

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

-FOR TURNBURY OAKS HOMEOWNERS ASSOCIATION, INC.

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Return To:
in Deed
J.V. Myers, Jr.
Book 11219, Page 0094, Gwinnett County,
Alston & Bird
Georgia Records
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

Please cross index with deed recorded

DECLARATION
OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR TURNBURY OAKS

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR TURNBURY OAKS (this "Declaration") is made as of the ____ day of _____ 1995, by MORRISON HOMES OF FLORIDA, INC. (formerly known as George Wimpey of Florida, Inc. and hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is the owner of certain real property in land lot 300 of the 6th District. Gwinnett County, Georgia, which is more particularly described on Exhibit A, attached hereto and made a part hereof.

Declarant is developing on the real property described above a community to be known as "Turnbury Oaks" (hereinafter sometimes referred to as the "Community") Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Turnbury Oaks, the Community made subject to this Declaration, by the recording of this Declaration and amendments thereto Declarant desires to provide a flexible and reasonable procedure for the overall development of Turnbury Oaks Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration.

Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

The Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to this Declaration, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The covenants, restrictions and easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, its heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

ARTICLE I
DEFINITIONS

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

1.01 ARC. “ARC” means the Architectural Committee described in Article V

1.02 Association ‘Association means Turnbury Oaks Homeowners Association, Inc (a non-profit, non stock, membership corporation organized wider the Georgia Nonprofit Corporation Code). its successors and assigns.

1.03 Board. “Board” means the Board of Directors of the Association.

1.04 By-Laws. “By-Laws” means the Bv-Laws of the Association.

1.05 Commencement Date ‘Commencement Date’ means the date on which this Declaration is recorded in the real estate records of Gwinnett County, Georgia.

1.06 Common Property “Common Property” means all real property (together with any and all improvements now or hereafter located thereon) personal property, or other property interest which is or may be subjected to the terms of this Declaration that is owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and environment of the Owners.

1.07 Community Wide Standard “Community-Wide Standard” shall mean the standard of conduct, maintenance or other activity generally prevailing in the Community Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to the Declaration and By-Laws Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

1.08 Declarant. “Declarant” means Morrison Homes of Georgia, Inc., a Florida Corporation qualified to do business in the State of Georgia, and its successors-in-title and assigns provided that in the instrument of transfer to any such successor-in-title or assign, such successor-in-title or assign is designated as the “Declarant” hereunder by the grantor of such transfer, which grantor shall be the “Declarant” hereunder at the tune of such transfer provided, further, upon such designation of successor “Declarant”, all rights and obligations of the former Declarant in and to such status as “Declarant” hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the “Declarant” hereunder at any one time

1.09 Lot ‘Lot’ means any parcel of land shown upon a Subdivision Plat; provided, however, that no portion of the Common Property shall ever be a Lot except as provided in Section 2.05 hereof

1.10 Member “Member” means any member of the Association

1.11 Membership “Membership” means the collective total of all Members of the Association

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

1.13 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 the 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.

1.14 Property. “Property” means that certain real property described on Exhibit A together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof.

1.15 Residence. “Residence” shall mean a Structure situated upon a Lot intended for independent use and occupancy as a residence for a single family for which a Certificate of Occupancy shall have been issued by the appropriate governmental authorities as a prerequisite to the occupancy of such Residence. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a Certificate of Occupancy for the Residence. Notwithstanding anything in this Declaration to the contrary, any Sales Office or Model Home located on the Property shall not be deemed a Residence until it is conveyed for occupancy to a third party other than the builder thereof.

1.16 Restrictions. “Restrictions” means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.17 Subdivision Plat. “Subdivision Plat” means any subdivision plat of the Property which is recorded in the Office of the Clerk of the Superior Court, Gwinnett County, Georgia, including the Final Plat of Turnbury Oaks Subdivision dated May 12, 1995, prepared by Larry R. Bollinger, Georgia Registered Land Surveyor No. 169 of Cornerstone Planning Co. and recorded in Plat Book 66, Page 169, Gwinnett County, Georgia records.

1.18 Structure. “Structure” means:

- (a) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, any Residence, garage, porch, shed., greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, dock, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, television antenna or any other temporary or permanent improvement to such Lot.
- (b) any excavation, grading, fill, ditch, diversion dam or other thing or device

which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

- (c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section applies to such change.

ARTICLE II COMMON PROPERTY

2.01 Conveyance of Common Property.

(a) The Declarant may from time to time transfer or convey to the Association, at no expense to the Association and in accordance with this Section, any Common Property for the common use and enjoyment of the owners of Residences and, to the extent set forth in this Declaration, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

(b) It is contemplated by the Declarant that the Declarant may convey to the Association Common Property for recreational use to include facilities such as a swimming pool. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Community.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

(e) Notwithstanding anything to the contrary on the Subdivision Plat, Lots 81 and 82 may become Common Property and be utilized for swimming and other recreational purposes and for other purposes permitted by the Association.

