

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
BROOKSTONE**

*A Country Club Community*

(CONSOLIDATED)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**BROOKSTONE, A COUNTRY CLUB COMMUNITY  
(Consolidated)**

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*This document is a consolidated Declaration of Covenants, Conditions & Restrictions for Brookstone, a Country Club Community. This document is a consolidation of the original Declaration and those amendments which are listed on the last page of this document. This consolidated Declaration has been created by the Association for owners within the Association for reference purposes only. Although this document includes the text of each amendment (without introductory recitations and property descriptions from the original document) the best and sole resource for issues are the actual documents recorded in the land records of Cobb County, Georgia. The purpose behind the creation of this consolidated document is to simplify and inform members of the Association as to the provisions of the Declaration.*

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**BROOKSTONE, A COUNTRY CLUB COMMUNITY**  
*(CONSOLIDATED)*

**DECLARATION OF COVENANTS. CONDITIONS. AND RESTRICTIONS  
FOR BROOKSTONE. A COUNTRY CLUB COMMUNITY, AS AMENDED**

**ARTICLE I  
DEFINITIONS**

Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Additional Property" shall mean and refer to the real property described in Exhibit B and all improvements thereon, together with such other additional property and all improvements thereon as Declarant shall acquire from time to time and by amendment to Exhibit B hereto recorded in the records of the Clerk of the Superior Court of Cobb County, Georgia, include within the property described in Exhibit B.

(b) [Deleted by Amendment dated January 26, 1994, Deed Book 7993, Page 0051.]

(c) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Brookstone Homeowners Association, Inc., as amended from time to time.

(d) "Assessment" shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(e) "Association" shall mean and refer to Brookstone Homeowners Association, Inc., a Georgia nonprofit corporation.

(f) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(g) "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of Brookstone Homeowners Association, Inc. which govern the administration and operation of the association, as the same may be amended from time to time.

(h) "Club Owner" shall mean and refer to the owner of the Country Club Property, and its successors, assigns, and successors-in-title with respect thereto.

(i) "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The designation of any land and/or improvement as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein.

(j) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

(k) "Country Club" shall mean and refer to the golf course and related club facilities developed by Club Owner on the Country Club Property adjacent to the Development, including the eighteen hole golf course, golf driving range, putting green, golf cart paths, tennis courts, swimming pool, clubhouse, tennis and golf pro shops, locker room facilities, food and beverage facilities and other related facilities. Brookstone Golf & Country Club., Ltd., a Georgia limited partnership, owns the Country Club and the Country Club is not part of the Common Areas nor is it governed by the provisions of this Declaration.

(l) "Country Club Property" shall mean and refer to that certain property on which the Country Club is located, being more particularly described in Exhibit C. attached hereto and incorporated herein by this reference.

(m) "Declarant" shall mean and refer to: (i) Willoughby & Sewell Development, Ltd., or (ii) any successor in title to the entire interest of Willoughby & Sewell Development, Ltd. with respect to the Property and the Additional Property at the time of such transfer to said successor in title, (iii) or any Person or entity that acquires any interest of Willoughby & Sewell Development, Ltd. with respect to the Property and any Additional Property pursuant to foreclosure of: (a) that certain Deed to Secure Debt and Security Agreement, recorded at Deed Book 4420, Page 391 of the Cobb County, Georgia records; (b) that certain Deed to Secure Debt recorded at Deed Book 4210, Page 97, Cobb County, Georgia records; or (c) that certain Deed to Secure Debt recorded at Deed Book \_\_, Page \_\_, aforesaid records and the successors, assigns and successors-in-title of such person or entity.

(n) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Brookstone, A Country Club Community, and all amendments thereof filed for record in the records of the Clerk of the Superior Court of Cobb County, Georgia.

(o) "Development" shall mean and refer to the Property and all improvements located or constructed thereon, and any portion of the Additional Property submitted to the provisions hereof pursuant to Section 2.02. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Action. O.C.G.A. Section 44-3-220. et seq.

(p) "Dwelling" shall mean and refer to any improved property intended for use as a single-family detached dwelling or as a patio or cluster home, whether detached or attached, located within the Development.

(q) "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the exercise of a power of sale contained in any Mortgage or the conveyance of property by a deed in lieu of judicial or nonjudicial foreclosure.

(r) "Golf Course Easement" shall mean and refer to the Golf Course Easement described in that certain Reciprocal Easement Agreement by and between Declarant and Willoughby & Sewell Builders, Inc. dated even date herewith, to be recorded in the records of Cobb County, Georgia, immediately prior to the recording of this Declaration.

(s) "Institutional Mortgage" shall be deemed to mean a mortgage held by a bank, trust company, insurance company or other recognized leading institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(t) "Lot" shall mean and refer to any unimproved parcel of land shown upon a subdivision plat recorded in the office of the Clerk of the Superior Court of Cobb County, Georgia, covering any portion of the Property, upon which it is intended that a Dwelling shall be constructed. A parcel of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such parcel and the improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.

(u) "Modifications Committee" or "MC" shall be that committee

established to review and approve modifications, additions, or alterations on or to existing structures on Lots and open space appurtenant thereto as more fully provided in Article X of this Declaration.

(v) "Mortgage" shall mean and refer to a security deed, deed of trust, mortgage, installment land sales contract or other similar security instrument granting, creating or conveying a lien upon, a security interest in or a security title to a Lot or Dwelling.

(w) "Mortgagee" shall mean and refer to the holder of a Mortgage.

(x) "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, tenant or family member of an Owner, occupying or otherwise using a Dwelling within the Development.

(y) "Owner" shall mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot or Dwelling, excluding, however, those persons having such an interest under a Mortgage.

(z) "New Construction Committee" or "NCC" shall be that committee established to review and approve original construction as more fully provided in Article X of this Declaration.

(aa) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(bb) "Property" shall mean and refer to those tracts or parcels of land described in Exhibit A, together with all improvements thereon, including the Common Areas, roads, utility systems, drainage systems and other improvements serving the Lots and Dwellings, and, upon submission to the provisions of this Declaration, the tracts, or parcels of land described in Exhibit B, or any portion thereof, or any tracts or parcels of land hereafter added thereto, together with all improvements thereon. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Action, O.C.G.A. Section 44-3-220, et seq.

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

## DEVELOPMENT

2.01 Development of Property. Except as otherwise set forth in Section 10.09, all Lots within the Development shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and residential use and shall be subject to the standards and restrictions set forth in Article X hereof. While Declarant has submitted all of the Property to the terms and provisions of the Declaration, the Property will be developed in phases and consequently only those phases which are completed and platted shall comprise the Lots. Declarant hereby reserves the right, to be exercised in its sole discretion, to designate the boundaries of all Lots, Dwellings and Common Areas in the various phases of the Property as they are developed and platted and to construct on any portion of the Property designated as Common Areas recreational facilities, including but not limited to tennis courts, swimming pools and related facilities. Declarant shall designate all Common Areas, if any, on the plat for each phase of the Property. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option (as defined in Section 2.02) to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by the Declarant or of the Common Areas, (iii) changes in the boundaries between the Country Club Property and any portion of the Property owned by Declarant (or any of the Additional Property submitted to the terms hereof), provided Club Owner first consents to any changes, which consent shall not be unreasonably withheld, (iv) installation and maintenance of any water, sewer and other utility systems and facilities, and (v) installation of security and/or refuse facilities.

