

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
THE VILLAGE AT MORGAN HILL

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Jay C. Stephenson  
COBB COUNTY COURT CLERK

THIS DECLARATION is made on the date here forth by COLUMBIA HONES, L. P., a Georgia Limited Partnership (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property located in Land Lot 14 0 of the 20th District, 2nd Section of Cobb County, Georgia, which property is more particularly described in Exhibit "A" attached hereto and made a part of this Declaration; and

WHEREAS, Declarant intends to develop on the real property described above a development to be known as The Village at Morgan Hill (hereinafter referred to as the "Development"); and

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a nonprofit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined);

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibit "A" shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions and Restrictions, which is for the purpose of enhancing and protecting the desirability and attractiveness of said real property. Declarant further declares that this Declaration shall run with the title to said real property, and be binding on all parties having any right, title or interest in the described property or any part thereof, and shall, subject to all limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns, and to the benefit of the Association.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

1.01 Additional Property. "Additional Property" means the additional property, which may be added to the Property and made subject to this Declaration pursuant to Article X hereof.

1.02 Association. "Association" means Morgan Hill Homeowners Association, Inc. (a nonprofit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

1.03 Board. "Board" means the Board of Directors of the Association.

1.04 Bylaws. "Bylaws" means the Bylaws of the Association.

1.05 Common Property. "Common Property" means all real property (together with any and all improvements now or hereafter located thereon) and all personal property now or hereafter owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

1.06 Declarant. "Declarant" means Columbia Homes, L. P., a Georgia Limited Partnership, its successors and assigns. The term shall also be applied to any person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, which lawfully acquires the rights, privileges and options of Declarant in accordance with this Section 1. 06. Should any of the Property of the Additional Property become subject to a first mortgage given by Declarant (as defined herein) as security for the repayment of a loan to improve the Property and/or Additional Property for development as part of this residential community, then all rights, privileges and options herein reserved to the Declarant, if held by the Mortgagor under said Development Loan shall inure to the benefit of the holder of such first mortgage upon its becoming the actual Owner of the Property and/or Additional Property then subject to such first mortgage through judicial foreclosure or sale made pursuant to any power of sale contained in such first mortgage or by conveyance of a deed in lieu of foreclosure. The Declarant as hereinabove defined, may transfer all of its rights, privileges and options as Declarant to a successor-in-title to all or some portion of the Property or the Additional Property, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of such property, and provided further, that in a written instrument, such successor-in-title is expressly assigned all of Declarant's rights, privileges and options herein reserved to Declarant. Such an assignment may be included as a recital in any deed executed by Declarant, which conveys any portion of the Property or the Additional Property.

1.07 Declaration. "Declaration" means the Declaration of Covenants, Conditions and Restrictions for The Village at Morgan Hill.

1.08 Lot. "Lot" means any numbered parcel of land shown upon that plat of survey of The Village at Morgan Hill recorded in Plat Book 132, Page 36, Cobb County, Georgia Records, or as similarly shown on supplemental surveys of such tract or such additional tracts as may be added to the Property from time to time, as provided herein; provided however, that no portion of the Common Property shall ever be a lot except as provided for in Section 2.04.

1.09 Member. "Member" means any member of the Association.

1.10 Owner. "Owner" means the record owner (including Declarant) whether one or more persons or entities, of a fee simple title to any lot, provided, however, that where fee simple title has been transferred and is being held merely as security for repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.11 Property. "Property" means that certain real property (other than Common Property) hereinabove described together with such additional real property as the Declarant may acquire and subject to the provisions of this Declaration of Covenants, Conditions and Restrictions in accordance with the provisions of Article X hereof.

1.12 Restrictions. "Restrictions" means all covenants, restrictions, easements, liens and other obligations created or imposed by this Declaration.

1.13 Structure. "Structure" means (PAGE MISSING)

Section 2.02 is subject to those items set forth in Section 2.03, which include suspension by the Association as provided in Sections 2.03(c) and 3.05.

2.03 Rights of the Association. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;

(b) charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications, which shall be uniform within each such class but need not be uniform between such classes;

(c) suspend the voting rights of any Member, pursuant to Section 3.05, and the right of enjoyment granted or permitted by Section 2.02;

(d) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;

(e) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;

(f) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;

(g) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

(h) to sell, lease or otherwise convey all or any part of its properties and interest therein; provided, however, that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of two-thirds (2/3) of each class of Members.

2.04 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of each class of Members of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

2.05 Entrance and Scenic Strip Landscaping Easements. It is contemplated that certain easements for the erection and maintenance of entrance monuments, subdivision signs, walls, fences, scenic strips and other structures

intended to provide an attractive atmospheres or to provide privacy to Owners within the Development will be reserved by the Declarant and may be set forth on plats of survey of the Development recorded in the County Records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. All Owners taking title to any Lot upon which such an easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the deed conveying such easements to the Association. Such easements shall be Common Property.

2.06 Encroachment Easements. If any buildings or other improvements initially constructed by Declarant on any of the Lots (including without limitation any eaves, roof overhangs, balconies, siding, porches, or other structures which may be attached to the walls and roof of such buildings) encroach onto or over or extend into the air space of any portion of the Common property, or, conversely, if any such improvements initially constructed on the Common Property encroach onto or over portions of any Lot, a valid easement for the encroachment and for the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

2.07 Easement for Maintenance by the Association. There is hereby granted to the Association and its designated representatives an easement for access to each Lot for the purpose of exercising the maintenance responsibilities of the Association on the Lots.

### ARTICLE III

#### THE HOMEOWNERS' ASSOCIATION

3.01 Purposes, Powers and Duties of the Association. The Association shall be formed as a nonprofit civic organization for the primary purpose of performing certain functions for the common good and general welfare of the people of the Development. To the extent necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code, and (b) shall have the power to exercise all of the rights, powers and privileges of the Association as set forth in this Declaration.