2.02 Right of Enjoyment. Every Owner of a Lot shall have a right and easement to use and enjoy the Common Property, subject to the rules and regulations of the Association, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common

Property by all other Owners. The Association may permit persons who are not Owners of Lots to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provide in Sections 2.03(e) and 3.05.

2.03 Rights and Obligations of The Association. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right, and where applicable, the obligation, 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) 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 Associations property including Common Property and revenues from assessments, user fees and other sources; and provided, however, that, during the period when the Declarant has the right to appoint members of the Board, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without approval by Declarant and a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association;

- (c) 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;

- (d) 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, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members who are present in person or b proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association and by the grantee, 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;

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

- (f) sell, lease or otherwise convey all or any part of its properties and interests therein;

- (g) enforce all applicable provisions of valid agreements of the Association relating

to the Common Property or any part thereof: and

- (h) maintain any and all landscaping treatments installed on Common Property, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads for Gwinnett County, Georgia; and
- (i) collect assessments which are described in Article IV including the exercise of all rights and remedies described herein or at law or equity; and
- (j) maintain all improvements on the Common Property and operate all recreational facilities, such as a swimming pool and cabana, on the Common Property; and
- (k) obtain and retain liability insurance on all Common Property and fire and extended coverage insurance on all improvements on Common Property.

2.04 Acceptance of Common Property by Association. As stated in Section 2.01 hereof, the Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easements (including but not limited to utility easements relating to gas, electricity, cable television, water, sanitary sewer and storm water

drainage) or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted and all obligations of the Declarant assumed by the Association. and the property shall thereafter, be Common Property to be maintained by the Association for the benefit of all of its Members.

2.05 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 the Members of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

2.06 Delegation of Use. Any Owner may delegate to the members of his family or his tenants who reside in a Residence, in accordance with the By-Laws, his right to use and enjoy the Common Property. The Common Property may be used by the guests, invitees and licensees of an Owner.

2.07 Maintenance. The Association shall maintain and keep in good repair the Common Property, This maintenance shall include, without limitation, maintenance, repair and replacement. subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The foregoing maintenance shall be performed consistent with the Community-

Wide Standard. To the extent any detention ponds and storm water lines shown on the Subdivision Flat are not dedicated and accepted by Gwinnett County, Georgia, for maintenance, the Association shall be responsible, and shall maintain and keep in good repair such facilities.

The Association shall also have the right, but not the obligation to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit the Community.

- 2.08 Governmental Requirements. The Association shall enter into any agreements, permits or other documents with Gwinnett County or any other governmental entity which may be necessary or appropriate for the acceptance of responsibility and maintenance for any customized improvements to any roadway within the Community.

ARTICLE HI
TURNBURY OAKS HOMEOWNERS ASSOCIATION, [NC.

- 3.01 Purposes, Powers and Duties of The Association. The Association is formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Community. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Community. To the extent, and only 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 and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations 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.
- 3.03 Voting Rights. At the expiration of the Declarant Control Period established in Section 3.08 below, each Owner of a Lot, shall be entitled to one (1) vote per Lot owned. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.
- 3.04 Board of Directors. 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 the By-Laws of the Association.

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 or the Design Standards of the ARC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.14 or 8.02 hereof;
- (b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or
- (c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such 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 Owners ingress to or egress from his Lot.

3.06 Termination of Membership. Membership shall cease only when a person or entity ceases to be an Owner.

3.07 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 By-Laws of the Association, as each shall from time to time be in force and effect.

3.08 Control by Declarant.

- (a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association or any other document, Declarant hereby retains the right to operate the Association and the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association until after the first of the following events shall occur (“Declarant Control Period”): (i) the expiration of ten (10) years after the date of the recording of this Declaration or (ii) six (6) months after the date upon which all Lots intended by Declarant to be a part of the Community have been conveyed by Declarant to Owners other than an entity or entities constituting Declarant or (iii) the date Declarant surrenders the authority to operate the Association and the right to appoint and remove directors and officers by an express amendment to this Declaration or other recorded document executed and recorded by Declarant at any time, Declarant hereby reserving the right to so surrender such authority Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to operate the Association and to appoint and remove directors and officers of the

Association as provided in this Section

- (b) Upon the expiration of the Declarant Control Period, the right to operate the Association and the right to appoint and remove directors and officers of the Association shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be called at such time. 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. 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.

3.09 Indemnification The Association shall indemnify every officer, director and committee member, including members of the committees established under Article V, against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Georgia law.