2.02 Development of Additional Property. Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time the additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property. This option may be exercised by Declarant in accordance with the following rights, conditions and limitations, which are the only conditions and limitations on such option to add all or any portion of the Additional Property to the Development:

(a) The option may be exercised from time to time during a period of ten (10) years from the date of this Declaration; provided, however, that Declarant reserves the right to terminate such option at any time prior to the expiration of such ten (10) year period by executing and filing an agreement evidencing such termination in the records of the Clerk of the Superior Court of Cobb County, Georgia, and, except for such termination by Declarant, no other circumstances will terminate such option prior to the expiration of such ten (10) year period.

(b) The legal description of the Additional Property as of the date hereof is set forth in Exhibit B: portions of the Additional Property

(together with additions thereto made in accordance herewith) may be added to the Development at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence or

location in which any of such portions maybe added to the Development. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

(c) If the Additional Property or any portion thereof is added to the Development, Declarant reserves the right to designate the boundaries of the Lots, Dwellings and Common Areas, if any, to be added to the Development in connection therewith.

(d) Should the option to add the Additional Property, or any portion thereof, not be exercised within the terms specified herein or be terminated by Declarant, such option shall in all respects expire and be of no further force and effect. In the event that such option expires or is terminated, Declarant shall not be obligated to impose on the Additional Property or any portion thereof any covenants, conditions or restrictions whatsoever.

(e) The option reserved by Declarant to cause all or any portion of the Additional Property to become part of the Development shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property to the Development or to construct thereon any improvements of any nature whatsoever.

The option reserved under this Section 2.02 may be exercised by Declarant only by the execution of an amendment to this Declaration which shall be filed in the records of the Clerk of the Superior Court of Cobb County, Georgia, together with a legal description of the additional Property or such portion or portions thereof as are being added to the Development by such amendment. Simultaneously therewith, Declarant shall convey to the Association the Common Areas, if any, contained within the Additional Property, or such portion thereof so submitted, such conveyance to be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the Property and/or the Additional Property any exceptions which would be disclosed by a survey or physical inspection of such parcel(s). If the Additional Property or any portion or portions thereof is added to the Development, then from and after such addition, the number of votes in the Association shall be increased by the number of Lots or Dwellings to be located on the Additional Property or such portion or portions thereof as are added so that there shall continue to be one vote in the Association per Lot or Dwelling in the Development.

2.03 Country Club. BROOKSTONE INVESTORS LIMITED PARTNERSHIP, AS CLUB OWNER, INTENDS TO OPERATE THE COUNTRY CLUB, INCLUDING A GOLF COURSE AND RELATED FACILITIES, ON THE COUNTRY CLUB PROPERTY. THE COUNTRY CLUB SHALL BE A PRIVATELY OWNED CLUB, SEPARATE AND DISTINCT FROM THE ASSOCIATION AND GOVERNED BY ITS OWN RULES, REGULATIONS AND REQUIREMENTS.

THE COUNTRY CLUB AND THE COUNTRY CLUB PROPERTY SHALL NOT BE PART OF THE COMMON AREAS AND NEITHER THE ASSOCIATION NOR ANY OWNER SHALL HAVE ANY RIGHT OR PRIVILEGE IN AND TO THE COUNTRY CLUB OR THE AMENITIES

CONTAINED THEREIN, INCLUDING THE RIGHT TO ENTER UPON OR USE THE COUNTRY CLUB FACILITIES, EXCEPT (A) AS PROVIDED IN SECTION 10.05 HEREOF, AND (B) FOR INDIVIDUAL OWNERS WHO HAVE APPLIED FOR AND BEEN ACCEPTED INTO MEMBERSHIP IN THE COUNTRY CLUB AND UNDER SUCH CONDITIONS AND REQUIREMENTS AS MAY BE ESTABLISHED BY THE CLUB OWNER FROM TIME TO TIME. THE TERMS OF SECTION 5.03 SHALL BE ENFORCEABLE ONLY BY DECLARANT, IN ACCORDANCE WITH SECTION 5.03(d) HEREOF.

2.04 Interest Subject to Plan of Development. Every purchaser of a Lot or Dwelling shall purchase such Lot or Dwelling and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of this Article. Any provision of this Declaration to the contrary notwithstanding, the provisions of this Article II may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Declarant.

2.05 Subdivision Plats. Declarant reserves the right to record, modify, amend, revise and add to, at any time and from time to time, subdivision plats setting forth such information as Declarant may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of the Lots, Dwellings, Common Areas, Additional Property, roads, utility systems, drainage systems, utility easements, drainage easements, access easements and set-back line restrictions.

2.06 Country Club Property. The Country Club Property shall be and is hereby restricted exclusively to use as a golf course and country club facility with related improvements and amenities, including but not limited to tennis courts, swimming pools, storage and maintenance facilities. No residential or commercial development of any kind shall be permitted on the Country Club Property. Notwithstanding the foregoing, Club Owner shall be entitled to conduct on the Country Club Property those activities normally conducted on public and private golf courses and country clubs, including but not limited to food and beverage sales, pro shops and tournaments, with or without commercial sponsorship.

## **ARTICLE III**

### **PROPERTY RIGHTS**

3.01 General. Each Lot and Dwelling shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot or Dwelling, subject to the provisions of this Declaration, including without limitation, the provisions of this Article III, and the provisions of that certain

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reciprocal Easement Agreement between Declarant and Willoughby & Sewell Builders, Inc. dated even date herewith, and recorded in the records of Cobb County, Georgia immediately prior to the recording of this Declaration. The ownership of each Lot and Dwelling shall include, and there shall pass with each Lot and Dwelling as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, which shall include, but not be

limited to, membership in the association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his lot or Dwelling. Except as provided in sections 2.01 and 3.05 hereof, Lots shall not be subdivided and the boundaries between Lots shall not be relocated unless the relocation thereof is made with the consent of at least a majority of the Owners in the Development and of Declarant, so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two or more Lots into a larger parcel in order to create a Dwelling site larger than one Lot.

3.02 Owner's Easement of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board in accordance with the By-Laws and the terms thereof, every Owner, his family, tenants and guest shall have a non-exclusive right, privilege and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass and run with title to each Lot and Dwelling, subject to the following provisions:

(a) The right of the Association to borrow money (i) for the purpose of improving the Common are, or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Common Areas, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 8.02 hereof, to give as security for the payment of any such loan a security deed or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instruction given by the Association shall be subject and subordinate to any and all rights, interests, options, licenses, easements and privileges herein reserved or established for the benefit of Declarant, any Owner, the Club Owner or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(b) The rights and easements reserved to Declarant in Sections 3.04, 3.05, 3.06, 3.08, 3.09, and 3.10.

(c) The right of the Association to grant and accept easements as provided in Section 3.06 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to Cobb County, Georgia, or to any other public agency or authority, public service, district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, for so long as

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Declarant owns any lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

(d) The rights and easements reserved in Section 3.07 hereof for the benefit of the Association, its directors, officers, agents and employees.

(e) The right of the Association to suspend an Owner's right to use any recreational facilities within the Common Areas (i) for any period during which any Assessment of the Association against the Owner's Lot or Dwelling remains unpaid, and (ii) for any infraction by an Owner of this Declaration or the By-Laws of the Association for the duration of the infraction.

(f) The rights of the holder (and its successors and assigns) of any Mortgage which is prior in right or superior to the rights, interests, options, licenses, easements and privileges herein reserved or established.

3.03 Recreational Facilities. Subject to the terms and provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, every Owner and his family, tenants, guests shall have the non-exclusive right, privilege and easement of access to and the use and enjoyment of the recreational area and such other recreational facilities and amenities as are now or hereafter located in the Common Areas.