3.02 Membership in the Association. Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Conditions and Restrictions.

3.03 Voting Rights. Subject to the following provisions of this Section 3.03, the Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. Every person who is an Owner, with the exception of the Declarant except as otherwise set forth herein, shall be a Class A Member and shall be entitled to one vote for each Lot owned. When more than one person is a Class A Member by virtue of an ownership interest in the same Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons and an attempt by two or more of them to cast the vote of such Lot, such persons shall not be recognized and the vote of such Lot shall not be counted. The

membership of a Class A Member shall automatically terminate upon the Member's sale of his Lot. However, no termination of Class A membership shall affect such Member's obligation to pay assessments, fines or penalties as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

(b) Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and during its existence the Class B Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled to three (3) votes for each Lot owned by it; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (a) the expiration of ten (10) years from the date of recording of this Declaration; (b) the date as of which three-fourths (3/4) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed to an individual Owner or Owners for residential occupancy; or (c) the surrender by the Declarant of the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed and recorded by the Declarant; provided, however, that so long as any Mortgagee of Declarant holds a security interest in any portion of the Property, as security for a Development Loan to Declarant, the Class B membership shall not terminate without the prior written consent of such Mortgagee. If at the time of termination of the Class B membership, Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A Member.

(c) The Development may be composed of Lots to be developed in phases containing unequal number of Lots. Each such phrase will be platted of record in the office of the Clerk of the Superior Court of Cobb County in accordance with Article X of this Declaration. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in subsection (b) of this Section 3.03 and in no event shall Class B Membership cease and be converted to Class A Membership (as provided in subsection (b) of this Section 3.03) until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless such phase is subject to this Declaration.

### 3.04 Board of Directors and Officers.

(a) Board. The affairs of the Association shall be managed by a Board of Directors. The number of directors and the method of election of directors shall be as set forth in this Declaration and in the Bylaws of the Association. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation Code or this Declaration, the Association's Bylaws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.

(b) Officers. The number of officers and the method of election of officers shall be as set forth in this

Declaration and the Bylaws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, officers of the Association shall be appointed by the Board until such time as Declarant no longer has the right to appoint members to the Board of Directors.

(c) Casting of Votes. The votes of the Members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the Bylaws of the Association, as amended from time to time, or by law.

3.05 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions of the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.02 or 8.02 hereof;

(b) shall be delinquent in the payment of any assessment, fine or penalty levied by the Association pursuant to the provisions of this Declaration; or

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property;

Any suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.05, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.06 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the Bylaws of the Association, as each shall from time to time be in force and effect.

3.07 Control by Declarant and Appointment of the Board. Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of five (5) members. Notwithstanding any other language or provision to the contrary in this Declaration in the Articles of Incorporation, or in the Bylaws of the Association, the Declarant hereby retains the right to appoint all members to the Board. The rights of Declarant to appoint members of the Board also includes the right to remove and replace appointees until such time as Declarant's rights to appoint members to the Board ceases. Declarant shall retain the right to appoint and remove members of the Board until such time as the first of the following events shall occur: (i) the expiration of ten (10) years from the date of the recording of this Declaration; (ii) the date upon which three-fourths (3/4) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by Declarant to an individual Owner or Owners for residential occupancy; or (iii) the surrender by Declarant of the authority to appoint and replace directors by an express amendment to this Declaration executed and recorded by Declarant. Upon the final expiration of all rights of

Declarant to appoint and replace directors of the Association a special meeting of the Association shall be called. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period, which Declarant has in its possession. Each Owner by acceptance of the deed to or other conveyances of a Lot vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section.

3.08 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

#### ARTICLE IV

##### ASSESSMENTS AND MAINTENANCE CHARGES

4.01 Covenant for Assessments and Creation of Lien and Personal Obligations. The Declarant, to the extent that Declarant is an Owner, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to pay to the Association the annual assessments, which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(b) to pay to the Association any special assessments for capital improvements and any fines, penalties or other charges, which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all assessments, fines, penalties and other charges are made to secure payment of such items and any interest thereon as provided in Section 4.07 hereof and costs of collection including reasonable attorneys' fees;

(d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens, or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) the lien of any first mortgage. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer;

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessment thereafter assessed;

(f) that all annual and special assessments (together with interest thereon as provided in Section 4.07 of

this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Section 4. 01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.02 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the new community of the Development, including, but not limited to, and in addition to other purposes set forth in this Declaration, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owned by the Association.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04 Annual Assessment or Maintenance Charge.

(a) Subject to the terms of this Article, each Lot in the Property is hereby subjected to an annual assessment or maintenance charge for the purpose of creating a fund to be known as the "maintenance fund, " which maintenance charge and assessment will be paid by the Owner or Owners of each Lot within the Property (and any area annexed under the jurisdiction of the Association). Payment of such assessments will be made in advance in monthly, quarterly or annual installments with the due dates being established by the Board of Directors.

(b) The annual maintenance charge and assessment will commence as to each Lot on the first day of the month following the earlier to occur of the following events: (i) upon the occupancy of the Lot as a residence; or (ii) upon the conveyance of the Lot by Declarant to an Owner or tenant for residential occupancy.

(c) Beginning on the date this Declaration is executed through January 1, 1991, the annual maintenance charge and assessment will not exceed \$300. 00 per annum (said rate of charge being the "maximum annual assessment" for 1990. Beginning January 1, 1991, and from year to year thereafter, the maximum annual assessment may be increased by the Board of Directors; however, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum annual assessment for the previous year without a vote of the membership, which shall require approval of two-thirds (2/3) of each class of Members present, in person or by proxy, at a meeting duly called for such purpose, with at least sixty percent (60%) of the Owners or other proxies present. If sixty percent (60%) of the Owners do not attend, a second meeting may be called and the quorum will be reduced to thirty percent (30%) of the Owners or their proxies. The annual assessment for each year shall be determined by the Board of

Directors as the needs of the Development may in the judgment of the Directors require; however, the annual assessment for each year shall not exceed the maximum annual assessment set for that year. If not increased as provided herein, the maximum annual assessment for each successive year shall equal the maximum annual assessment in effect for the previous year. In addition, if for any reason the Board of Directors fail to determine the annual assessment for any successive year, the annual assessment for the previous year shall continue for such successive year until a new annual assessment is determined by the Board of Directors.