ARTICLE IV ASSESSMENTS

4.01 Covenant for Assessments and Creation of Lien and Personal Obligation. Each Owner of a Lot, 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 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 such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.03 hereof and costs of collection including reasonable attorney's fees.
- (d) that such continuing charge and lien on such Lot binds such Lot in the hands of

the then Owner, and the Owners 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 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) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction repair or alteration of Structures,

- (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot from liability for any assessment thereafter assessed,
- (f) that all annual, special and specific assessments (together with interest thereon as provided in Section 4.08 of this Declaration and costs of collection including reasonable attorney's fees) levied against any Lot owned by it during the period that it is an Owner shall be (in addition to being a continuing charge and lien against such Lot as provided in Section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot owned by it, 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 Community, including, but not limited to, 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 ARC, 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. Beginning on January 1 of each calendar year and continuing thereafter until January 1 of the year immediately following, each Lot shall be subject to an annual assessment in the amount determined by the Board. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on

January 1 of the year immediately following the Commencement Date

4.05 Special Assessments In addition to the annual assessments authorized by this Article IV, the Association may levy, at any time in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paving, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property

4.06 - Assessment Procedure The Board shall establish the annual assessment for each Assessment Year and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the 'Due Date') The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs will be covered by Special Assessment. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year The Board shall also establish payment procedures for payment of any special assessments which may be levied in accordance with the provisions of this Article [V

4.07 Uniform Rate of Assessment Both annual and special assessments must be fixed at a uniform rate for all Lots

4.08 Effect of Nonpayment of Assessments Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of fifteen percent (15%) 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. In the event of default in the payment of any one or more installments of an assessment, 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 prior to 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 interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owners Lot enforceable in accordance with the provisions of this Declaration.

4.09 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.

4.10 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the Approval of Declarant for so long as - Declarant has the right to appoint officers and directors of the Association

4.11 Specific Assessments The Board shall have the power to specifically assess an Owner or Owners pursuant to this Section as. in its discretion, it shall deem appropriate Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses. including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses. except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein

- (a) Expenses of the Association which benefit less than all of the Lots. which may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received;
- (b) Expenses incurred by the Association pursuant to Sections 5.11, 6.14 or 8.02 hereof, and
- (c) Reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws

4.12 Initial Assessment The Association or the Declarant may establish a working capital fund for the initial operation of the Association, such initial working capital to be funded by a one-time assessment of two (2) times the monthly assessment (or monthly assessment equivalent if assessments are imposed other than monthly) for a Lot. Such assessment, if established, shall be payable by the initial Owner of each Lot at the time of such Owners purchase of each such Lot

4.13 Reserves and Shortfalls Notwithstanding any other provision in this Declaration, the By-Laws or the Articles of Incorporation to the contrary, the Declarant shall have no obligation to fund Association reserves or any shortfall in the budget, such reserves or shortfalls to be funded solely by assessments.

ARTICLE V ARCHITECTURAL REVIEW

5.01 Architectural Review Committee - Creation and Composition.

- (a) The ARC shall be established consisting of not less than one (1) nor more than five (5) individuals, provided, however, that the ARC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, except as provided for in Section 5.17 hereof, the Declarant shall have the right, but not the obligation, to appoint all members of the ARC until the date all work related to the initial sale of Residences has been completed and all of the Residences for all of the Lots in the Community have been conveyed to third party Owner for occupancy. Thereafter, the Board shall appoint the members of the ARC. All costs of operating the ARC, may, at the discretion of Declarant (or at the discretion of the Board if at the time the Board has the right to appoint and remove members of the ARC as provided in Section 3.08 hereof), be borne by the Association.
- (b) Each initial member of the ARC shall be appointed for a calendar year term. If any vacancy shall occur in the membership of the ARC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ARC shall continue to act and such vacancy shall, subject to the provisions of Section 5.01(a) and 5.17, be filled by the Declarant (or Board *if at* the time the Board has the right to appoint and remove members of the ARC) at the earliest possible time. Any ARC member may resign at any time by giving written notice of such resignation to the Chairman of the ARC and such resignation shall take effect on receipt thereof by the Chairman. Subject to Section 5.17 hereof, any member of the ARC may be removed at any time with or without cause by the Declarant (or Board if at the time the Board has the right to appoint members of the ARC).

5.02 Purpose, Powers and Duties of the ARC. The purpose of the ARC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ARC 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 Community Wide Standards, 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 ARC 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 ARC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ARC as they shall from time to time determine necessary.

5.04 Operations of the ARC.

- (a) Meetings. The ARC shall hold regular meetings as often as may be established

by the ARC. 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 ARC then in office. Regular and special meetings of the ARC shall be held at such time and at such place as the ARC shall specify. Notice of each regular or special meeting of the ARC 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. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ARC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ARC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ARC, 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 ARC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ARC. In the absence of a quorum, any member of the ARC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The ARC shall maintain both a record of votes and minutes for each of its meetings. The ARC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary thereof. Any action required to be taken at a meeting of the ARC, or any action which may be taken at a meeting of the ARC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by a majority of the members of the ARC and be filed within the minutes of the proceedings of the ARC. 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 ARC.

(b) Activities.

(i) The ARC may adopt and promulgate Design Standards described in Section 5.05 hereof and, if such Design Standards are adopted and promulgated, 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 ARC pursuant to the provisions of this Declaration. The ARC may issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration and/or the Design Standards.

(ii) Any one (1) or more members of the ARC may be authorized by the ARC to exercise the fill authority of the ARC with respect to all matters over which the ARC has authority as may be specified by resolution of the ARC, except with respect to the adoption or promulgation of the Design Standards. The majority action of one (1) or more members with respect to the matters specified shall be final and binding upon the ARC and upon any applicant for an approval, permit or authorization, subject, however,

to review and modification by the ARC on its own motion or appeal by the applicant to the ARC as provided in this paragraph (ii). Written notice of the decision of such one (1) or more members shall 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 ARC. 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 ARC, 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 ARC with respect to such matter or any other matter shall be final and binding.