3.04 Easements for Declarant. During the period that Declarant owns any lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, Declarant shall have an alienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing Dwellings and other improvements in and to the Lots and for installing, maintaining, repairing and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article n hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Dwelling or Lot or has the right to submit the Additional Property or any portion thereof to the Development, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners in the Development to the use of the Common Areas.

3.05 Changes in Boundaries: Additions to Common Areas. Declarant expressly reserves for itself and its successors and assigns the right to change and realign the boundaries of the Common Areas, any Lots or Dwellings owned by Declarant and, with the consent of Club Owner, which consent shall not be unreasonably withheld, the Country Club Property, including the realignment of boundaries between adjacent Lots and/or Dwellings owned by Declarant. In addition, Declarant reserves the right, but shall

not have the obligation, to convey to the Additional Property, such real property to be conveyed to the Association as an addition to the Common Areas and subject to the title exceptions set forth in Section 2.02 hereof. Furthermore, Declarant reserves for itself, its affiliates, successors and assigns the right, but shall not have the obligation, to convey by quit-claim deed to the Association at any time and from time to time, as an addition to the Common Areas, such other portion of the Development owned by Declarant as it, in its sole discretion, shall choose.

3.06 Easements for Utilities and Public Services. There is hereby reserved for the benefit of Declarant, the Association, and then\* respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant, accept, modify or relocate easements to and from Cobb County, Georgia or any other public authority or agency, public service district, public or private utility, or other person, (including Club Owner) upon, over, under, and across (i) all of the Common Areas, and (ii) those portions of all Lots and all Dwellings as are reasonably necessary, for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems and retention ponds and facilities for the Development or any portion thereof, and electrical, gas, telephone, water and sewer lines, provided that such easements shall not unreasonably affect the developability, marketability or value of any such Lot or Dwelling. Such easements may be granted, accepted, modified or relocated by Declarant, its successors or assigns, or by the Board, provided, however, that for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Board must obtain the written consent of Declarant prior to granting and accepting any such easements. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portion of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes or shrubbery, (iii) to grade, excavate or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems; provided, however, that such utility company or other supplier or servicer shall take reasonable actions to repair any damage caused by such utility company or other supplier or servicer during the exercise of any rights conveyed under any easement granted hereunder.

3.07 Easement for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or Dwelling or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then whenever practicable, only upon reasonable advance notice to the Owner or Occupant of the Lot or Dwelling directly affected thereby.

3.08 Sales and Construction Offices. Notwithstanding any provisions or restrictions contained herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns the alienable and transferable right and easement in and to the Property for the maintenance of signs,

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sales offices, construction offices, business offices and model Dwellings, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion, improvement and/or sale of Lots, Dwellings, Common Areas or the Additional Property, for so long as Declarant owns any Lot of Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

3.09 Maintenance Easement. Subject to the terms of Section 5.02(b) hereof, there is hereby

reserved for the benefit of Declarant, the Association, and then- respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any Lot and upon unimproved portions of any Dwelling for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

3.10 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over and across all Lots and all unimproved portions of Dwellings for the purpose of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

3.11 Entry by Golfers. Each Lot and Dwelling and any portion of the Common Areas which are adjacent to the Country Club Property shall be subject to the right and easement on the part of authorized golf course players and their caddies to enter upon the unimproved portion of any such Lot, Dwelling or Common Area which is within the Golf Course Easement to remove a ball, subject to the official rules of the golf course, with such entering not being deemed to be a trespass. Golf course players or their caddies shall not be entitled to enter on any such Lots, Dwellings or portions of the Common Areas with a golf cart or other vehicle. While on any Lot, Dwelling or portion of the Common Areas, golf course players and their caddies shall at all times conduct themselves in a manner consistent with accepted standards of play on a first class golf course and shall in no event commit a nuisance while on any such portion of the Development.

3. 12 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

## **ARTICLE IV**

### **MEMBERSHIP**

Every Owner shall be deemed a mandatory member of the Association. Membership shall be appurtenant to any may not be separated from ownership of any Lot or Dwelling, and ownership of a Lot or Dwelling shall be the sole qualification for such membership.

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In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Lot or Dwelling. In

the event of multiple Owners of a Lot or Dwelling, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse, but in no event shall more than one vote be cast or more than one office held for each Lot or Dwelling, e.g. if a person owns three lots or Dwellings, such person shall be entitled to three votes. When more than one person holds an interest in any Lot or Dwelling, the vote for such Lot or Dwelling shall be exercised as those Owners of such Lot or Dwelling themselves determine. The vote appurtenant to such Lot or Dwelling shall be suspended in the event more than one person seeks to exercise it. The voting weight appurtenant to each Lot or Dwelling is equal and each Lot and each Dwelling shall have one vote. Such voting weight shall continue to be equal upon the addition of each phase of the Property and the addition of all or a portion of the Additional Property to the Development, and each Lot or Dwelling therein shall have one vote. Each Owner, by acceptance of a deed or other conveyance for a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the submission of the Additional Property or any portion thereof to the terms of this Declaration as provided herein.

## **ARTICLE V**

### **MAINTENANCE**

5.01 Responsibilities of Owners. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots and Dwellings, together with all other improvements thereon or therein and all lawns, landscaping, trees and grounds on and within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his or its Lot or Dwelling, as the case may be, in a neat, clear and sanitary condition, and such responsibility shall include the maintenance and care of (i) all exterior surfaces of all Dwellings, buildings and other structures (including repainting), (ii) all lawns, trees, shrubs, hedges, grass and other landscaping, and (iii) all utility lines and easements located on and serving only such Owner's Lot to the extent such utility lines and easements are to be maintained by the utility or appropriate governmental agency or authority. As provided in Section 5.02(b) hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any items which is the responsibility of such Owner but which responsibility such Owner fails or refuses to discharge. No Owner shall (x) decorate, repaint, change or otherwise alter the appearance of

any portion of the exterior of a Dwelling or the landscaping, grounds or other improvements within a Lot unless such decoration, repainting, change or alteration is first approved, in writing, by the Architectural Control Committee as provided in Article X hereof.

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#### 5.02 Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of (i) all roads, walks, trails, parking lots, landscaped areas, recreational areas and other improvements made by Declarant or the Association situated within the Common Areas, (ii) such security systems and utility lines, pipes, plumbing, wires, conduits and related

systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iii) all lawns, trees, shrubs, hedges, grass and other landscaping and all lakes and ponds situated within or upon the Common Areas. The Association shall also maintain and keep in good repair all street signs and traffic signs located on, in or about the right-of-ways of any and all publicly dedicated roads located within the Property. The Association shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner or any other person, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common areas or any other portion of the Property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any other or directive or any municipal or other governmental authority, and obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

(b) In the event that Declarant or other Board determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance (including painting), cleaning, repair or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance (including painting), cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity and maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have ten (10) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the

event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expenses of such Owner, and said costs shall be added to and become a part of the assessment to which such Owner and his Lot or

Dwelling are subject and shall become a lien against such Lot or Dwelling. In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses. In the alternative, the Association may levy fines against an Owner who fails or refuses to discharge properly his or her obligations with regard to items for which he or it is responsible hereunder.

### 5.03 Club Owner's Responsibility.

(a) Club Owner shall maintain and repair all portions of the Country Club Property, which responsibility shall include the maintenance, repair and replacement of (i) all roads, walks, trails, parking lots, landscaped areas, recreational areas and other improvements made by Club Owner situated within the Country Club Property, (ii) such security systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Country Club Property and which are not maintained by a public authority, public service district, public or private utility, or other person, (iii) all lawns, trees, shrubs, hedges, grass and other landscaping and all lakes and ponds situated within or upon the Country Club Property, (iv) all structures, buildings, storage and maintenance facilities, including the clubhouse, located on the Country Club Property, and (v) the golf course constructed, maintained and operated on the Country Club Property.