(d) Assessments may be used by the Association to provide for, by way of clarification, and not limitation, any and/or all of the following as determined, from time to time, by the Board of Directors: normal, recurring maintenance of the Common Property (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for the existing landscaping) and the acquisition and installation of capital improvements to the Common Property, such as sprinkler systems, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common property; normal, recurring maintenance of the front yards of the Lots up unto the side yard fences (including, but not limited to, mowing, edging, and otherwise caring for the existing landscaping); the cost of hazard and liability insurance for the Common property and the cost of such other insurance as the Association may deem necessary; the cost of water, electricity, street lights, and other utilities to the Common Property; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the Property to which said assessments apply; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; payment of ad valorem property taxes assessed against the Common Property (in the event the Association is dissolved or for any reason fails to pay such taxes or other obligations hereunder, such shall become the obligation of the members of the Association to the extent of their percentage interests in the Association); employment of security guards or watchmen, if determined necessary; caring for vacant lots; and unclogging sewer blockage if two adjacent houses are simultaneously without sewer service; and doing any other thing or things necessary or desirable in the opinion of the Board or membership of the Association to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that when and if presented to the Members the judgment of the majority of the Members of the Association in the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall also establish and maintain an adequate reserve fund for the period of maintenance, repair, and replacement of improvements to the Common Property.

(e) Unless required as a matter of law or as otherwise set forth in this Article, Declarant shall not, at any time, be subject to the annual maintenance charge and assessment; however, the Declarant hereby agrees that until such time as Declarant no longer has the right to appoint members to the Board of the Association, Declarant will pay to the Association any deficit amounts not covered by the income of the Association which are reasonably necessary to maintain the Common Property and the vacant Lots in a neat, attractive, and in addition, where such property is intended for recreational use, usable condition. In determining whether such a deficit exists, paper expenses, such as depreciation shall not be taken into consideration. Any such deficit amount required to be paid by Declarant shall be treated as an

assessment and subject to the provisions of Section 4.07; provided however, any lien for such an assessment shall apply only to those Lots owned by Declarant which are subject to this Declaration, and the amount thereof shall be divided equally among all such Lots; and, provided further, that in no event shall Declarant be required to pay any amounts, specifically including any deficit amount, which would exceed an amount equal to the number of Lots owned by Declarant and subject to the Declaration at the time Declarant becomes responsible for payment, or the time the deficit is incurred, multiplied by an amount equivalent to one-fourth (1/4) of the annual assessment which should have been paid or has become due and payable by any other Owner of a Lot from the time Declarant became responsible for such payments (including assessments), or the time the deficit was incurred (for purposes of this proviso, "the time the deficit is incurred" means the time in which the expense creating such deficit becomes a binding obligation upon the Association). Beginning on the first day of the next month following the expiration of Declarant's right to appoint members to the Board of the Association, Declarant shall be subject to an annual maintenance charge and assessment in an amount equal to one-fourth (1/4) of the full annual assessment being paid by all other Owners. Notwithstanding the preceding, the full annual maintenance charge and assessment will commence as to each Lot owned by Declarant or a builder upon its occupancy as a residence in accordance with Section 4.04(b). In addition and notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money, (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution as reasonably determined by the Declarant.

4.05 Special Assessments for Working Capital Fund, Nonrecurring Maintenance, and Capital Improvements. In addition to the annual assessments authorized by this Article IV, the Association may levy:

(a) upon the first sale of each and every Lot to an Owner who will individually or through tenants or assigns occupy a Lot, a special assessment equal to five (5) months' estimated regular assessments, which shall be collected at the closing of such sale for the benefit of the Association. The aggregate fund established by such special assessment shall be maintained in a segregated account, and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board; and

(b) in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part any Association expenses not covered by the annual budget, including, but not limited to, the cost of nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by two-thirds (2/3) vote of each class of Members of the Association who are present in person or by proxy at a meeting duly called for such purpose.

4.06 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action requiring vote under Sections 4.04 or 4.05 shall be sent to all Members, or delivered to their residence, not less than twenty-one (21) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the

votes of each class or membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.07 Effect of Nonpayment of Assessments. If any assessment or installment is not paid within fifteen (15) days after the Due Date there shall be imposed a late or delinquency charge in the amount of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due. Any assessment or installment, and any late charge connected therewith, which is not paid within thirty (30) days after the Due Date of the assessment shall bear interest (from the Due Date with respect to the assessment or installment, and the date such charge was imposed with respect to the late charge), at the rate of twelve percent (12%) per annum or at such rate as the Board may from time to time establish; provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. If any one or more installment of any assessment is not paid within thirty (30) days after the Due Date the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment or installment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with any delinquency charges, interest, and costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorney's fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration. In addition to the above, if any Owner has not paid any assessment or installment, or any late charges or expenses related thereto, within sixty (60) days after the Due Date of the assessment or installment, the Association shall have the right to notify any or all mortgagees having a security interest in such Owner's Lot or Lots that such Owner is in default in the performance of his obligations under these Restrictions, and of those actions taken or proposed to be taken by the Association as a result of the default.

4.08 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the association and any bona fide purchaser of, or lender on, the Lot in question.

## ARTICLE V

### ARCHITECTURAL CONTROL

5.01 Architectural Control Committee - Creation and Composition. An Architectural Control Committee (the "ACC") shall be established consisting of at least three (3) individuals to be appointed by the Board of Directors.

5.02 Purpose, Powers and duties of the ACC. The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any Structure on any Lot. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.03 Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC may, with the approval of the Board, be reimbursed by the Association for traveling expenses and other out-of-pocket costs incurred in the performance of their duties as members of the ACC.

