liability for Assessments. When an Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by the lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to the Owner. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under Article 4 herein as if lessee were an Owner. The above provision shall not be

construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(i) Owner Obligation to Evict. Each Owner who leases his or her Lot shall be obligated to evict the lessee upon written request by the Association if such Lot Owner's lessee has committed three (3) or more separate violations of the Governing Documents within any twelve (12) month period for which sanctions (including, but not limited to, fines) are imposed as provided for in the Governing Documents. The Owner shall be required to commence the eviction process within ten (10) days after receipt of said notice from the Association, and shall be further required to diligently and continuously pursue the eviction process up to and through its final resolution or disposition. Upon the request of the Association, the Owner shall provide the Association with assurances, including, if requested, supporting documentation, showing evidence of the Owner's compliance with his or her obligations as provided for herein. Upon the final resolution or disposition of the eviction process, the Owner shall inform the Association of the same by written notice. In the event the Owner fails to comply with his or her obligation to evict the lessee as provided for herein, the Owner shall be subject to fines (and other sanctions), and such fines shall be deemed an assessment and lien against the Lot as provided in the Declaration. The Owner, and not the Association, shall be solely responsible for evicting the lessee as provided for herein and shall solely bear the costs and expenses, including attorneys' fees, associated therewith.

(j) Application to Existing Leases/Leasing. Notwithstanding the provisions of Subparagraphs (b) and (c) hereof, those Owners who are leasing Lots upon the recording date of this Amendment (the "Effective Date") and who, within thirty (30) days of the Effective Date, file with the Board a copy of the lease in effect on the Effective Date, shall be allowed to continue leasing without being required to demonstrate emergency or extraordinary circumstances until the first to occur of the following: (i) the sale or conveyance of the Lot in a bona fide, arm's length transaction, (ii) the failure of the Owner to have his or her Lot leased for any consecutive ninety (90) day period, (iii) the failure of the Owner to have his or her Lot occupied for any consecutive ninety (90) days period and/or (iv) the occupancy of the Lot by the Owner. Upon the expiration of such period, such Owner and all subsequent Owners of the Lot shall be subject to and be governed in all respects by the terms and provisions of this Section

7.6 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, 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. No exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Article 6 hereof.

7.7 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. 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 Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No 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. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot.

7.8 Unsightly or Unkempt 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 any part of the Community.

7.9 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install one antenna used to receive video programming (satellite receiving dish or television antenna) not larger than one meter in diameter or diagonal measure which blends with the color and is installed on or in the rear of the main dwelling so as not to be visible from the street in front of the Lot. Installation of an antenna deviating from the above provision shall be approved pursuant to Article 6 hereof as reasonably necessary to permit the reception of an acceptable quality signal.

7.10 Tree Removal. No trees that are more than four inches in diameter at a point 12 inches above the ground and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed without the prior written consent of the approving authority under Article 6 hereof. Owners shall also comply with any local ordinance applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant.

7.11 Drainage. Catch basins, retention ponds, detention ponds and drainage easement areas are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.12 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or

other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.

7.13 Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within the Community.

7.14 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 6 hereof. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Lot(s) with the consent of the Owner of the effected Lot(s) and to approve the revision and re-recording of any plat of any Lot(s) owned by any builder or developer, including, but not limited to, changing any Lot to Common Property or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such Lot(s).

7.15 Firearms. The use of firearms in the Community is prohibited. The term “firearms” includes, without limitation, B-B guns and pellet guns.

7.16 Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6, but in no event may a chain link or barbed wire fence be approved; provided, however, the Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants

7.17 Utility Lines. Except as maybe permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community.

7.18 Air-Conditioning Units. No window air conditioning units may be installed.

7.19 Lighting. Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof.

7.20 Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags and similar items must be approved under and pursuant to Article 6 hereof.

7.21 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant or the Architectural Review Committee as the case may be in accordance with the provisions of Article 6 hereof.

7.22 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof and in no event shall any above-ground swimming pool be permitted.