(b) The Country Club Property shall be maintained and repaired so as to maintain a golf course and country club facility in a condition at least comparable to the condition of the Country Club Property on the date hereof.

(c) In the event that Declarant reasonably determines that Club Owner has failed or refused to discharge properly its obligations arising under the terms of this Section 5.03, then Declarant, as its sole remedy, shall deliver to Club Owner written notice detailing the obligations of Club Owner that Declarant reasonably determines have not been discharged properly. Within thirty (30) days after Club Owner receives such written notice, Club Owner and Declarant shall in good faith meet, discuss and attempt to agree upon what actions, if any, are necessary to fulfill and properly discharge such obligations. If Club Owner and Declarant fail to agree on such necessary actions within said thirty (30) day period, Declarant or Club Owner may submit to arbitration in Atlanta, Georgia the issues of (i) whether Club Owner has failed to discharge properly its obligations under this Section 5.03 and (ii) what, if any, actions are necessary to fulfill and properly discharge such obligations, and a time period for completion of such actions. Club Owner and Declarant agree that the result of the arbitration shall be binding on both parties, and any recommendation of action shall be promptly undertaken by Club Owner at Club Owner's sole cost and expense. Such arbitration shall be conducted in accordance with the Arbitration Association, unless the parties agree otherwise. Club owner and Declarant shall equally divide the costs of such arbitration, except that each party shall be responsible for its legal fees and expenses in connection therewith. In the event of any failure by Club Owner to execute such actions under arbitration decision, Declarant may seek judicial enforcement of the same.

(d) Declarant shall have the rights set forth in subsection (c) above until the earlier to occur of such time as (i) Declarant no longer has the right to appoint and remove directors and officers of the Association in accordance with Sections 8.01 and 12.01 of the Declaration, or (ii) the Declarant is no

longer Willoughby & Sewell Development, Ltd., at which time the terms and provisions of subsection (c) shall terminate and be of no further force or effect. Subject to the limitation set forth in the preceding sentence, the terms of this Section 5.03 shall be enforceable by Declarant only, and no one else, including, without limitation, the Association, the Board of Directors, the Owners, or any other committee comprised of Owners, shall have any right to enforce this Section 5.03.

## ARTICLE VI

### INSURANCE AND CASUALTY LOSSES

#### 6.01 Insurance.

(a) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverage's as are determined to be necessary by the Board.

(c) The Board or its duly authorized agents shall have the authority and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws, and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

(d) All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Owners and the costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter enforce with respect to the Development shall be vested in the Board; provided,, however, that no Mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

6.02 Damage or Destruction to Common Areas. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas 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, in any such event, the Board shall obtain reliable and detailed estimates of the costs of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged property to

substantially the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common areas, Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, together with at least seventy-five percent (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated

from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess costs or repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the portion of the Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas left in a clean, orderly, safe and sightly condition.

## **ARTICLE VII**

### **CONDEMNATION**

Whenever all or any part of the Common Areas of the Development shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board (which conveyance may only occur with the approval of Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development), the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be retained by and for the benefit of the Association.

## **ARTICLE VIII**

### **ADMINISTRATION**

8.01 Common Areas. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive and sanitary condition, order and

repair pursuant to the terms and conditions hereof, Except to the extent otherwise required by the provisions of the Official Code of Georgia relating to nonprofit corporations, this Declaration, the By-laws or the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Owners. As provided in Section 12.01 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Development, Club Owner shall have the permanent right to appoint one member of the Board. Declarant shall have the

right to appoint and remove all other members of the Board and any officer or officers of the Association until such time as the first of the following events shall occur: (i) the date as of which the last Lot in the Development owned by Declarant shall have been conveyed by Declarant to an Owner other than a person or persons constituting Declarant, or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Club Owner and Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 8.01 and by Section 12.01 hereof. In the event that Club Owner's permanent right to appoint one member of the Board violates any law or regulation of any pertinent governing jurisdiction or would violate any regulation of or requirement for any governmental lending or financing program utilized by Declarant, then Club Owner shall not be entitled to exercise such right and the same shall be deemed extinguished. In such event, the member of the Board appointed by Club Owner may be removed by Declarant, in its sole discretion, after twenty (20) days prior written notice of such removal from Declarant to Club Owner.

8.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the Official Code of Georgia relating to nonprofit corporations, this Declaration, the By-Laws and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Official Code of Georgia, this Declaration, the By-Laws or the Articles of Incorporation, the provisions of the Official Code of Georgia, this Declaration and the By-Laws, in that order, shall prevail, and each Owner of a Lot or Dwelling, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every 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 to privilege. Notwithstanding the foregoing provisions of this Section 8.02 or any other provisions of this Declaration to the contrary, for so long as Declarant shall own any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage or hypothecate all of any portion of the Common Areas.

8.03 Rules and Regulations. As provided in Article XI hereof, the Association, through its board, may make and enforce reasonable rules and regulations governing the use of the Lots, Dwellings and Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

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## **ARTICLE IX**

### **ASSESSMENTS**

9.01 Purpose of Assessments. The assessments for Common Expenses provided for herein and in the Act shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Development, and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board.

9.02 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot or Dwelling by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the association: (a) annual assessments, such assessments to be established and collected as provided in Section 9.03 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 9.04 hereof, and (c) individual or specific assessments against any particular Lot or Dwelling which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such Lot or Dwelling in accordance with Article XI hereof. All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and Dwelling and shall be a continuing lien upon the lot and Dwelling against which each assessment is made. Such amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance; provided, however, the lien for unpaid assessments shall not apply to the holder of any first priority Institutional Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors or assigns, who takes title to a Lot or Dwelling through Foreclosure, or to any purchaser of such Lot of Dwelling at such foreclosure sale. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may except himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever.

9.03 Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The Board shall cause the budget and the proposed total of the annual assessments to be levied against Lots and Dwellings for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The total annual assessments shall be divided among the Lots and Dwellings equally, so that each Lot and Dwelling shall be subject to equal annual assessments. Upon the addition of the Additional Property or any portion thereof to the Development, assessments shall continue to be equal and the Lots and Dwellings being added to the Development shall thenceforth pay assessments which are equal to those imposed upon Lots and Dwellings previously in the Development. In such event, the Association's budget shall be accordingly revised by the Board, without the necessity of approval by the Owners, to include Common Expenses and assessments related to such additional Lots and Dwellings. The budget and the annual assessments

shall become effective unless disapproved at the annual meeting by either Declarant so long as Declarant has the authority to appoint and remove directors and officers of the Association or Owners holding a majority of the total Association vote; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at such meeting. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the

approval of a special assessment as provided in Section 9.04 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

(i) management fees and expenses of administration, including legal and accounting fees. The accounting fees shall include the cost and expense of an annual audit of the books and records of the Association by an independent certified public accountant.

