

STATE OF GEORGIA
COUNTY OF FULTON

THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS FOR WINDRUSH SUBDIVISION (this "First Amendment") is made on the date hereinafter set forth by D.W. MILLEN & ASSOCIATES, INCORPORATED, a Georgia corporation ("Declarant").

W I T N E S S E T H:

WHEREAS, Declarant has heretofore declared, made und published that certain Declaration of Restrictive Covenants For Windrush Subdivision (the "Declaration"), filed and recorded in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia, in Deed Book 7200, Page 112, and in the Office of the Clerk of the Superior Court of Hall County, Georgia, in Deed Book _____, Page _____; and,

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

WHEREAS, Declarant desires to amend the Declaration (i) for the purpose of incorporating therein the provisions hereinafter set forth relating to the establishment and operation of the Association, and (ii) for other purposes;

NOW, THEREFORE, the Declarant hereby declares that the Declaration shall be and is hereby amended so as to incorporate therein the following provisions:

ARTICLE III

ADDITIONAL DEFINITIONS

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

Section 3.1 Association. "Association" means Shadburn Ferry Homeowner's Association, Inc., a non-profit corporation organized under the Georgia Nonprofit Corporation Code, and its successors and assigns.

Section 3.2 Board. "Board" means the Board of Directors of the Association.

Section 3.3 By-Laws. "By-Laws" means the By-Laws of the Association.

Section 3.4 Common Property. "Common Property" means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Lot Owners.

Section 3.5 Member. "Member" means any member of the Association.

ARTICLE IV

COMMON PROPERTY

Section 4.1 Conveyance of Common Property.

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Lot Owners (such real and personal property is hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 4.1 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 4.1, the Declarant may convey to the Association in accordance with this Section 4.1 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

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

Section 4.2 Right of Enjoyment. Every Lot Owner shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Lot Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Lot Owners. The Association may permit persons who are not Lot Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 4.02 is subject to suspension by the Association as hereinafter provided.

Section 4.3 Right of The Association. The rights and privileges conferred in Section 4.2 hereof shall be subject to the right of the Association acting through the Board to:

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

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

(c) suspend, pursuant to Section 5.6, the voting rights of any Member and the right of enjoyment granted or permitted by Section 4.2;

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

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

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

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

(h) to sell, lease or otherwise convey all or any part of its properties and interest therein.

Section 4.4 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of each class of Member of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

(a) It is contemplated that certain easements for the erection and maintenance of entrance monuments, subdivision signs, walls, fences and other structures intended to provide an attractive atmosphere or to provide privacy to Lot Owners within the Development will be reserved by the Declarant and set forth on plats or survey of the Development recorded in the County Records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Lot Owners within the Development. Said easement areas shall be designated as such and all Lot Owners taking title to any Lot upon which such easement lies will take title subject to the easement rights set forth herein, and well as such rights as may be set forth in the deed conveying such easements to the Association. Such easements shall be Common Property.

(b) It is contemplated that certain Lots may have located thereon portions of a lake or lakes. In that event, the Declarant intends to reserve a perpetual easement over that portion of the Lots for boating, fishing and other forms of recreation and to grant to the Association rights in such easement. Such easements shall be Common Property.

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

Section 4.5 Delegation of Use. Any Lot Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, his right to use and enjoy the Common Property.

ARTICLE V

THE HOMEOWNERS' ASSOCIATION

Section 5.1 Purposes, Powers and Duties of The Association. The Association shall be formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the residents of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the residents of the Development. To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

Section 5.2 Membership in the Association. Every Lot Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Restrictive Covenants.

Section 5.3 Voting Rights. Subject to the following provisions of this Section 5.3, the Association shall have two classes of voting membership Class A and Class B.

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

However, no termination of Class A membership shall affect such member's obligation to pay assessments, as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

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(b) Class B. The Declarant shall be the sole Class B member. Class B membership shall be a full voting membership and during its existence the Class B member shall be entitled to vote on all matters and in all events. The Class B member shall be entitled to three (3) votes for each Lot owned by it. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (a) the expiration of five (5) years from the date of recording of this Declaration; (b) the date as of which all of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either the Declarant or by a builder who purchased the Lot from Declarant for the purpose of creating a dwelling thereon, to an individual Lot Owner or Lot Owners for residential occupancy; or (c) the surrender by the Declarant of the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed and recorded by the Declarant; provided, however, that so long as any Mortgagee of Declarant holds a security interest in any portion of the Property, as security for a Development Loan to Declarant, the Class B membership shall not terminate without the prior written consent of such Mortgagee. If at the time of termination of the Class B membership, Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A member.

Section 5.4 Board of Directors and Officers.

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

(b) Officers. The number of officers and the method of election of officers shall be as set forth in this Declaration and the By-Laws of the Association. 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, officers of the Association shall be appointed by the Board until such time as Declarant no longer has the right to appoint members to the Board.

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

Section 5.5 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in this Declaration and the By-Laws of the Association.