7.23 Gardens, Play Equipment and Pools. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals) or pool to be erected on any Lot may be located other than between the rear dwelling line and the rear lot line, without the prior written approval in accordance with the provisions of Article 6 hereof.

7.24 Mailboxes. All mailboxes serving Lots shall be approved in accordance with the provisions of Article 6 hereof. Owners may not replace mailboxes without the prior written approval of the ARC or the Board. The ARC or the Board may, at any time, require an Owner to replace, at such Owner's expense, the mailbox serving such Owner's Lot with a mailbox specified by the Board or the ARC and being of a make and model and having such specifications as are required by the ARC or the Board.

7.25 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

7.26 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Article 6 hereof.

Article 8

Insurance and Casualty Losses

8.1 Insurance on Common Property. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of

Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

8.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times.

8.3 Damage and Destruction -- Insured by Association. Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within 60 days after the casualty, a proposal not to repair or reconstruct such property is approved by at least 75% of the Total Association Vote and the Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed 60 days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Lot.

Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

8.4 Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within 75 days after such damage or destruction or, where repairs cannot be completed within 75 days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within 75 days after such damage or destruction.

Article 9 Mortgagee Provisions

9.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, 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 Community or which affects any Lot 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 Lot 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 Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2 Audit. 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 of the Association within 90 days of the date of the request.

9.3 No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

9.4 VA/HUD Approval. As long as the Declarant has the right to appoint and remove the officers and/or directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development (“HUD”) for insuring or the U.S. Department of Veterans Affairs (“VA”) for guaranteeing any Mortgage in the Community the following actions shall require the prior approval of the VA and/or HUD as applicable: annexation of additional property to the Community, except for unilateral annexation by Declarant as provided herein; dedication of Common Property to any public entity; merger, consolidation or dissolution of the Association; and material amendment of the Declaration, Bylaws or Articles of Incorporation.

Article 10 Easements

10.1 Easements for Use and Enjoyment. Every Owner shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owner’s Lot in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

(a) the right of the Association to charge reasonable admission and other fees for the use of any Community recreational facilities, to limit the number of Persons who may use the Community recreational facilities, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(b) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the Community recreational facilities, if any, for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds of the Lots (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community.);

(d) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property to government entities, any quasi-governmental agency or to any utility company or cable television company;

(e) the right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least two-thirds of the Lots (other than Declarant) and the Declarant;

(f) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration or in any deed conveying Common Property to the Association; and

(g) all encumbrances and other matters shown by the public records affecting title to the Common Property.

10.2 Easements for Utilities. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Community. Declarant, the Association or the designee of either, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement.

10.3 Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family dwelling without permission of the Owner.

10.4 Easement for Maintenance. Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the

maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

10.5 Easement for Entry Features and Streetscapes. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon any portion of a Lot containing such entry features or streetscapes as may be 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 entry features and streetscapes and the right to grade the land under and around the same.

10.6 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association an easement for creating and maintaining satisfactory drainage across Lots in the Community, over and across an area five feet wide along each side Lot line and ten feet wide along each rear Lot line; provided, however, such easement area shall not include any portion of a Lot upon which the foundation of a dwelling is located.

10.7 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the Community for Declarant and any builder 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 or convenient for Declarant's and such builder's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such builders, including, but not limited to: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with streets, driveways, paths, 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, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; 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 may use residences, offices or other buildings owned or leased by Declarant or such builder as model residences and sales

offices and may also use Community recreational facilities as a sales office without charge. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

Article 11
Use of Recreational Facilities by Nonmembers

11.1 Rights Reserved by Declarant. Declarant shall have the right to grant to Persons who are not members of the Association the right to use the Community recreational facilities. The extent and duration of nonmember use and the fee to be charged therefor shall be determined solely by Declarant. The Declarant may grant nonmember use rights to individuals on a nonrenewable annual basis or as an easement appurtenant to such individuals' residential real property so that such use rights shall automatically inure to the benefit of both the original grantees and their respective successors-in-title to such real property. Nonmember users fees shall be paid to the Association. Unless otherwise provided by the Board of Directors, such fees shall be paid in annual installments. The amount of such payments may be increased each year by the Board so long as the annual fee does not exceed the annual general assessment levied against members of the Association. Any use right granted to nonmembers which extends beyond the termination of Declarant's rights under this Declaration shall be valid and may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by Declarant are complied with by the nonmember user.