(ii) utility charges for utilities serving the Common Areas and charges for other common services for the Development, including trash collection and security services, if any such services or charges are provided or paid by the Association;

(iii) the cost of any policies of insurance purchased for the benefit of all the Owners and the association as required or permitted by this Declaration, including fire, flood and other hazard coverage, public liability coverage and such other insurance coverage as the Board determines to be in the interests of the Association and the Owners;

(iv) the expenses of maintenance, operation and repair of those portions of the Common Areas, and of all street signs and traffic signs located on, in or about the right-of-ways of any and all publicly dedicated roads located within the Property, which are the responsibility of the Association under the provisions of this Declaration;

(v) the expenses of maintenance, operation and repair of other amenities and facilities serving the Development, the maintenance, operation and repair of which the Board from time to time determines to be in the best interest of the Association;

(vi) the expenses of the Architectural Control Committee which are to defrayed by plan review charges;

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(vii) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(viii) such other expenses as may be determined from time to time by the Board of the Association to be Common Expenses; and

(ix) the establishment and maintenance of a reasonable reserve fund or funds (A) for inspections, maintenance, repair and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be inspected, maintained, repaired or replaced on a periodic basis, (B) to cover emergencies and repairs required as a result of casualties which are not funded by the insurance proceeds, and (C) to cover unforeseen operating contingencies or deficiencies arising

from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

In no event shall Common Expenses be deemed to include contributions to persons running for political office or expenditures related to political activity of any kind, including zoning matters.

9.04 Special Assessments. In addition to the annual assessments authorized above, the Association, acting through its Board, may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that except as otherwise permitted in Section 6.02 hereof, any such assessment shall be approved by (i) Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, and (ii) by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 9.06 hereof. The Board may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be prorated among the Lots and Dwellings equally as provided with respect to the annual assessments.

9.05 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any Owner shall be specifically assessed against such Owners and their respective Lots or Dwellings. The individual assessments provided for in this Section 9.05 and in Section 44-3-225(a) of the Act shall be levied by the Board and the amount and due date of such assessment shall be as specified by the Board.

9.06 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 9.03 and 9.04 hereof, shall be sent to all members not less than fifteen (15) days nor more than forty-five (45) days in advance of such meetings. With respect to annual meetings, the presence of members or proxies entitled to cast over ten percent (10%) of all of the votes of the association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice and quorum requirements. The foregoing notwithstanding, a minimum vote of fifty-one percent (51%) of all the votes of the Association shall be required to disapprove the Association's budget.

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

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

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

(b) If part payment of assessments and related charges is made, the amount received shall be

applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

(c) If the Board permits payment of the annual assessments in installments, and if assessments, fines or other charges, or any part thereof due from an Owner remain delinquent and unpaid for a period greater than ten (10) days from the date due, then a notice of delinquency may be given to that Owner stating that if the assessment or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board may accelerate and declare immediately due any installments of the annual assessment. If an Owner fails to pay all assessments and related charges currently due within ten (10) days of the date of the notice of delinquency, the Board may then accelerate and declare immediately due all installments of the annual assessment, if any, and of any special assessment, without any further notice being given to the delinquent Owner.

(d) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after the assessment payments first become delinquent, then the Association, acting through and Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, the Act and Georgia law, and Owner's and occupant's right to use the Common Property and to vote shall automatically be suspended until such time as all amounts due are paid in full.

9.09 Certificate. The Treasurer, or the manager of the Association shall, within five (5) days of receipt or a written request and upon payment of a fee, not exceeding then (\$10.00) dollars, or such higher amount authorized by the Act, furnish to any Owner, purchaser from such Owner, or such Owner's Mortgagee which requests the same, a certificate in writing signed by said Treasurer or manager setting forth whether the assessments for which such Owner is responsible have been paid, and if, not paid, the outstanding amount due and owing, together with all fines, accrued interest and other penalty charges. Such certificate shall be conclusive evidence against all but such Owner of payment of any assessments stated therein to have been paid.

9.10 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Lot and Dwelling on the earlier to occur of (i) one year after the day on which such Lot or Dwelling is conveyed to a person other than Declarant, or (ii) occupancy of the Dwelling constructed on the Lot by an Occupant. The annual assessments shall be due and payable in such manner and on such schedule as the Board may provide. Annual assessments and any outstanding

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special assessments shall be adjusted for such Lot or Dwelling according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such assessments commence. Annual and special assessments for Lots and Dwellings in portions of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Dwelling in accordance with the foregoing. Anything contained in this Article to the contrary notwithstanding, Declarant shall not be responsible for the payment of annual or special assessments on Lots of Dwellings which it or its affiliates own unless such Lots or Dwellings contain occupied residences.

## ARTICLE X

### ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

10.01 Purpose. In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development and to protect and promote the value of the Property, the Lots, Dwellings and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article X. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article X.

10.02 Architectural Committees.

(a) New Construction Committee. The New Construction Committee (NCC) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until one hundred percent of the Properties have been developed and conveyed to Owners other than builders, the Declarant retains the right to appoint all members of the NCC who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, The Board of Directors shall appoint the members of the NCC, who shall serve and may be removed at the discretion of the Board of Directors. The Club Owner shall have a permanent right to appoint one member to serve on the NCC which representative need not be an Owner.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee (MC) to consist of at least three and no more than five persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures on Lots and the Open space, if any, appurtenant thereto. Notwithstanding the above, the NCC shall have the right to veto any action taken by the MC which the NCC determines, in its sole discretion, to be inconsistent with the guidelines of the NCC. The Club Owner shall have a permanent right to appoint one member to serve on the MC which representative need not be an owner.

(c) In the event that Club Owner's permanent right to appoint one representative to serve on the

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NCC and the MC violates any law or regulation of any pertinent governing jurisdiction or would violate any regulation of or requirement for any governmental lending or financing program utilized by Declarant, then Club Owner shall not be entitled to exercise such right and the same shall be deemed extinguished. In such event, the representative appointed by Club Owner to serve on the NCC or the MC may be removed by Declarant, in its sole discretion, after twenty (20) days prior written notice of such removal from Declarant to Club Owner.

10.03 Permitted Improvements: Standard.

(a) No improvements of any nature whatsoever shall be constructed, altered, added to or maintained upon any part of the Property except (i) for Dwellings and other improvements which are constructed by Declarant, (ii) such improvements as are approved by the NCC or the MC in accordance with this Article X, or (iii) improvements which pursuant to this Article X do not require the consent of the NCC or the MC.

(b) The NCC and the MC are hereby authorized to promulgate from time to time written architectural standards, policies and guidelines (the "Standards") governing the construction, location, landscaping and design of improvements, contents of submissions of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to Sections 10.05, 10.06 and 10.08 hereof. Any such Standards published by the NCC and the MC, shall be subject to the terms and conditions of the Golf Course Easement and shall be binding and enforceable on (i) all Owners with respect to all improvements in the Development requiring the approval of the NCC or the MC.

10.04 Construction of Improvements. Dwellings may not be temporarily or permanently occupied until the exteriors thereof and the landscaping of the lot on which the Dwellings located have been completed and a certificate of occupancy for such Dwelling has been issued. No temporary house, shack, tent, barn or other outbuilding shall be permitted on any Lot or Dwelling at any time, except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board, nor shall any stable, poultry house or yard, rabbit hut or other similar yard structure be constructed or allowed to remain on any lot or Dwelling. Construction, reconstruction or remodeling of all Dwellings shall be completed within six (6) months of the commencement date of said construction, reconstruction or remodeling. Once such activity is commenced, work shall be continuous and uninterrupted except for weather delays and causes beyond the Owner's control. If construction, reconstruction or remodeling period of more than thirty (30) consecutive days, the Association shall have the right, but not the obligation, to enter the Lot or Dwelling and to take such action as may be required to make the Lot and Dwelling safe, sightly and secure, all without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions; provided, however, the Board shall first follow the notice procedure set forth in Section 5.02(b) hereof. All costs incurred by the Association in connection therewith shall become a part of the assessment against the Owner of such Lot or Dwelling in accordance with the provisions of Section 5.02(b) hereof. During the continuance of construction by an Owner, such Owner shall require its contractors to maintain the lot or Dwelling in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, such Owner shall cause its contractors to immediately remove all equipment, tools and construction material and debris from the Lot or Dwelling on which such construction has been completed.