5.04 Operations of the ACC.

(a) Meetings. The ACC shall hold regular meetings as may be established by the ACC; provided, however, that during such time as Declarant has the right to appoint and replace members of the Board of Directors the frequency of regular meetings will be established by the Board. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

(b) Activities.

(i) The ACC shall adopt and promulgate the Design Standards and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue

permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(ii) Any one (1) member of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The action of said member with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in this paragraph (ii).

Written notice of the decision of the one member of the ACC shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

#### 5.05 Design Standards.

(a) The ACC shall from time to time adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purposes of:

(i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;

(ii) governing the procedure for such submission of plans and specifications;

(iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and

(iv) assuring the conformity and harmony of external design and the general quality of the Development.

(b) The ACC may publish copies of its current Design Standards, in which case they shall be made readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.06 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefore shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards.

5.07 Approval of Plans and Specifications. Upon approval by the ACC of any plans and specification submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with the Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structures. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

5.08 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

(a) the failure to include information in such plans and specifications as may have been reasonably requested;

(b) the failure of such plans or specifications to comply with this Declaration or the Design Standards;

(c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards of the Development as set forth in the Design Standards, or (ii) as to location, to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.09 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and. specifications.

5.10 Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon any Lot or Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

5.11 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8. 02 hereof.

5.12 Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 5. 10. The fee shall be established from time to time by the ACC and published in the Design Standards.

5.13 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications 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 or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for 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.

5.14 Declarant. The provisions contained in this Article, as well as all other architectural control provisions contained in the Development documents shall not apply to Declarant. This Section 5.14 may only be amended with the prior written consent of the Declarant.

## ARTICLE VI

### GENERAL COVENANTS AND RESTRICTIONS

6.01 Application. The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon.

6.02 Maintenance. Except as provided for in Section 4.04(d) of this Declaration, each Owner shall keep and maintain each Lot, the exterior of the dwelling and all Structures owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other

appropriate external care) of raking and otherwise caring for the dwelling and all other Structures; (ii) the seeding, fertilizing and watering of all lawns and mowing, edging, clipping, sweeping, pruning, raking and otherwise caring for all lawns not maintained by the Association; (iii) the pruning and trimming of all trees, hedges and shrubbery not maintained by the Association so that the same are not obstructive of a view by motorists or pedestrians of street traffic; (iv) the maintenance of any Sideyard Easement Area that may exist on the Owner's Lot as provided for in Section 7.05 of this Declaration; and (v) the maintenance, repair and painting of all fences on the Lot. If, in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right to Abatement as provided in Section 8. 02 hereof. Guidelines relating to the maintenance of Structures, Sideyard Easement Areas and landscaping may be included in the Design Standards of the ACC.

6.03 Restrictions of Use. Lots may be used for single-family residences only and for no other purpose provided that Declarant may operate a Sales Office and/or Model Home and construction trailer on a Lot or Lots designated by Declarant.

6.04 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision; except, however, Declarant shall have the right without the consent of other Lot Owners to subdivide or resubdivide Lots to correct minor changes resulting from errors of survey in the platting of the subdivision.

6.05 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition or approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation.

6.06 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration.

6.07 Trees. No living tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 6. 05 hereof.

6.08 Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, with the ACC's prior written approval of plans and specifications therefore, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof except:

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one "For Sales" or "For Rent" sign, such sign having a maximum face area of four square feet; provided, however,, that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used;
- (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC; and
- (iv) such signs that the Declarant may deem necessary to advertise the Development and to promote the sale of Lots and homes in The Village at Morgan Hill.

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC. Except as provided in the Design Standards no "Sold" sign shall at any time be installed or maintained on any Lot or on any portion of the Structure visible from the exterior thereof, except by the Declarant in building out the community.

#### 6.09 Setbacks.

(a) Each dwelling, which is erected on a Lot, shall be situated on such Lot in accordance with the building and setback line shown on the recorded plat, and in no event shall any dwelling be erected upon any Lot in any manner, which violates such building and setback lines. For purposes of this requirement, all porches, patios, decks, shutters, awnings, eaves, gutters and other overhangs will not be considered in violation thereof, even though such structure shall extend beyond said building and setback lines if approved by the ACC. Notwithstanding the foregoing, the Declarant shall have the right to obtain variances on a Lot or Lot setback requirements or change them if Declarant deems necessary to do so.

(b) In approving plans and specifications for any purposed Structure, the ACC may establish setback requirements for the location of such Structure. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

6.10 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Fences or walls erected at the rear yards shall not be higher than eight (8) feet. No fences or walls shall be permitted in the front yards except such fences or walls used for decorating or ornamental purposes installed by the Declarant. Any fences connecting dwellings, which were originally erected by the Declarant for side yard privacy shall not be removed, destroyed or altered and shall be maintained in good condition and repair by the Owner. Fences must be constructed to permit reasonable access to utilities or they must have gates to allow initial construction of a Dwelling and must conform to the same style as that of the connecting fence at the time of construction or shall be a six (6) foot high stockade type fence. Sideyard trellises shall not have solid roofs over them unless permitted by the ACC.

6.11 Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways.

6.12 Antennae. No satellite dish, tower, radio or television antennae of any sort shall be placed, allowed or maintained upon any portion of a Structure of Lot. No antennae shall be installed or used for the purposes of transmitting electronic signals.

6.13 Front Yard Areas. No clotheslines shall be permitted. The front yard areas shall be kept neat and clean. All equipment, garbage cans, and woodpiles shall be kept in the garage or screened by adequate planting or approved fencing so as to conceal them from view by neighboring residences and streets.