11.2 Right and Easement of Use. Declarant hereby expressly reserves unto itself, its successors and assigns a non-exclusive, perpetual right, privilege and easement with respect to the Community for the benefit of Declarant, its successors, assigns and the above discussed nonmember users, over, under, in and/or on the Community (including, without limitation, the above described recreational facilities), without obligation and without further charge to the foregoing, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such nonmembers as described above. Such right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress of and to the above described recreational facilities and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, and across the Community roads, parking areas and walkways.

11.3 Remedy of Association Upon Failure to Pay User Fees. Declarant shall not be liable for and is hereby held harmless from any failure of any nonmember to pay a nonmember user fee to the Association. In such case, the Association's sole remedy hereunder shall be to suspend the use right of the nonmember who has not timely paid until all amounts owed are paid. Declarant shall also not be liable for and is hereby held harmless from any personal injury or property damage caused to or by a nonmember using the Community recreational facilities. The provisions of this Section shall apply notwithstanding any contrary provisions in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, use restrictions and any amendments to any of the foregoing.

11.4 Right of Association to Grant Nonmember Use Rights. After the termination of Declarant's rights under this Declaration as hereinafter provided, the Association shall be entitled to grant nonmember use rights to the same extent as the Declarant could previously grant under this Article.

11.5 Capacity of Facilities. The rights granted under this Article for use of the Community recreational facilities shall be subject to any applicable limitations on bathing load for any swimming pool that may be a part of such facilities and other limitations on capacity of any of such facilities as may be established by any applicable government law, ordinance, rule or regulation.

Article 12 General Provisions

12.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, 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 Association, the Declarant or an aggrieved Owner. Failure by the Declarant, 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 Association 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 Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

12.2 Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

12.3 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the Architectural Review Committee or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten days' written notice of the intent to exercise self-help. Notwithstanding the

foregoing, vehicles may be towed after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

12.4 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and 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(s) shall be (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Lots has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

12.5 Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Community and no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy has been issued for a dwelling on each Lot in the Community; or (b) the date of recording by Declarant in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's rights hereunder.

12.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing. Further, 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 Lot without the consent of the affected Owner. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent of at least two-thirds of the Owners and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given.

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

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

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

12.10 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefitted by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant, while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

12.11 Preparer. This Declaration was prepared by David N. Dorough, Jr., Dodson, Feldman & Dorough, L.L.P., Attorneys, 6000 Lake Forrest Drive, N.W., Suite 300, Atlanta, Georgia 30328-3896.

12.12 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to any Owner at the address of the Lot and to the Declarant or the Association at the address of their respective registered agent in the State of Georgia. Any

Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be deemed delivered three business days after mailing by United States Registered or Certified Mail, postpaid, or upon delivery when delivered in person, including delivery by Federal Express or other reputable courier service.

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

12.14 Indemnification. To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

12.15 Agreements. Subject to the prior approval of Declarant all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

12.16 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Community.

12.17 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least 75% of the Total Association Vote and the consent Declarant. This Section shall no apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

IN WITNESS WHEREOF, the Declarant herein hereby executes his instrument under seal, this 3rd day of July, 1997.

DECLARANT: **ASHTON ATLANTA RESIDENTIAL, L.L.C.**, a Georgia limited liability company

By: _____(SEAL)
Michael Kilgallon, an Attorney-In-Fact pursuant to that Power of Attorney recorded at Deed Book 21043, page 144, Fulton County, Georgia records.

Signed, sealed, and delivered in the presence of:

WITNESS

NOTARY PUBLIC

My Commission Expires:

[AFFIX NOTARY SEAL]

westbury hoa/document/declaration