5.05 Design Standards.

- (a) The ARC may 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 ARC 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 ARC pursuant to this Declaration; and
 - (iv) assuring the conformity and harmony of external design and general quality of the Community.
- (b) The ARC shall make a published copy of its current Design Standards, if any, as the same may be amended from time to time, (in the form of a Design Review Manual) readily available to Members and prospective Members of the Association and to all applicants seeking the ARC's approval. All references herein to the Design Standards shall mean the Design Standards. if promulgated and adopted, as the same may be amended from time to time.
- (c) The Design Standards may require certain specific types of construction and/or site improvement relating to the development of a Lot including, without limitation, specific requirements as to (i) types of driveways and mail boxes that are to be installed. (ii) the installation of a concrete sidewalk for each Lot and (iii) trees, shrubs and ground cover that are to be installed and/or retained.

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 therefor shall have been submitted to and approved in writing by the ARC. For purposes hereof but without

limiting the foregoing in any way, any change in the color of the exterior of any Structure shall be deemed to be a material change in appearance. The plans and specifications referred to in this Paragraph 5.06 shall be in such form and shall contain such information as may be reasonably required by the ARC, including, but not limited to:

- (a) a site plan;
- (b) a foundation plan;
- (c) a floor plan;
- (d) exterior elevations of all proposed Structures and alterations to existing Structures;
- (e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures;
- (f) plans for landscaping and grading; and

5.07 Approval of Plans and Specifications. If requested by the ARC, upon approval by the ARC of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the ARC 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 any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ARC'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 Structure. 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 ARC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

- (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, if any;
- (c) any other matter which, in the judgment of the ARC, 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 Community-Wide Standard, or (ii) as to location to be

incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ARC shall disapprove any plans and specification 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 ARC 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 ARC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ARC, if granted, together with any conditions imposed by the ARC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by ARC to take any 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 ARC may, after reasonable notice, at any reasonable time or times enter upon any Lot and 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 ARC, 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 substantial accordance with the plans and specifications approved by the ARC 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 ARC such violation shall have occurred, the ARC shall notify the Association and the Board shall take appropriate measures to correct the violation; 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 and all other rights provided for in Section 8.02 hereof.
- 5.12 Certification of Compliance.
- (a) Upon completion of the installation, construction or alteration of any Structure in substantial accordance with plans and specifications approved by the ARC, the ARC shall, upon written request of the Owner

thereof or upon the ARC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ARC.

- (b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrance in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ARC of the actual construction of Structures or of the workmanship, or to represent or warrant to anyone the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment.

The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation.

5.13 Fees. The ARC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and of inspections performed pursuant to Section 5.10. The fee shall be established from time to time by the ARC.

5.14 Nondiscrimination by ARC. The ARC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicants race, color, sex, religion, age or national origin. Further, the ARC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

5.15 Disclaimer as to ARC Approval. Plans and specifications and completed work are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications or by issuing a Certificate of Compliance neither the ARC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ARC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone (which shall include, without limitation, persons submitting plans and specifications to any of them for approval, any Owner of property affected by this Declaration, and any third parties) by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with (a) the approval or disapproval or failure to approve or disapprove any such plans or specifications or (b) the issuance or failure to issue a Certificate of Compliance. Every person who submits plans or specifications, every Owner and every third party agrees that it will not bring any action or Suit against Declarant, the Association, the ARC, the Board, or the officers, directors, members,

employees, and agents of any of them to recover any such damages and hereby releases, quit-claims and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

5.16 Variations and Waivers. The ARC shall have the authority to issue variations and to grant waivers with respect to the matters that are within its purview pursuant to this Article V and also with respect to the general covenants and restrictions imposed by Article VI hereof Any such variations and/or waivers shall be in writing and may be granted by the ARC when in its reasonable judgment the ARC determines that the variance and/or waiver is appropriate under the particular facts or circumstances.

5.17 Declarant. Declarant shall have the right, but not the obligation, to have and maintain a majority membership on the ARC and have the right to unilaterally promulgate the Design Standards until the date Declarant has completed all of its work relating to the initial sale of Residences on the Property and has conveyed all of the Residences for all of the Lots in the Community to third party Owners for occupancy. Residences or Structures constructed by Declarant shall be deemed in compliance with the ARC architectural and design requirements; however, since Declarant maintains the right to appoint a majority membership on the ARC. Declarant shall not be required to comply with the ARC submission, approval and disapproval requirements set forth in Sections 5.06, 5.07, 5.05 and 5.13 above. To the extent this Section 5.17 conflicts with any other provision of this Declaration, any provision in the Articles of Incorporation or Bylaws of the Association, or any other document, this Section 5.17 shall control.

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. Further guidelines with respect to the matters set out in this Article VI may be included in the Design Standards promulgated by the ARC, and to the extent so included are incorporated herein by reference.