Section 5.6 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) shall be subject to the Right of Abatement, as defined in Section 8.2 by reason of having failed to take the reasonable steps to remedy a violation of breach of the Restrictions within thirty (30) days after having received notice of the same pursuant to the provisions hereinafter set forth;

(b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or

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

(d) any suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 5.06, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent a Lot Owner's ingress to or egress from his Lot.

Section 5.7 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Non-Profit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, as each shall from time to time be in force and effect.

Section 5.8 Control by Declarant and Appointment of the Board. Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of three (3) members. 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, the Declarant hereby retains the right to appoint two (2) members to the Board. The rights of Declarant to appoint members of the Board also includes the right to remove and replace its appointees until such time as its right to appoint members to the Board ceases. Declarant shall retain the right to appoint and remove its members of the Board until such time as the first of the following events shall occur: (i) the expiration of five (5) years from the date of the recording of this Declaration; (ii) the date upon which all of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either Declarant or by a builder who purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, to an individual Lot Owner or Lot Owners for residential occupancy; or (iii) the surrender by Declarant of the authority to appoint and replace directors by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the Declarant's right to appoint and remove directors of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Lot Owners, including Declarant, if Declarant then owns one or more Lots. Upon the final expiration of all rights of Declarant to appoint and replace directors of the Association, a special meeting of the Association shall be called. At such special meeting, the Lot Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Lot Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE VI

ASSESSMENTS AND MAINTENANCE CHARGES

Section 6.1 Covenant for Assessments and Creation of Lien and Personal Obligations. The Declarant, to the extent that Declarant is a Lot Owner, hereby covenants and agrees, and each Lot Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

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

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

(c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 6.7 hereof and costs of collection including reasonable attorney's fees;

(d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then Lot Owner, and the Lot Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all improvements which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of improvements;

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

(f) that all annual and special assessments (together with interest thereon as provided in Section 6.7 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot or Lots owned by him during the period that he is a Lot Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Section 6.1(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot owned by him; provided, however, that such personal obligation for delinquent assessment shall not pass to a Lot Owner's successor in title unless expressly assumed by such successor.

Section 6.2 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the residents of the Development, including, but not limited to, and in addition to other purposes set forth in this Declaration, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, enforcement of the restrictions contained in this Declaration, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

Section 6.3 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

Section 6.4 Annual Assessment or Maintenance Charge. Subject to the terms of this Article, each Lot in the Property is hereby subjected to an annual maintenance charge for the purpose of creating a fund to be known as the "maintenance fund" which maintenance charge and assessment will be paid by the Lot Owner or Lot Owners of each Lot within the Property (and any area annexed under the jurisdiction of the Association) in advance in monthly, quarterly or annual installments. The annual maintenance charge and assessment will commence as to each Lot on the first day of the month following the earliest to occur of the following events: (a) upon the occupancy of a permanent dwelling located on the Lot as a residence; or (b) upon the conveyance of the Lot by Declarant to a Lot Owner or tenant for residential occupancy; or (c) upon the conveyance by a builder who has purchased the Lot from Declarant for the purpose of erecting a dwelling thereon to a Lot Owner or tenant for residential occupancy. Neither the Declarant nor any builder who has purchased

a lot from Declarant for the purpose of erecting a dwelling thereon shall be subject to the annual maintenance charge and assessment. Notwithstanding the preceding, the annual maintenance charge and assessment will commence as to each Lot owned by Declarant or a builder upon the occupancy of a permanent dwelling located thereon as a residence. The Declarant is authorized, although not required, to advance funds to the Association necessary to further the purposes of the Association, and in the event such funds are advanced, the repayment of same shall be secured by a lien upon the property of the Association. Beginning on the date this Amendment is executed through December 31, 1992, the annual maintenance charge and assessment will not exceed \$ -0- per month or a rate of \$ -0- per annum (said rate of charge referred to hereinafter as the "Initial Rate"). The Initial Rate will be determined by the Board of Directors; however, said Initial Rate will not exceed the maximum rate stated in the preceding sentence. Whether such assessment shall be payable monthly, quarterly or annually will be determined by the Board of Directors. Beginning January 1, 1993, and from year to year thereafter, the annual assessment may be adjusted by the Board of Directors as the needs of the Development may in the judgment of the Directors require. The due dates shall be established by the Board of Directors. The Association shall use the proceeds of said maintenance fund in providing for normal, recurring maintenance charges for the Common Property for the use and benefit of all residents of said Property. Such uses and benefits to be provided by said Association may include, by way of clarification, and not limitation, any and all of the following: normal, recurring maintenance of the Common Property (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for existing landscaping and maintaining and repairing recreational facilities) and the acquisition and installation of capital improvements to such Common Property, such as sprinkler systems, providing that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Property; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the Property to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employment of security guards or watchmen, if determined necessary; caring for vacant lots; and doing any other thing or things necessary or desirable in the opinion of the Board or membership of the Association to keep the property neat and in good order, or which is considered of general benefit to the Lot Owners or occupants of the Property, it being understood that the judgment of the majority of the Members of the Association in the expenditure of said funds and the determination of which constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Property. The fund shall be established and maintained out of regular annual assessments.