6.14 Recreational Vehicles and Trailers. No school bus, truck or commercial vehicle over one (1) ton capacity, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, habitable motor vehicle of any kind, boat or boat trailer, trailers of any kind, or like equipment shall be permitted on any Lot provided, however, any such vehicle, boat or trailer will be permitted if stored within the garage with the garage door closed. Any trash, firewood, wood scraps, or building materials contained in any vehicle or trailer shall be covered from view. The provisions of this section shall not apply to Declarant while constructing a Structure on any Lot.

6.15 Recreational Equipment. Recreational and playground equipment shall not be placed or installed in the front or side yard area and may only be placed in the rear of a Lot as approved by the ACC.

6.16 Animals. No animals, including birds, insects, and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No breed of dogs or other animals shall be allowed on any Lot which breed is by nature dangerous. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans, specifications and location for said Structure have been approved by the ACC.

6.17 Solid Waste.

(a) No person shall dump or burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property except Declarant during development and construction of the Development.

(b) Except for building materials employed during the course of construction of any Structures approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards.

(c) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed.

6.18 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to this community.

6.19 Exteriors. Declarant will color coordinate certain exterior materials on the dwellings as they are built. As these products need replacing, repairing or repainting, the

original colors and type of materials must be used or colors and materials as near the original as possible may be substituted providing the original is not readily available. Exterior trim and garage trim shall be white or as originally installed. Siding and roofing colors and design shall remain as similar as possible to the original. Painted and unpainted fences connecting the dwellings shall remain the same type and color as the original.

6.20 Air Conditioning Units. No window air conditioning units shall be placed in any dwelling so as to be visible from the front of any lot or any adjoining street.

## ARTICLE VII

### EASEMENTS. ZONING AND OTHER RESTRICTIONS

#### 7.01 Easements.

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose, which Declarant deems necessary, including, by way of example, and not limitation, the following:

(i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities;

(ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;

(iii) slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and

(v) the erection, installation, construction and maintenance of fences, walls, monuments, signs, etc. along streets in, around and along, and at entrances to, the Development, and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature.

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

(c) The Declarant hereby reserves for itself, its successors and assigns, across the initial phase of the Property, and across each portion of the Additional Property subsequently submitted to this Declaration by Annexation as provided in Article X hereof, perpetual easements appurtenant to all or any portion of the Additional Property not subject to this Declaration for the following uses and purposes:

(i) an easement for ingress and egress by vehicular and pedestrian traffic over (1) such drives, roadways, walkways and paths as are shown on the plat or plats recorded in connection with the initial phase of the Property and such portions of the Additional Property as are submitted to this Declaration, and (2) such drives, roadways, walkways and paths as may be constructed in the future; and

(ii) an easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewage, storm drainage, electricity, street lights, cable television, telephone, and other utilities and services, including the right to use in common with the Owners in the initial phase of the Property and portions of the Additional Property subsequently submitted to this Declaration, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners.

(d) In addition to the above, the Declarant hereby grants a general easement in favor of utility, cable television and other such service companies across the initial phase of the Property, and across each portion of the Additional Property subsequently submitted to this Declaration by Annexation as provided in Article X hereof, to maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities provided for the benefit of the Owners.

(e) The easements created in this Article VII are in addition to any easements or rights created elsewhere in this Declaration or in other easements of record. The provisions of this Article VII may not be amended without the written consent of the Declarant, its successors and assigns.

7.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or grant of easement, or on any filed or recorded map or plat relating thereto, or as otherwise set forth in Section 7.01 and 7.05.

7.03 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken by the same in an Easement Area pursuant to the provisions of Section 7.01 and 7.05.

7.04 Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

7.05 Sideyard Easement Area.

(a) The dwellings to be constructed by Declarant on each Lot may be built on a side boundary line of a Lot (this

side boundary line of a Lot for the purposes of this Section 7.05 will be hereinafter referred to as the "Zero Setback Line"). There shall be a five (5) foot wide Sideyard Easement Area serving each Lot (hereinafter referred to as the "Dominant Estate") which shall lie across the Lot or Lots immediately adjacent to the Dominant Estate (said adjacent Lot or Lots being hereinafter referred to as the "Servient Estate") and which shall extend along the length of the Dominant Estate's Zero Setback Line.

(b) The Sideyard Easement Area shall be used for maintenance and repair purposes by the Owner of the Dominant Estate, and neither the whole or any part thereof shall be sold, mortgaged, leased or otherwise granted and conveyed separate and apart from the Dominant Estate. The Owner of the Dominant Estate shall not: (i) permit eaves, gutters or overhangs of the dwelling to extend more than 12 inches onto the Sideyard Easement Area or construct, install or otherwise cause to be made any door, window, duct, vent or aperture of any kind in the dwelling on the Dominant Estate which abuts or adjoins the Sideyard Easement; (ii) suffer or permit any waste upon the Sideyard Easement Area; (iii) undertake any use of or affix any object to any wall, fence or other structure on the Servient Estate which abuts, adjoins or crosses the Sideyard Easement Area; (iv) undertake any grading that would tend to prevent proper drainage of the Sideyard Easement Area, or to promote soil erosion or to undermine support for the foundation of any wall, fence or other structure on the Servient Estate which abuts or adjoins the Sideyard Easement Area; (v) place or permit the accumulation of any soil or fill material against any wall, fence or other structure on the Servient Estate which abuts, adjoins or crosses the Sideyard Easement Area to a height which exceeds original grade; (vi) cause, suffer or permit any damage to any utility lines located within the Sideyard Easement Area or interrupt or interfere with the maintenance and repair thereof; (vii) construct, erect or install any structure upon, across, over, under or within the Sideyard Easement Area or undertake any grading or fill or any other activity upon the Sideyard Easement Area which is in violation or which would result in a violation of any applicable governmental statute, ordinance, rule or regulation or which would be in violation of the provisions of this Declaration.