6.02 Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Residence with the exception of Declarants ability to establish a sales center in any one of the unsold Residences until such time as all Residences have been sold and closed except that the Owner or Occupant residing in a Residence may conduct such business activities within the Residence so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the Residence; (ii) the business activity conforms to all applicable zoning requirements; (iii) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use.

6.03 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 ARC of plans and specifications for such split, division or subdivision. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter; and, provided further, that the determination as to whether the Owner of the Residence on such Lot shall be responsible for annual and special assessments based upon the number of Lots combined into one Lot or for one Lot shall be made by the Board of Directors of the Association.

6.04 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ARC of plans and specifications for the prevention, and control of such erosion or siltation. The ARC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 605. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ARC.

6.05 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ARC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Design Standards of the ARC.

6.06 Trees. No living tree having a diameter of three (3) 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. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ARC.

6.07 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefor approved by the ARC.

6.08 Signs.

- (a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the ARC's prior written approval of plans and specifications therefor, 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 temporary "For Sale" sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and, provided, further, that if, at the time of any desired use of such sign, the Association is making "For Sale" 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 ARC; and
 - (iv) signs that may not be prohibited by law
- (b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ARC.

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6.09 Setbacks. In approving plans and specifications for any proposed Structure, the ARC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ARC. 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 ARC of plans and specifications for such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ARC. No chain link fences shall be allowed.

6.11 Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ARC of plans and specifications for such roads and driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards of the ARC.

6.12 Antennae, Clotheslines, Etc. No exterior television or radio antennae or receiver or solar equipment or clothesline of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ARC. No antennae shall be installed or used for the purpose of transmitting electronic signals.

6.13 Garbage Cans, Etc. All equipment, garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to completely conceal them from view by neighboring residences and streets, and may be maintained in the rear yard on a Lot only.

6.14 Maintenance. Each Owner shall keep and maintain each Lot and Structure 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 all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a

Lot to the curbing of the right-of-way bordering said Lot. If in the opinion of the ARC, any Owner shall fail to perform the duties imposed by this Section, the ARC shall notify the Association. If the Board shall agree with the determination of the ARC 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 of Abatement and all other rights provided for in Section 8.02 hereof Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ARC.

6.15 Commercial and Recreational Vehicles and Trailers. No commercial vehicle, unlicensed or inoperable motor vehicle, house trailer, mobile home, motor home, recreational vehicle (excluding four wheel drive sports utility vehicles), camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed-on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed garage and is concealed from view by neighboring residences and streets.

6.16 Recreational Equipment. Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ARC. Retractable basketball goals may be placed adjacent to the driveway, but shall be painted to match the house and shall be stored in the garage of the Residence no later than 9:00 p.m. each and every night. No above ground pool shall be allowed.

6.17 Non-Discrimination. No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age or national origin.

6.18 Animals. No agricultural animals may be kept on any Lot and 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. All household pets shall not be permitted upon the Common Property unless under the supervision of a responsible person, restrained by a leash or by being carried by such responsible person. No animal shall be allowed to become a nuisance and no Lot shall have more than two (2) household pets at any one time. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have been approved by the ARC.

6.19 Solid Waste.

- (a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.
- (b) Except during approved construction and as approved by the appropriate governmental authority, no person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property;

- (c) Except for building materials employed during the course of construction of any Structure approved by the ARC, 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.
- (d) 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 in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Design Standards.

6.20 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become any annoyance or nuisance to the community.

6.21 Covenants and Restrictions on Subdivision Flats. Any covenants or n restrictions set out on the Subdivision Flat (other than any which conflict with any provision of the Declaration) are hereby incorporated herein by reference and shall have the same effect as if specifically set out herein. In the event of any conflict or inconsistency between any term or provision of this Declaration and any term, provision or matter contained on any Subdivision Flat, the Board shall determine which controls, or, in the absence of such a determination, the term or provision herein shall control.

6.22 Garages. Unless otherwise approved by the ARC, each Residence shall include a garage adequate to house two (2) but not more than four (4) large size automobiles. All garages shall also provide for storage areas. Guidelines relating to the design and size requirements for garages and related storage areas may be included in the Design Standards of the ARC.

6.23 Window Treatments. Bed sheets, plastic sheets, newspapers, plastic storm windows or other similar window treatments shall not be hung or placed in or on any window on any Structure located on any Lot. No Structure shall have any aluminum foil placed in any window or glass door or any reflective substance or other materials (except standard window treatments) placed on any glass.

6.24 Pipes: Cables: Hoses. No water pipe, sewer pipe, gas pipe, drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground and no wire, cable or other similar transmission line may be attached to the exterior of any Structure on any Lot. Except during periods of actual use, no hose shall be stored or placed in the front or side yard of any dwelling unless screened from public view.