Section 6.5 Special Assessments for Working Capital Fund, Nonrecurring Maintenance, and Capital Improvements. In addition to the annual assessment authorized by this Article IV, the Association may levy:

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(a) upon the first sale to a Lot Owner who will individually or through tenants or assigns occupy a Lot, such sale to be made by Declarant or by a builder who has purchased the Lot from Declarant, for the purpose of erecting a dwelling thereon, a special assessment in the amount of \$ 250.00. The aggregate fund established by such special assessment shall be maintained in a segregated account, and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board; and

(b) in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by a two-thirds (2/3) vote of each class of Members of the Association who are present in person or by proxy at a meeting duly called for such purpose.

Section 6.6 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.4 or 6.5 shall

he sent to all Members, or delivered to their residence, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.7 Effect of Nonpayment of Assessments. Any Assessment which is not paid within thirty (30) days after the Due Date shall bear interest from the Due Date at the rate of twelve percent (12%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that a Lot Owner shall fail to pay fully any portion of any assessment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Lot Owner, as well as a lien on such Lot Owner's Lot enforceable in accordance with the provisions of this Declaration.

Section 6.8 Certificate of Payment. Upon written demand by a Lot Owner, the Association shall within a reasonable period of time issue and furnish to such Lot Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Lot Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

ARTICLE VII
EASEMENTS, ZONING AND OTHER RESTRICTIONS

Section 7.1 Easements.

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

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

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

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

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

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

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Section 6.9 Transfer Assessments.

(vi) lake maintenance, access and recreational use for portions of the Property abutting lakes, if any, which easement may be for the benefit of the Declarant and Lot Owners. No easement shall be granted to the Association or others by Declarant to permit any person or person using any lake or lakes on Common Property to enter onto any portion of a Lot not covered by such lake unless such entering person is the Lot Owner of the Lot.

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

Section 7.2 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto.

Section 7.3 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Article. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 7.01.

Section 7.4 Zoning and Private Restrictions. None of the covenants, restrictions or easements creating or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

ARTICLE VIII

ENFORCEMENT

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

Section 8.2 Right of Abatement.

(a) Except where different notice provisions are provided elsewhere herein, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Lot Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Lot Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement.

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

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public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deed to secure debt given to secure a loan the proceeds of which are used (1) to purchase a lot or lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

(c) The remedies provided in this Section 8.2 shall be in addition to, and not in lieu of, all other legal and equitable remedies elsewhere provided for in this Declaration.

Section 8.3 Collection of Assessments and Enforcement of Lien.

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

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Lot Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to lien at auction, at the usual place for conducting sales at the Courthouse in Forsyth County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Fulton County, Georgia are published, all other notice being hereby waived by each Lot Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Lot Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Lot Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Lot Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Lot Owner, and that the conveyance to be made by the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen per centum (15%) of the aggregate amount due for attorneys' fees, shall pay any excess to such Lot Owner, or to the heirs or assigns of such Lot Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

*Amended
See
Amendment #5
dated
10-1-04*

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

Section 8.4 No Waiver. The failure of the Declarant, the Association, or the Lot Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Other Changes. Notwithstanding any other provisions

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

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

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

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of dwellings on the Lots of the Development, the exterior maintenance of Lots and improvements thereon, the maintenance of the Common Property or party walks or common fences or common roadways and driveways, or the upkeep of lawns and plantings in the Development.

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

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

Section 9.2 Rights of First Mortgagees.

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

(b) In addition to the rights of mortgagees elsewhere provided, each first mortgagee of a Lot, upon request, shall (i) be entitled to attend and observe all meetings of Lot Owners, but not meetings of the Board; (ii) be furnished copies of annual financial reports made to the Lot Owners; and (iii) be entitled to inspect the financial books and records of the Association during reasonable business hours.

Section 9.3 Professional Management. Any agreement for professional management of the Association, or any other contract providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice.

Section 9.4 Notice of Leases, Tenants and Guests. All tenants, lessees, guests and visitors are subject to the covenants contained in this Declaration, and they must abide by the rules and regulations set forth herein and as promulgated by the Association. It is the responsibility of the Lot Owner to inform his tenants, lessees, guests and visitors of this requirement. It is also the responsibility of the Lot Owner to inform the Association of any lease of his dwelling, whether by written or oral agreement, and where the Lot Owner will not be occupying his dwelling to provide the Association with a forwarding address where he may be contacted.

Section 9.5 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 9.6 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the Lot Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

- (a) Declarant: D.W. Millen & Associates, Incorporated
1080 Upper Hembree Road
Roswell, Georgia 30076
Attn: Mr. Don W. Millen, President
- (b) Lot Owner: Each Lot Owner's address as registered with the Association in accordance with the By-Laws.

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

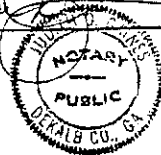
Section 9.7 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Lot Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Lot Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by a Lot Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Lot Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

IN WITNESS WHEREOF, the Declarant has caused this First Amendment to be duly executed and sealed this 12th day of February 1992.

Signed, sealed and delivered in the presence of:

Witness

Notary Public



D. W. MILLEN & ASSOCIATES, INCORPORATED

By: Don W. Millen, President
DON W. MILLEN, President

[CORPORATE SEAL]