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#### 10.05 Architectural Approval.

(a) To preserve the architectural and aesthetic appearance of the Development, no construction, reconstruction or placement of improvements of any nature whatsoever shall be commenced or maintained by any Owner, other than Declarant, with respect to the construction, reconstruction, placement or affecting the exterior appearance of any Dwelling or with respect to any other portion of the Property, including, without limitation, the construction, reconstruction, placement or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, doghouses, greenhouses, playhouses, swing sets, basketball goals, awnings, walls, fences, exterior lights, garages, guest or servants' quarters or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the NCC or MC, a survey showing the location of trees of six (6) inches in diameter at a height of four (4)

feet and other significant vegetation on such Lot or Dwelling) showing the nature, color, type, shape, height, materials and location of the same shall have been submitted to and approved in writing by the NCC or MC as to the compliance of such plans and specifications with such Standards as may be published by the committees from time to time including the harmony of external design, location and appearance in relation to surrounding structures and topography. One copy of such plans, specifications and related data so submitted shall be retained in the records of the NCC or MC and the other copy shall be returned to the Owner marked "approved," "approved as noted," or "disapproved." The NCC or MC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspector or attorneys retained in accordance with the terms hereof. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his Dwelling that do not affect the exterior appearance without the necessity of approval or review by the MC.

The NCC and MC shall have sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. Actions taken by the NCC and MC shall in no event be treated or considered as establishing a precedent of any kind, it being intended that the NCC and MC shall have total discretion in each instance based upon the facts and circumstances present in each case.

In connection with approval rights and to prevent excessive drainage or surface water run-off, the NCC and MC shall have the right to establish a maximum percentage of a Lot or Dwelling which can be cleared or graded and a maximum percentage of a Lot or Dwelling which may be covered by Dwellings, buildings, structures or other improvements, which standards shall conform with all applicable governmental requirements, ordinances, rules and regulations.

Following approval of any plans and specifications by the NCC or MC, representatives of said committees shall have the right during reasonable hours to enter upon and inspect any lot or Dwelling or other improvements with respect to which construction is underway to determine whether or not the

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plans and specifications therefor have been approved and are being complied with. In the event the NCC or the MC shall determine that such plans and specifications have not been approved or are not being complied with, the Association shall be entitled to enjoin further construction immediately, notwithstanding anything to the contrary in Article XI of this Declaration. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expenses, remove such construction, alternation, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction alternation or other work. All cost thereof, including reasonable attorney's fees, may be assessed against the benefited lot and collected as an assessment pursuant to this Declaration.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Article and its decisions or those of the NCC or the MC.

(b) After Declarant and its successors and assigns shall no longer have the right to appoint and remove any of the members of the Board and any officer or officers of the Association, Club Owner shall have the same approval rights as the NCC or MC set forth in Sections 10.05 and 10.06 thereof and the independent right to enforce the covenants and restrictions contained in this Declaration. After such time Club Owner shall then also have the absolute right to override any decision of the NCC or MC relating to the Lots and Dwellings adjoining and continuous to the Country Club Property, if such decision violates the written rules and regulations of the NCC or MC. In the event that the granting of such rights violates any law or regulation of any pertinent governing jurisdiction or would violate any regulation of or requirement for any governmental lending or financing program utilized by declarant, then Club Owner shall not be entitled to exercise such rights and the same shall be deemed extinguished.

In the event that the NCC or MC or its designated representative fails to approve or to disapprove the plans and specifications within thirty (30) days after the plans and specifications and such information as the NCC or MC may reasonably require has been submitted, its approval will not be required and such plans and specifications will be deemed to have been expressly approved, provided, the proposed improvements are generally in harmony with the scheme of the Development as set forth in this Declaration and the proposed improvement is not otherwise in violation of the Declaration, the By-Laws, or the rules and regulations. Upon approval of plans and specifications, no further approval under this Article X shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the NCC or MC upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

10.06 Landscaping Approval. To preserve the aesthetic appearance of the Development, no landscaping, fencing, grading, excavation or filling of any nature whatsoever shall be implemented and installed by any Owner, other than Declarant or Club Owner pursuant to the Golf Course Easement, unless and until the plans therefor have been submitted to and approved in writing by the NCC or MC,

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as appropriate. The provisions of Section 10.05 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation or filling.

10.07 Approval Not a Guarantee. No approval of plans and specifications and no publication of Standards shall be construed as representing or implying that such plans, specifications or Standards will, if followed, result in properly designed improvements. Such approvals and Standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association nor the NCC nor the MC shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to the terms of this Article X, any loss or damages to any person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications.

10.08 Building Restrictions. All Dwellings and other structures shall be constructed in

compliance with any and all applicable state, county and municipal zoning and building restrictions. In addition, the NCC and the MC is authorized to promulgate from time to time as part of the Standards described in 10.03(b) thereof additional restrictions applicable to the Development, including, without limitation, restrictions relating to height of improvements above grade, roof pitch and minimum square footage of heated and air-conditioned living space in each Dwelling. No exterior portion of any building, structure or other improvement (excepting sidewalks and driveways) located on or with respect to any Lot or Dwelling shall be located other than as permitted by the applicable set-back line restrictions as set forth in the Standards; provided that the NCC and the MC shall be empowered to grant variances with respect to such set-back line restrictions in its sole and absolute discretion.

#### 10.09 Use of Lots and Dwellings.

(a) Residential Use. Except as permitted by Section 3.08 and 10.16 each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Property, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within the dwelling so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the dwelling; (b) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees; (c) the business activity conforms to all zoning requirements for the Property; (d) the business activity does not increase traffic in the Property; (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; and (f) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security of safety of other residents of the Property, as may be determined in the sole discretion of the Board of Directors.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or

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activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this subparagraph.

10.10 Antennas. No television antenna, radio receiver, satellite dish or other similar device shall be attached to or installed on any portion of the Development, unless contained entirely within the interior of a building or other structure, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot or Dwelling which may unreasonably interfere with the reception of television or radio signals within the Development; provided, however, that Declarant and the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio or other similar systems within the Development, and should cable television services be unavailable and adequate television reception not be otherwise available, then an Owner may make written application to the Modifications Committee for permission to install a television antenna.

10.11 Water Wells and Septic Tanks. No private water wells may be drilled or maintained and

no septic tanks or similar sewerage facilities may be installed or maintained on any Lot or Dwelling without the prior written approval of the NCC or MC. Notwithstanding anything herein to the contrary, Club Owner shall be permitted and allowed to locate below ground septic sewer facilities and systems on the Country Club Property to service restroom facilities thereon which are not part of the clubhouse on the Club House Property.

10.12 Pets. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept by any Owner upon any portion of the Development, provided that generally recognized house pets may be kept in Dwellings, subject to rules and regulations adopted by the Association, through its Board, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No pit bulldogs, pot bellied pigs or other breeds determined in the sole discretion of the Board to be dangerous or a nuisance may be brought onto or kept on the Property at any time by any Lot Owner, Occupant or guest of a Lot Owner or occupant. Dogs must be kept on a leash and be under the physical control of a responsible person at all times walked or exercised outside of all fenced areas on a Lot or Dwelling, any pet which endangers the health of any Owner or Occupant of any Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the sole discretion of the Board of Directors, must be permanently removed from the Property upon seven (7) days' written notice by the Board of Directors. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet. Any pet, which, in the sole discretion of the Board, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner.