6.25 Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other owners and with the Association that each individual Owner shall carry blanket all risk casualty insurance on the dwelling and all Structures located upon the

Lot, at a minimum, such coverage shall provide coverage against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insured hazard. The Board, or its duly authorized agent, shall have the authority to obtain insurance for all or any of the dwellings located on the Property, unless the Owners thereof have supplied proof of adequate coverage to the Boards satisfaction. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction to the dwelling and other Structures constructed on the Lot, the Owner shall proceed promptly to repair or to reconstruct the dwelling in a manner consistent with the original construction, unless approval to do otherwise is obtained from the ARC or the Board.

6.26 Lawn Furniture. Lawn furniture shall be used and maintained in rear yards or decks only and shall be maintained in a neat and attractive manner.

6.27 Use of Common Property. There shall be no obstruction of the Common Property nor shall anything be kept, parked or stored on any part of the Common Property without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Property without the prior written consent of the Association.

6.28 Leasing Amendment. (Filed and Recorded in Gwinnett County Superior Court 5/27/2003)

STATE OF GEORGIA

CROSS REFERENCE Deed Book 11987

Page 037

COUNTY OF GWINNETT

**AMENDMENT TO THE DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR TURNBURY OAKS**

WHEREAS, the Declaration of Covenants, Restrictions and Easement for Turnbury Oaks was recorded on November 17, 1995, in Deed Book 11987, Page 037, et seq., Gwinnett County, Georgia Records ("Declaration"); and

WHEREAS, Article IX, Section 9.03(a) of the Declaration provides that notice of the subject matter of any proposed amendment to the Declaration shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association; and

WHEREAS, the notice described in Article IX, Section 9.03(a) of the Declaration was properly provided to each member of the Association; and

WHEREAS, Article IX, Section 9.03(b) of the Declaration provides that at such meeting, a resolution adopting the proposed amendment may be proposed by either the Board or by Members of the Association and such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association; provided that any amendment which materially and adversely affects the security, title and interest of an y mortgagee must be approved by such mortgagee and during the period in which

Declarant has the right to appoint and remove officers and directors of the Association such amendment must be approved by the Declarant; and

WHEREAS, the resolution required by Article IX, Section 9.03(b) of the Declaration was proposed by the Board of Directors at a duly called meeting of the Association members; and

WHEREAS, Members holding at least two-thirds (2/3) of the total votes in the Association approved this amendment at such duly called meeting; and

WHEREAS, this amendment does not materially or adversely affects the security, title or interest of any mortgagee; and

WHEREAS, Declarant no longer has the right to appoint and remove officers and directors of the Association; and

NOW THEREFORE, the Declaration of Covenants, Restrictions and Easement for Turnbury Oaks is hereby amended to add the following new Section 6.28 to Article VI thereof:

6.28. Leasing. In order to preserve the character of the Property as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, leasing of Lots shall be governed by the restrictions imposed by this Section. **Except as provided herein, the leasing of Lots is prohibited.**

(a) Definitions.

(i) "Effective Date" means the date this Amendment is recorded in the Gwinnett County, Georgia land records.

(ii) "Grandfathered Owner" means an Owner of a Lot who is lawfully leasing his or her Lot on the Effective Date. Grandfathering shall apply only to the Lot owned by that Grandfathered Owner on the Effective Date. Grandfathering hereunder shall continue only until the date the Grandfathered Owner conveys title to the Grandfathered Lot to any other person (other than the Owner's spouse).

(iii) "Grandfathered Lot" means the Lot owned by a Grandfathered Owner on the Effective Date hereof.

(iv) "Leasing" means the regular, exclusive occupancy of a Lot by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner, or (2) a person who occupies the Lot with the Owner or parent, child or spouse of the Owner, so long as such Owner or parent, child or spouse of the Owner is occupying the Lot as his or her primary residence. For purposes of this provision, a corporate-owned Lot cannot be used to temporarily relocate executives or for housing employees of the corporation, unless such executive or employee has been permanently assigned to the Atlanta area. Otherwise, the occupancy of such Lot by such executive or employee of the corporate Owner (even if

he/she did not sign a lease and is not paying rent) shall be deemed “leasing” and be subject to the provisions of this Section 6.28.

(b) Leasing Permit and Restriction. No Owner of a Lot may lease his or her Lot unless: (1) the Owner is a Grandfathered Owner; (2) the Owner is not a Grandfathered Owner but has received a hardship leasing permit from the Board as provided below; or (3) the Owner is not a Grandfathered Owner but has occupied the Lot for a period of no less than two (2) years.

(c) Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a hardship leasing permit. The Board shall have the authority to issue or deny requests for hardship leasing permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship, (2) the harm, if any, which will result to the Property if the permit is approved, (3) the number of hardship leasing permits which have been issued to other Owners, (4) the Owner's ability to cure the hardship, and (5) whether previous hardship leasing permits have been issued to the Owner.

A “hardship” as described herein shall include, but not be limited to, the following situations: (1) an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) months from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; and (2) an Owner dies and the Lot is being administered by his or her estate.

Hardship leasing permits shall be valid only as to a specific Owner and Lot and shall not be transferable to other Lots or Owners (including a subsequent Owner of a Lot where a permit was issued to the Owner's predecessor-in-title). Hardship leasing permits shall be valid for a term approved by the Board, not to exceed one (1) year. Owners may apply for additional hardship leasing permits at the expiration of a hardship leasing permit, if the circumstances warrant.