(c) There shall be reserved to the Owner of the Dominant Estate with respect to the Sideyard Easement Area the right to: (i) cause or permit the foundations of the dwelling constructed upon the Dominant Estate to extend under the Sideyard Easement Area (below finish grade) and to cause or permit the eaves and gutters, if any, of the dwelling constructed on the Dominant Estate to extend over the Sideyard Easement Area at heights no less than as such as eaves and gutters are originally constructed and extensions no greater than 12 inches; provided, that no such gutters shall be permitted which cause or lead to excess water run-off and drainage upon the Sideyard Easement Area or which results in erosion of the surface thereof; (ii) enter upon the Sideyard Easement Area at reasonable times and under reasonable circumstances for the purpose of constructing, reconstructing, maintaining and repairing any connecting fence, wall or other structure on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement Area; and, (iii) permit reasonable drainage of water from the Dominant Estate over, upon and across the Sideyard Easement Area. In exercising his right of entry upon the Sideyard Easement Area as provided for hereinabove, the Owner of the Dominant Estate shall use reasonable care not to damage any landscaping or other items existing in the Sideyard Easement Area; provided, however, the Owner of the Dominant Estate shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the Sideyard Easement Area for authorized purposes.

(d) The Owner of the Servient Estate may use the Sideyard Easement Area in any manner permitted by the provisions of this Declaration, including such purposes as landscaping, general recreation, access, drainage and other visual, aesthetic and recreational purposes. The Owner of the Servient Estate shall maintain the Sideyard Easement Area as well as the landscaping on any land lying between the Dominant Estate's dwelling foundation and the Zero Setback Line.

(e) The Owner of the Servient Estate shall not: (i) place any structures on the Sideyard Easement Area in such a manner or such a location that the structure would unreasonably interfere with the repair, maintenance or reconstruction of any wall, fence or the dwelling lying on the Dominant Estate. If any such structure lying on the Sideyard Easement Area interferes with the Owner of the Dominant Estate's permitted use of the Sideyard Easement Area, then the Owner of the Dominant Estate will not be liable for any damage to such structure which occurs in the course of permitted repair, maintenance or reconstruction work by the Dominant Estate Owner; (ii) permit trees, shrubbery or other vegetation to grow on the Sideyard Easement Area which would cause damage to or interfere with the maintenance and repair of any wall, fence or the dwelling on the Dominant Estate; (iii) cause or permit any offensive contact (including without limitation, any pounding or bouncing of objects) with any wall of the dwelling on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement Area; (iv) suffer or permit upon the Sideyard Easement Area any activities by household pets or other animals which would tend to cause damage to or undermine support for any wall, fence or other structure on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement Area; (v) cause or permit to exist any open, uncontained fire on the Sideyard Easement Area; (vi) construct, erect or install any structure upon, across, over, under or within the Sideyard Easement Area or undertake any grading or fill or any other activity upon the Sideyard Easement Area which is in violation or which would result in a violation of any applicable governmental statute, ordinance, rule or regulations or which would be in violation of the provisions of this Declaration.

(f) In the event a dispute arises concerning the respective rights and obligations of the Owner or Owners of the Dominant Estate and the Owner or Owners of the Servient Estate, then the Association shall act as arbitrator of said dispute and may enforce the Association's decision in accordance with the provisions of Section 6.02 of this Declaration.

## ARTICLE VIII

### ENFORCEMENT

8.01 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal representatives, heirs, successors and assigns.

### 8.02 Right of Abatement.

(a) Except where different notice provisions are provided in Section 5.11 and 6.02, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation

or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement. If any assessment, interest, cost or charge required by this Declaration is not paid within sixty (60) days after such assessment is due or such charge is imposed, the Association shall have the right to notify any or all mortgagees that have a security interest in the Owner's Lot or Lots that such Owner is in default in the performance of his obligations under these Restrictions, and of those actions taken or proposed to be taken by the Association as a result of the default.

(b) The Right of Abatement, as used in this Section and Sections 5.11 and 6.02 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or 10% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes for other public charges as are by applicable law made superior, (ii) the liens created by Section 8.04 hereof and (iii) any first mortgage on the Lot.

8.03 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.04 Collection of Assessments and Enforcement of Lien.

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Cobb County,

Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Cobb County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent centum of the aggregate amount due for attorneys' fees, shall pay any excess to Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) Waiver. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

8.05 No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representative, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

## ARTICLE IX

### DURATION AND AMENDMENT

#### 9.01 Duration and Perpetuities.

(a) The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Georgia law limits to twenty (20) years, the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land for a period of twenty (20) years from the date this Declaration is filed for record in the Office of the Clerk of the Superior Court of

Cobb County after which time such provision shall be automatically extended, if permitted by law, for successive periods of ten (10) years, unless an instrument, signed by at least seventy-five percent (75%) of the then Owners of record and the holders of first mortgages on their Lots has been recorded in the Office of the Clerk of said Court, agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any portion of the Property, by acceptance of a deed or other conveyance thereof, thereby agrees that the provisions of these Covenants may be extended and renewed as provided in this section.

(b) If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of those descendants of Her Majesty Queen Elizabeth II, the Queen of England, which are living as of the date this Declaration is executed.

9.02 Amendment. So long as Declarant owns at least one (1) Lot held primarily for sale, or has an unexpired option to add additional property to the Development, this Declaration may be amended unilaterally at any time and from time to time by Declarant (i) 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, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these Restrictions, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to these Restrictions, or (iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private mortgage insurance company to insure mortgage loans on the Lots subject to these Restrictions; provided any such amendment shall not adversely affect the title to any Owner's Lot, unless any such Owner so affected thereby shall consent thereto in writing. This Declaration may be amended at any time and from time to time by an agreement signed by at least seventy-five percent (75%) of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the Owner of any real property subject to this Declaration; and, provided further, however, no amendment affecting the Declarant's right to add additional property shall be effective unless also signed by Declarant. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of Cobb County. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that these Restrictions may be amended as provided in this Section.