Any Owner or Occupant who keeps or maintains any pet upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, its directors, officers, and the Association's management company, if any, free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Development.

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10.13 Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Development, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying any other portions of the Development. Noxious or offensive activities shall not be carried on in any Lot or Dwelling or in any part of the Common Areas, and each Owner, his family, tenants, guests, invitees, servants and agents shall refrain from any act or use of a Lot, Dwelling or of the Common Areas which could cause disorderly, unsightly or unkempt conditions, or which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Development or which could result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Development. Any owner, or his family, tenants, guest, invitees, servants or agents, who dumps or places any trash or debris upon any portion of the Development shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot or Dwelling are subject. Notwithstanding anything herein to the contrary, any activities or noises that are customarily associated with the operation of a golf course, the game of golf or the maintenance of a golf course shall not be

deemed a nuisance or otherwise prohibited by this Section 10.13, unless such noises or activities result in a cancellation of any insurance policy insuring any part of the Development.

10.14 Golf Course Areas. Owners of Lots and Dwellings adjacent to the Country Club Property, as well as their families, tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would distract from the playing qualities of any golf courses located on the Country Club Property. Such prohibited activities shall include, but not be limited to, burning materials where the smoke will cross the Country Club Property, maintenance of dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions, playing of loud radios, televisions, stereos or musical instruments, running, bicycling, skateboarding, walking or trespassing in any way on the Country Club Property, picking up balls or similar interference with play.

10.15 Motor Vehicles. Trailers. Boats. Etc. All automobiles owned or used by Owners or Occupants other than temporary guests and visitors shall be parked in garages to the extent that garage space is available, and garages shall not be used for storage or otherwise so that they become unavailable for parking cars therein. The Board of the Association shall have the authority to promulgate rules and regulations to govern or prohibit the outside storage or parking upon any Lot or Dwelling or within any portion of the Common Areas, (other than areas provided therefor within the Common Areas, if any) of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart or any other related forms of transportation devices. Furthermore, although not expressly prohibit hereby, the Board may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts and other similar vehicles, or any of them, from being kept, placed, stored, maintained or operated upon any portion of the Development if in the opinion of the Board such prohibition shall be in the best interests of the Development. No Owners or other occupants of any

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portion of the Development shall repair or restore any vehicle of any kind upon or within any Lot or Dwelling or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a property repair facility. Declarant hereby reserves the right (without any obligation to do so) to designate a portion of the Common Areas as a parking area for boat trailers, motor homes and similar vehicles.

10.16 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots and/or Dwellings or the developing of Lots, Dwellings, Common Areas and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved by Declarant from time to time, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 10.16 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and/or Dwellings and for related activities.

10.17 Fences. No fence or wall of any kind shall be created, maintained or altered on any Lot of Dwelling without the prior written approval of the Architectural Control Committee. Notwithstanding anything herein to the contrary, Club Owner shall have the right to construct, install and maintain on the Country Club Property (a) interior fencing (i.e., fencing within the Country Club Property which does not abut any property in the Development except for the other portions of the Country Club Property) and (b) other fencing reasonably deemed necessary by Club Owner for the protection, health, safety or welfare of the persons using the Country Club Property or the Owners of Lots adjacent to or near the Country Club Property, provided that such fencing does not materially interfere with or materially obstruct the view of the golf course from any Lot.

10.18 Vents. No plumbing vent or heating vent shall be placed on the front side of any roof of any Dwelling or accessory structure, and any such vent shall be painted the same color as the roof on which it is placed.

10.19 Sight Line Restrictions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between four (4) and six (6) feet above the streets in and around Brookstone, A country Club Community, shall be placed or permitted to remain on any corner Lot or Dwelling within the triangular area of such corner Lot or Dwelling formed by the street boundary lines and the line connecting such boundary lines at points twenty-five feet (25') from the intersection of such street boundary lines. The same sight line restrictions shall apply on any Lot or Dwelling within ten feet (10') from the intersection of any street boundary line with the edge of a driveway.

#### 10.20 Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the NCC or MC's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Lot, or on any portion of a Dwelling visible from the exterior thereof, except:

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- (i) such signs as may be required by legal proceedings;
- (ii) not more than one "For Sale" or "For Rent" sign; provided, however, that in no event shall any such sign be larger than six square feet in area; and
- (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Control Committee; and not more than (1) "Political" sign; provided its is no larger than six (6) square feet in area, and it is installed not more than ten (10) days prior to election date and removed within twenty-four (24) hours following the election.

(b) Following the consummation of the sale or lease of any Lot or Dwelling, the "For Sale" or "For Rent" sign shall be removed immediately.

10.21 Garage Sales. All garage sales shall be conducted in accordance with applicable law and

such rules and regulations as the Board may establish from time to time concerning same.

10.22 Clotheslines. No outside clotheslines shall be constructed, placed or maintained on any Lot or Dwelling without the prior written approval of the Modifications Committee.

10.23 Leasing or Renting. Lots may be leased for residential purposes only. All leases shall have a minimum term of one (1) year unless prior written approval is given by the Board. Within seven (7) days of leasing a Lot, the Owner shall submit to the Board of Directors an information form made available by the Board which may request information including, but not limited to, the following: name and residence address of lessor; identity of Lot to be leased; home phone number of lessor; work place and work phone number of lessor; name of lessee(s); terms of the lease names of all occupants of the lot; home phone number of lessee(s); and work place and work phone number of lessee(s). All leases shall require that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association and shall also obligate the tenant to comply with these documents. There shall be no subleasing or assignment of any lease without the written approval of the Board.

The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities and other amenities.

Leases existing on the date this Amendment is recorded in the Cobb County land records shall not be subject to the terms of this Section. However, any assignment, extension, renewal, subleasing or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Section.

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10.24 Use of Common Areas. There shall be no obstruction of the Common areas, nor shall anything be kept, parked or stored on any part of the Common Areas without the prior written consent of the Association, except as specifically provided herein.

With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve a portion of the Common Areas for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Areas as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Areas and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

## **ARTICLE XI**

### **RULE MAKING**

11.01 Rules and Regulations. Subject to the provisions hereof, the Board may establish

reasonable rules and regulations concerning the use of Lots, Dwellings and the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners at least thirty (30) days prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, canceled or modified by the Board or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

11.02 Authority and Enforcement. Subject to the provisions of Section 11.03 hereof, upon the violation of this Declaration, the By-Laws or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Dwelling, the Owners or Occupants of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and then: respective families, guests and tenants) to use any of the recreational facilities located in the Common Areas, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing, sanctions in the event of such a violation by such Owner, his family, guests or tenants or by his co-Owners or the family, guests or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days per violation.

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11.03 Procedure. Except with respect to the failure of an Owner to pay assessments, the Board shall not impose a fine, suspend voting rights or infringe on the rights of an Owner, or other Occupant of the Development for violations of the declaration, the By-Laws or any rules and regulations of the Association, unless and until the following procedure is followed:

(a) Notice. If any provision of the Declaration or By-Laws or any rule or regulation of the Association is violated, the Board shall serve the violator with written notice sent certified mail, return receipt requested, which shall state: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a statement that the violator may challenge the fact of the occurrence of a violation, the proposed sanction, or both; (iv) the name, address, and telephone number of a person to contact to challenge the proposed action; and (v) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of receipt of the notice. If a challenge is not made, the sanction shall be imposed ten (10) days from the date of the notice; provided, the Board may, in its discretion, waive any sanction if the violation is cured within such ten (10) day period. In the event of a continuing violation, each day the violation continues beyond the ten (10) day period constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If the alleged violator timely challenges the proposed action, a hearing before the

board of Directors shall be held in executive session affording the violator a reasonable opportunity to be heard. The hearing shall be set at a reasonable time and date by the Board, and notice of the time, date (which shall be not less than ten (10) days from the giving of notice), and place of the hearing and an invitation to attend the hearing and produce any statements, evidence, and witnesses shall be sent to the alleged violator. Proof of such notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if the violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. This Section shall be deemed complied with if a hearing is held and the violator attends and is provided an opportunity to be heard, notwithstanding the fact that the notice requirements contained herein are not technically followed.