Hardship leasing permits shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse); (2) the failure of an Owner to lease his or her Lot within ninety (90) days of the permit having been issued; or (3) the failure of an Owner to have his or her Lot leased for any consecutive ninety (90) day period thereafter.

(d) Leasing Provisions. Leasing which is authorized hereunder shall be governed by the following provisions:

(i) Notice. At least seven (7) days before entering into a lease, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of that lease. If a lease is disapproved, the Board shall notify the

Owner of the action to be taken to bring the lease in compliance with the Declaration and any Association rules.

(ii) General. Lots may be leased only in their entirety; no rooms or fractions of Lots may be separately leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; rather, the Board's approval shall be limited to the form of the proposed lease.

(iii) Liability for Assessments; Compliance. Each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(A) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and Association rules and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants are liable and may be sanctioned for violations.

If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, fines may be levied hereunder against the lessee and/or the Owner, and such violation is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Association also may require the Owner to evict the violating tenant.

(B) Liability for Assessments. When an Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall

reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(e) Applicability of this Section. Notwithstanding the above, this Section shall not apply to any leasing transaction entered into by the Association, or by any first mortgagee who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage. Such parties shall be permitted to lease a Lot without first obtaining a permit in accordance with this Section.

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 for any reasonable purpose which Declarant reasonably 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 cables 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 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; and
 - (iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers 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.

7.02 Easements on Subdivision Flats. Any reservation by Declarant of any right, privilege or easement contained on the Subdivision Flat is hereby incorporated herein by reference and shall have the same effect as if specifically set out herein.

7.03 Easement Area. The words 'Easement Area' as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement, on any filed or recorded map or plat relating thereto or on the Subdivision Flat.

7.04 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, provided the same are done in accordance with the provisions of this Section. 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 in an Easement Area pursuant to the provisions of Section 7.01.

7.05 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.

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, its legal representatives, heirs, successors and assigns.

8.02 Right of Abatement: Fines.

- (a) Except where different notice provisions are provided in Sections 5.11 and 6.14, 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 said written notice, then the Association shall have the Right of Abatement.

- (b) The Right of Abatement, as used in this Section and in Sections 5.11 and 6.14 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 entry and such actions, provided such entry and 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 15%) 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 or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

- (c) In addition to all other remedies, in the sole discretion of the Board, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, tenants, or employees to comply with any term, provision, covenant, restriction, rule or regulation contained herein or promulgated pursuant to this Declaration, provided the following procedures are adhered to:
 - (i) The Association shall notify the Owner of the infraction or infractions. Included in the notice shall be the date and time of the next Board meeting at which time the Owner shall present reasons why a penalties or penalties should not be imposed.

 - (ii) The noncompliance shall be presented to the Board after which time the Board shall hear reasons why penalties should not be imposed. A written decision of the Board shall be submitted to the Owner no later than thirty (30) days after the Board meeting.

Fines may be imposed as follows:

- (a) First noncompliance or violation: a fine not in excess of ONE HUNDRED AND NO/100 DOLLARS (\$100.00).

- (b) Second noncompliance or violation: a fine not in excess of TWO

HUNDRED AND NO/100 DOLLARS (\$200.00).

- (c) Third and subsequent noncompliance, or violation or violations that are of a continuing nature: a fine not in excess of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) for each week of continued violation or noncompliance.

Fines shall be paid no later than thirty (30) days after notice of the imposition or assessment of the penalties. Any fines not paid within such thirty (30) day period shall thereafter accrue interest at the rate of ten percent (10%) per annum until paid. Any fine, imposed hereunder shall constitute a lien against the Owners 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 or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures. All monies received from fines shall be allocated as directed by the Board. Any fine imposed hereunder shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner.

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, fine, 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 set out above, 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 Gwinnett 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 Sheriffs advertisements for Gwinnett 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 percentum of the aggregate amount due for attorneys' fees, shall pay any excess to such 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 RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS 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 representatives, 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. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Gwinnett County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of twenty (20) years provided, however, that after the end of the first twenty (20) year period and during any twenty (20) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed in accordance with O.C.G.A. § 44-5-60(d)(2) (or its successor statute), provided that two-thirds (2/3) of the Members of the Association approve such termination.

9.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Gwinnett County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owners Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 902 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Community (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable

such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

9.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 9.02 hereof, shall be proposed and adopted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association provided, however (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.

- (c) The agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the Agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

ARTICLE X ANNEXATION

10.01 Annexation. For so long as Declarant has authority to appoint and remove Directors and Officers of the Association, additional real property may be annexed to the Property by the Declarant (and shall become part of the "Property") without the consent of the Members. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Gwinnett County an approved subdivision plat or an amendment or supplement to an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or filing an amendment to the Declaration which has

been consented to by the owners of the real property to be annexed if such real property is owned by someone other than Declarant. At the expiration of Declarant's right to appoint and remove Directors and Officers of the Association, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

ARTICLE XI
MISCELLANEOUS

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

11.02 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.