ARTICLE X

ANNEXATION

10.01 Submission of Additional Property. Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Section 10. 02 of this Article, to submit all or portions of the Additional Property to this Declaration and thereby to cause the Additional Property, or such portions thereof as may be submitted, to become part of the Property. This option may be exercised by the Declarant in accordance with the conditions and limitations set out in this Article, which are the only conditions and limitations on such right.

10.02 Conditions of Annexation. Any Annexation as permitted in Section 10. 01 of this Article shall be in accordance with the following terms and conditions.

(a) The option to submit portions of the Annexation Property may be exercised at any time and from time to time until ten (10) years from the date this Declaration is recorded; provided however, that the Owners of Lots to which two-thirds of the Class A votes in the Association appertain, exclusive of any vote or votes appurtenant to Lots then owned by Declarant, may consent to the extension of such option by vote taken not more than one (1) year prior to the date upon which such option will expire.

(b) Portions of the Additional Property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become part of the Property.

(c) All Lots created on portions of the Additional Property, which are added to the Property will be restricted exclusively to residential use, in accordance with Article VI of this Declaration, unless otherwise used as Common Property.

(d) The option reserved by Section 10. 01 of this Article may be exercised by the Declarant alone (without the consent of the Association or any Owner) by the execution by the Declarant of an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of Cobb County, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property, which is to become part of the Property, the boundaries of all Lots to be located therein, and an identifying number for each such Lot. Any such amendment shall expressly submit that portion of the Additional Property which is to become part of the Property, and upon the exercise, if any, of such option, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation. Following recording of the plat, Declarant shall convey the Common property shown thereon to the Association by limited warranty deed, subject to matters of record.

(e) In addition to the procedure outlined in subparagraph (d) above, the option reserved by Section 10.01 of this Article may be exercised with respect to any portions of the Additional Property, notwithstanding that such Additional Property may be owned by persons, including any individual, individuals, corporations, partnerships or any other type of entity, other than Declarant. Declarant shall exercise this option by an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the

Superior Court of Cobb County, Georgia, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property, which is to become part of the Property, the boundaries of all Lots to be located thereon, and an identifying number for each such Lot. Any such amendment shall contain a statement consenting to the annexation of any such Additional Property, together with a reference to a Declaration, (citing the specific Deed Book and Page in which such Declaration is recorded) executed by the Owner or Owners thereof submitting such Additional Property to this Declaration. Upon the exercise of the foregoing procedure, the provisions of this Declaration shall be understood and construed as embracing all of the Property including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(f) From and after the date of annexation of any portion of the Additional Property, each Lot so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges accorded every other Lot previously comprising part of the Property. Upon annexation of each portion of the Property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owner, the covenants to maintain the Common Property and the other obligations imposed by this Declaration, as amended from time to time, with respect to that portion of the Additional Property which is then the subject of annexation.

(g) It is understood that if the Development is approved for funding of individual Lot loan by the Federal Housing Administration and/or the Veterans Administration, any variance from the plan of an Annexation initially approved by them may jeopardize future funding unless such variance is approved prior to implementation.

(h) Each Owner, by acceptance of a deed to a Lot in the Property, and the Association, shall be deemed to have approved annexation in the manner provided in this Article X.

ARTICLE XI

LEASES

11.01 Application. In order to assure a community of congenial Owners and thus protect the value of Lots within the Development, the leasing of a Lot, or any portion thereof, by any Owner (other than as provided herein for certain mortgagees and Declarant) shall be subject to the provisions contained in this Article so long as the Property is subject to the Restrictions.

11.02 Required Lease Provisions. All leases and lessees are subject to the provisions of the Declaration and Bylaws. No dwelling situated upon the Property shall be leased for transient or hotel purposes or in any event for a period less than six (6) months. The Owner must make available to the tenant a copy of this Declaration. Any leases of a Lot, or a portion thereof, shall be deemed to contain the provisions of this Article whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of his Lot shall contain the language of said provisions, and further, that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and its

incorporation as part of the lease along with the following provisions:

(a) In order to enforce those provisions made for the benefit of the Association, the Association may bring an action against Lessee for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

(b) Lessee shall comply strictly with all provisions of the Declaration, Bylaws, and with the administrative rules and regulations adopted pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges that the violation by Lessee or any occupant or person living with Lessee of any provisions of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Lessee further acknowledges that the Association has the right to act on its own behalf, or where necessary on behalf of Lessor, as Lessor's attorney-in-fact, to seek any remedies which are available to a landlord upon breach or default of a lease agreement by Lessee.

The provisions of this Article shall not apply to any institutional mortgagors of any Lot, which come into possession of such Lot as or result of a foreclosure sale or other judicial sale or as a result of any other proceeding in lieu of foreclosure.

## ARTICLE XII

### INSURANCE

12.01 Insurance Policies. At all time during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders and insured be given thirty (30) days prior written notice of any cancellation of such policies.

### 12.02 Insurance Proceeds.

(a) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board 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 paragraph, means repairing or restoring the

property to substantially the same condition and location that existed prior to the fire or other casualty.

(b) Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove directors, the Declarant, otherwise agree. 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 one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

(c) 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 shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in a like manner 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 for the benefit of the Association.

(d) 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, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

(e) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

12.03 Other Insurance. In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time, by either the Federal Home Loan Mortgage Corporation, Veterans Administration or Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.

#### ARTICLE XIII

#### MISCELLANEOUS

13.01 Other Changes. Notwithstanding any other provisions herein which may be construed to the contrary, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) of the individual Lots in the Development have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by such Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common area or property by the Association shall not be deemed a transfer

within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges, which may be levied against an Owner;

(c) fail to maintain fire and extended coverage on insurable Association Common Property, if any, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost);

(d) use hazard insurance proceeds for losses to any Association Common Property for other than the repair, replacement or reconstruction of such property.

#### 13.02 Rights of First Mortgagees.

(a) First mortgagees of Lots in the Development may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Association's Common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Property and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Despite any other provision of this Declaration which may be interpreted otherwise, it is expressly intended that no Owner or any other party have priority over any rights of the first mortgagee of a Lot pursuant to its mortgage or security deed in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Association Common Property.