11.04 Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through its Board of Directors, may elect to enforce any provision of the Declaration, the By-Laws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations and the right of the Association to perform maintenance on a Lot pursuant to Article V, Section 5.02 of this Declaration) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 11.03 of this Article; provided, however, the Association shall be required to comply with the notice provisions in Article V., Section 5.02 of this Declaration. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

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The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Areas to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the By-Laws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided herein for the collection of assessments.

## **ARTICLE XII**

### **GENERAL PROVISIONS**

12.01 Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION OR IN THE BY-LAWS OF THE ASSOCIATION, Club Owner shall have the permanent right to appoint one member of the Board. Declarant shall have the right to appoint and remove all other members of the board of the Association and any officer or officers of the Association as provided by and for the term set forth in section 8.01 hereof. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Club Owner and Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 8.01. In the event that Club Owner's permanent right to appoint one member of the Board violates any law or regulation of any pertinent governing jurisdiction or would violate any regulation of or requirement for any governmental lending or financing program utilized by Declarant, then Club Owner shall not be

entitled to exercise such permanent right and the same shall be deemed extinguished. In such event, the member of the Board appointed by Club Owner maybe removed by Declarant, in its sole discretion, after twenty (20) days prior written notice of such removal from Declarant to Club Owner. Upon the expiration of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 8.01 and this Section 12.01, such right shall pass to the Owners, including Declarant, if Declarant then owns one or more Lots or Dwellings, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver all 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 and which Declarant has in its possession.

12.02 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 records of the Office of the Clerk of the Superior Court of Cobb County, Georgia, without the approval of any Owner or Mortgagee; provided, however, that, with the except of the addition of any portion of the Additional Property to the terms of this Declaration, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot, Dwelling or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot or Dwelling, such amendment shall be valid only upon the written consent thereto by a majority

in number of the then existing Owners 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. In addition, in the event that such amendment materially alters or changes any rights or easements granted herein to Club Owner or with respect to the country Club Property, such amendment shall only be valid upon the written consent thereto of the Club Owner. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional property or any portion thereof to the provisions of this Declaration as provided in Section 2.02 hereof. Any amendment made pursuant to this Section 121.02 shall be certified by Declarant as having been duly provided by Declarant, and by such Owners 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 or Dwelling, agrees to be bound by such amendments as are permitted by this Section 12.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declarant or any other instruments relating to the Development (A) 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, (B) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Dwellings subject to this Declaration, (C) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot, dwelling or other improvements subject to this Declaration, or (D) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots, Dwellings or other improvements subject to this Declaration.

12.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 12.02 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 Owners holding at least two-thirds (2/3) of the eligible 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 owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option under this Declaration to add the Additional Property or any portion thereof to the Development, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration shall be evidenced by then-execution of such amendment or, in the alternative, the sworn statement of the President 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. Notwithstanding the foregoing to the contrary, with respect to any amendment to this Declaration under this Section 12.03 which affects any of the rights or easements granted herein to the Club Owner or with respect to the Country Club Property, Club Owner shall receive the notice specified in Section 12.03(a) hereof and any such amendment shall only be valid upon the written consent thereto of Club Owner.

12.04 Enforcement. Each Owner shall comply strictly with the By-Laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot or Dwelling, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the recreational facilities located in the Common Areas or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by Declarant, the Board of behalf of the Association, or, in a proper case, by an aggrieved Owner, or, as provided in Section 10.05(b), by Club Owner. Should Declarant, the Association or Club Owner employ legal counsel to enforce any of the foregoing, all costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages and that Declarant, the Association, any aggrieved Owner or Club Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of Declarant, the Association, any aggrieved Owner or Club Owner, in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-laws or any rules and regulations of the Association, however long continued.

12.05 Duration. The covenants and restrictions of this Declaration shall run with and bind the property perpetually to the extent provided in the Act.

12.06 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this

Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Lillian Carter, mother of former U.S. President James Earl Carter.

12.07 Interpretation. In all cases, the provisions set forth or provided for in this declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of this filing for record in the records of the Clerk of the Superior Court of Cobb County, Georgia. The captions of each Article and Section hereof as to the contents of each article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Georgia.

12.08 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

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

12.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Owners and their Mortgagees as herein provided, and the Club Owner, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant, Mortgagees and Club Owner as herein provided, the Owners shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

12.11 Notice of Sale. Lease or Mortgage. In the event an Owner sells, leases, mortgages or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish-to the association in writing the name and address of such purchase, lessee, mortgagee or transferee.

12.12 No Trespass. Whenever the Association, declarant, the Architectural Control Committee, and their respective successors, assigns, agents or employees are permitted by this Declaration to enter

upon or correct, repair, clean, maintain, preserve or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.

12.13 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered, or sent to such addresses as have been designated in writing to the Association, or if no address had been so designated, at the addresses of such Owners' respective lots or dwellings. Notices sent by United States Mail shall be deemed effective on the third day after mailing. Notices delivered in person shall be effective on the date of delivery. All notices to the Association shall be delivered or sent in care of Declarant at the following address:

Willoughby & Sewell Development, Ltd.  
1781 Brookstone Walk  
Acworth, Georgia 30101

or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant at the above address or to such other address as Declarant may from time to time notify the Association. All notices to Club Owner shall be delivered or sent to Club Owner at Brookstone Golf & Country Club, Ltd., \_\_\_\_\_ or to such other address as Club Owner may from time to time notify the Association. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association.

12.14 Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner.

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

12.15 Dispute Resolution. Any Lot Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any officer or director, or the property manager of the Association, the Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.

BROOKSTONE HOMEOWNERS ASSOCIATION, INC.

Cobb County Public Land Reords

1. Declaration of Covenants, Conditions and Restrictions for Brookstone, a Country Club Community (recorded 2-5-87, Deed Book 4324, Page 484)
2. First Amendment to Declaration (recorded 5-7-87, recorded 4458, Page 298)
3. Second Amendment to Declaration (recorded 7-1-87, Deed Book 4540, Page 463)
4. Third Amendment to Declaration (recorded 2-24-88, Deed Book 4821, Page 464)
5. Fourth Amendment to Declaration (recorded 2-24-88, Deed Book 4821, Page 493)
6. Fifth Amendment to Declaration (recorded 3-23-88, Deed Book 4855, Page 36)
7. Sixth Amendment to Declaration (recorded 4-28-88, Deed Book 4898, Page 196)
8. Seventh Amendment to Declaration (recorded 6-22-88, Deed Book 4971, Page 215)
9. Eighth Amendment to Declaration (recorded 4-17-89, Deed Book 5309, Page 42)
10. Ninth Amendment to Declaration (recorded Deed Book 6165, Page 461)
11. Tenth Amendment to Declaration (recorded 6-28-93, Deed Book 7437, Page 127)
12. Amendment to the Declaration (recorded 1-26-94, Deed Book 7993, Page 0051)
13. Amendment to the Declaration (recorded 10-10-96, Deed Book 9920, Page 300)
14. Fourteenth Amendment to Declaration (recorded 10-28-96 Deed Book 9953, Page 1)