11.03 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.

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

11.05 Notices. All amendments, 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 ARC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

- (a) Declarant: Morrison Homes of Florida, Inc.
1080 Holcomb Bridge Road
Building 100, Suite 190
Roswell Georgia 30074
Attn: Mr. Halford G. Adams
- (b) Owners: Each Owners address as registered with the Association in accordance with the By-Laws

Any written communication transmitted in accordance with this Section 11.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

11.06 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.

11.07 Insurance.

- (a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep 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 all improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) commercial general liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for 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.
- (b) 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. 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 Members entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove directors, the Declarant otherwise agrees not to reconstruct such damage or destruction to the Common Property. 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. 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 Associations Members, levy a special assessment. Additional assessments may be made in 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.

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.

- (c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be paid by the Association.
- (d) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as the Board may determine.

11.08 Security. ALL OWNERS, OCCUPANTS, GUESTS, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, THE ASSOCIATION AND THE BOARD, AND THE ARC DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR SECURITY MEASURES WILL BE IMPLEMENTED IN THE COMMUNITY OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, GUEST, OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, THE ASSOCIATION, THE BOARD AND ARC ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, GUEST, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE BOARD, AND ARC HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

11.09 Litigation. At the end of the Declarant Control Period, except as provided below, no judicial or administrative proceedings shall be commenced or prosecuted by the Association unless approved by a vote of members holding seventy-five percent (75%) of the total votes in the Association, other than the Declarant. This Section shall not apply, however, to (a) an action brought by the Association to enforce the provision of this Declaration (including without limitation, the foreclosure of liens); (b) imposition and collection of assessments as provided in Article IV; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association and proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor or supplier of goods or services arising out of a contract for services or supplies. This Section 11.09 shall not be amended unless such amendment is approved by the percentage of votes and pursuant to the same procedures, necessary to institute the proceedings as provided above.

11.10 Construction and Sale Period. Notwithstanding any provisions contained in this Declaration (including, without limitation, Article VI), the By-Laws, Articles of Incorporation, and any amendments, so long as there is development and construction related to the initial sale of Residences, it shall be expressly permissible for Declarant to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarants development. construction, and sales activities related to the Property including, but without limitation the following:

- (a) the right of access, ingress and egress for vehicular (including, without limitation, trucks and other vehicles used in connection with the construction of Residences on the Property) and pedestrian traffic over, under, on or in the Property;
- (b) the right to tie into any portion of the Property with driveways, parking areas and walkways;
- (c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any devise which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Property;
- (d) the right to carry on sales and promotional activities on the Property; and the right to construct and operate business offices, signs, construction trailers, Structures, model residences, and sales offices. Declarant may use Structures, offices, or other buildings owned or leased by Declarant as model residences and sales offices.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person or entity causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent so long as the Declarant owns any Lots on the Property.

ARTICLE XII MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on Residences in the Community. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.0 1 Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage,

who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Lot address, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Common Property;
- (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action which pursuant to the terms hereof would require the consent of a specified percentage of eligible mortgagees.

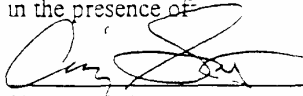
12.02 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

12.03 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owners Residence.


12.04 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.

IN WITNESS WHEREOF the Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

Signed, sealed and delivered
in the presence of



Unofficial Witness

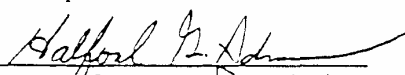


Notary Public


Date of execution by Notary:

Notary Public, Cherokee County, Georgia
My Commission Expires June 15, 1996

MORRISON HOMES OF FLORIDA, INC
a Florida corporation

By: 

as its Division President

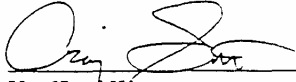
Attest. 

as its Controller

(Corporate Seal)

The Association, by the execution hereof, acknowledges the agrees that the Association is hereby bound by all of the Associations obligations under this Declaration.

Signed, sealed and delivered
in the presence of



Unofficial Witness


Notary Public

Date of execution by Notary

Notary Public, Cherokee County, Georgia
My Commission Expires June 15, 1996

TURNBURY OAKS HOMEOWNERS
ASSOCIATION, INC , a Georgia
Corporation

By: 
_____, President

Attest: 

(Corporate Seal)

This document was prepared by Alston & Bird, One Atlantic Center, 1201 West
Peachtree Street,
Atlanta, Georgia 30309-3424.

EXHIBIT "A"

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 300, 6th District, Gwinnett County, Georgia, and being shown on that certain Final Plat of Turnbury Oaks Subdivision, including Lots 1 through 21 and 66 through 82, together with any and all easements, appurtenances or common areas set forth thereon, dated May 12, 1995, prepared by Larry R. Bollinger, Georgia Registered Land Surveyor No. 169, of Cornerstone Planning Co. and recorded May 15, 1995 in Plat Book 66. Page 169, Gwinnett County, Georgia records and including the lands described as "Open Space" or "Detention Pond" on the subdivision plat.