(b) In addition to the rights of mortgagees elsewhere provided, each first mortgagee of a Lot, upon request, shall (i) be entitled to written notice from the Association of any default in the performance of his obligations under the Development documents of an Owner which is not cured within sixty (60) days; (ii) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (iii) be furnished copies of annual financial reports made to the Owners; (iv) be entitled to inspect the financial books and records of the Association during reasonable business hours; and (v) be entitled to timely written notice of any proposed action which would require the consent of a specified percentage of eligible mortgagees.

13.03 Professional Management. Any agreement for professional management of the Association, or any other contract providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice.

13.04 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

13.05 Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

13.06 Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

13.07 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

13.08 Notices. All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

- (a) Declarant: Columbia Homes, L. P.  
P. O. Box 100  
Woodstock, Georgia 30188
- (b) Owners: Each Owner's address as  
registered with the Association  
in accordance with the Bylaws.

Any written communication transmitted in accordance with this Section 13.08 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

13.09 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

13.10 Amendment by Board. Should the Veterans Administration, Federal Housing Authority, the Federal National Mortgage association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

13.11 Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

13.12 Approval of FHA or VA Required. So long as there is control by the Declarant of The Village at Morgan Hill development by the Declarant through the ownership of the Class B Membership, the following actions shall require the prior approval of the Federal Housing Administration and/or the Veterans Administration:

- (a) The annexation of additional properties to The Village at Morgan Hill;
- (b) the dedication of any Common Property to public use; and,
- (c) any subsequent amendment of this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this 3rd day of October, 1990

COLUMBIA HOMES, L. P.  
By: Bradsley Development, Inc.,  
General Partner

Signed, sealed and delivered  
this 3rd day of October, 1990  
in the presence of:

By: *Ronneau Ansley, Jr.*  
Ronneau Ansley, Jr., President

Attest: *Thomas L. Bradbury*  
Thomas L. Bradbury, Secretary

*Elizabeth A. Irwin*  
Unofficial Witness  
*Celia W. Killigham*  
Notary Public  
Notary Public, Gwinnett County, Georgia  
My Commission Expires Dec. 4, 1992



"CORPORATE SEAL"



EXHIBIT "A"

LEGAL DESCRIPTION  
THE VILLAGE AT MORGAN HILL

All that tract or parcel of land lying and being in Land Lot 140 of the 20th District, 2nd Section, City of Kennesaw, Cobb County, Georgia and being more particularly described as follows:

To find the true point of beginning, commence at the intersection of the northerly r/w of U. S. Hwy. 41 (200' r/w) and the westerly r/w of Paulding Drive (50' r/w) thence following the westerly r/w of Paulding Drive in a northerly direction a distance of 647.14' to a point. Thence N 86°23'54" W a distance of 5.00' to a point on the west r/w of Paulding Drive (60' right of way), and the true point of beginning, thence N 86°23'54" W a distance of 439.66' to a point, thence N 66°40'30" W a distance of 373.39' to a point, thence N 16°25'34" E a distance of 185.73' to a point, thence N 31°56'12" E a distance of 379.30' to a point, thence N 84°01'18" E a distance of 31.00' to the northwesterly side of the top of the detention pond dam, thence along the detention pond N 35°01'18" E a distance of 97.60' to a point, thence S 58°38'12" E a distance of 187.03' to a point, thence S 07°59'22" W a distance of 43.70' to a point, thence leaving the detention pond, S 63°12'41" E a distance of 65.88' to a point, thence S 83°13'01" E a distance of 80.72' to a point on the westerly r/w of St. Charles Lane (50' r/w) thence following said r/w along a curve to the left, having a radius of 75.00' an arc distance of 32.91' and being subtended by a chord and chord bearing of N 48°56'28" W 32.65', thence following a curve to the right having a radius of 50.00' an arc distance of 144.36' and being subtended by a chord and chord bearing of N 46°58'55" W 99.19' thence leaving said r/w N 54°16'21" W a distance of 147.97' to a point, thence N 29°43'42" E a distance of 56.50' to a point, thence N 72°16'31" E a distance of 20.17' to a point, thence N 74°26'45" E a distance of 40.05' to a point, thence N 82°07'55" E a distance of 48.15' to a point, thence S 73°58'56" E a distance of 91.50' to a point, thence S 78°36'16" E a distance of 56.07' to a point, thence S 79°45'24" E a distance of 42.86' to a point, thence S 82°32'44" E a distance of 86.18' to a point, thence S 78°08'11" E a distance of 29.93' to a point on the west right of way of Paulding Drive (60' right of way), thence running in a southerly direction following the western right of way of Paulding Drive the following distances and courses:  
S 01°06'28" E a distance of 24.32' to a point, thence  
S 05°05'16" W a distance of 49.44' to a point, thence  
S 07°38'38" W a distance of 102.64' to a point, thence  
S 07°18'22" W a distance of 226.10' to a point, thence  
S 02°35'37" W a distance of 141.31' to a point, thence  
S 03°51'22" W a distance of 133.98' to a point, thence  
S 03°18'50" W a distance of 91.34' to THE POINT OF BEGINNING.  
Said tract containing 11.54 acres.

**BK5886PG0228**

STATE OF GEORGIA

COUNTY OF CHEROKEE

CONSENT OF LENDER

The undersigned, being the holder of a Deed to Secure Debt and Security Agreement (the "Security Deed") conveying the property described in the foregoing Declaration of Covenants, Conditions and Restrictions for The Village at Morgan Hill does hereby consent to the filing of said Declaration in Cobb County, Georgia. The consent granted herein is not intended to constitute and shall not be deemed to constitute a subordination of the Security Deed to said Declaration.

This 4th day of October, 1990.

BANK OF CANTON  
By: *Steven L. Johnson*  
Title: *Executive Vice President*  
(Corporate Seal)

