

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR THE SUMMIT AT BROOKWOOD SUBDIVISION

THIS DECLARATION ("Declaration"), made as of the 28<sup>th</sup> day of April, 1994, by PULTE HOME CORPORATION, a Michigan corporation, hereinafter sometimes called the "Declarant."

W I T N E S S E T H:

WHEREAS, the Declarant is the Owner of the real property described in Article II hereof and desires to create thereon a residential community with permanent Common Areas and Community Facilities and Easement Areas for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of the Common Areas and Community Facilities and Easement Areas; and to this end, desires to subject the real property described in Article II hereof to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which are for the benefit of said property and the subsequent Owners thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an association to which should be delegated and assigned the powers and duties of maintaining and administering the Common Areas and Community Facilities and Easement Areas, administering and enforcing the within covenants and restrictions, and collecting and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed THE SUMMIT AT BROOKWOOD HOMEOWNERS ASSOCIATION, INC. as a nonprofit corporation without capital stock under the laws of the State of Georgia, for the purpose of carrying out the powers and duties aforesaid.

NOW, THEREFORE, the Declarant hereby declares that the real property described in Article II hereof is and shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter sometimes referred to as the "Covenants and Restrictions") hereinafter set forth, all of which are declared and agreed to be in aid of a plan for improvement of the Project, and shall be deemed to run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, its successors and assigns, and any individual acquiring or owning an interest in the Project and improvements, including, without limitation, any individual, group of individuals, corporation, trust or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of any obligation.

Forsoyth County  
Clerks Office Superior Court  
Filed for recording on 24  
day of MAY 1994  
at 2:20 o'clock P. Recorded in  
Book 760 Page 358-39 this  
24 day of MAY, 1994  
Paul Nicolson Clerk

## ARTICLE I

Section 1. Definitions. The following words, when used in this Declaration (including the preamble hereinabove), shall have the following meanings:

(a) "Association" shall mean and refer to THE SUMMIT AT BROOKWOOD HOMEOWNERS ASSOCIATION, INC., a Georgia non-profit corporation, and its successors and assigns.

(b) "Board of Directors" shall mean duly elected Board of Directors, elected pursuant to the Articles of Incorporation and By-Laws of the Association.

(c) "Common Areas and Community Facilities" shall mean and refer to all real property, whether improved or unimproved, owned or leased by the Association or otherwise available to the Association for the benefit, use and enjoyment of its Members and shall include all improvements located therein or thereon, and all utilities which serve the Property and are to be maintained by the Association. The Common Areas and Community Facilities shall include any and all tennis courts, swimming pool, pool house, fences, landscaping, lighting, walkways, parking areas and other improvements constructed by Declarant thereon. The Common Areas and Community Facilities described on Exhibit C attached to this Declaration have been or shall be conveyed to the Association by the Declarant.

(d) "Declarant" shall mean and refer to the Declarant identified in the preamble to this Declaration and its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purposes of development.

(e) "Easement Areas" shall mean those areas (if any) shown as landscape maintenance easements, detention areas, drainage easements, and traffic islands on the final subdivision plat for the Project to be recorded by Declarant in the real property records of Forsyth County, Georgia.

(f) "Member" shall mean and refer to every individual, group of individuals, corporation, trust or other legal entity, or any combination thereof, who holds a Class A or Class B membership in the Association.

(g) "Mortgagee", as used herein, means the holder of any recorded mortgage, or the party secured by or beneficiary of any recorded deed to secure debt, encumbering one or more of the Units, and shall not be limited to Institutional Mortgagees. "Mortgage", as used herein, shall include a deed to secure debt. "First Mortgage", as used herein, shall mean a Mortgage with priority over all other Mortgages secured by the same property. As used in this Declaration, the term "Institutional Mortgagee" or "Institutional Mortgagee" shall include banks, trust companies, insurance companies,

mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States government or of any state or municipal government. As used in this Declaration, the term "Mortgagee" shall include the parties secured by any deed to secure debt or any beneficiary thereof.

(h) "Owner" shall mean and refer to the record owner, whether one or more individuals or entities, of the fee simple title to any Unit situated on the Property, including contract sellers, but excluding those having such interest solely as security for the performance of any obligation.

(i) "Project", as set forth in this Declaration, mean that certain subdivision being developed by the Declarant in Forsyth County, Georgia known as THE SUMMIT AT BROOKWOOD SUBDIVISION and located on the Property.

(j) "Property" shall mean and refer to all real property described in Article II, Section 1 hereof, including any Additional Property that may be annexed pursuant to the terms of Article II, Section 2 hereof.

(k) "Unit" shall mean and refer to any lots or portions of the Property on which Declarant intends for there to be construction and occupancy of a residence by a single individual or family.

Whenever in this Declaration any action is required to be taken by a specified percentage of "each class of the then Members" of the Association, then such action shall be required to be taken separately by the specified percentage of the then outstanding Class A Members of the Association and by the specified percentage of the then outstanding Class B Members of the Association. Whenever in this Declaration any action is required to be taken by a specified percentage of the "then Members" of the Association, then such action shall be required to be taken by the specified percentage of the then outstanding cumulative membership of the Association.

## ARTICLE II

Section 1. Property Subject to Declaration. The Property which is, and shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the Declaration is located in Forsyth County, State of Georgia, and is more particularly described in Exhibit A attached hereto and by reference made a part hereof.

Section 2. Additional Property. So long as there are Class B Members of the Association, additional property may be annexed to the Property, without the consent of the Class A Members of the

Association, if any, so long as the additional property is a part of the property described on Exhibit B attached to this Declaration and incorporated herein by this reference (referred to herein as the "Additional Property"). Following the lapse or surrender of the Class B memberships, as provided for in Article III of this Declaration, Additional Property may be annexed to the Property without the consent of the Class A Members of the Association, if any, so long as such Additional Property is part of the property described on Exhibit B attached to this Declaration and said annexation is accomplished within seven (7) years of the date of this Declaration. The scheme of this Declaration shall not, however, be extended to include any such Additional Property until such Additional Property is annexed and subjected to this Declaration as hereinafter set forth.

Any annexations made pursuant to this Article, or otherwise, shall be made by recording a supplementary declaration, which supplementary declaration shall extend the scheme of the this Declaration to such annexed Additional Property. Such annexations need not be made by the Declarant; provided, however, that any such annexation accomplished by persons other than the Declarant shall have the consent of the Declarant, which consent shall not be unreasonably withheld or delayed.

### ARTICLE III

#### Membership

Section 1. Membership. The Association shall have two classes of voting membership, which shall be known as "Class A" and "Class B":

(a) With the exception of the Declarant, every individual, group of individuals, corporation, partnership, trust or other legal entity, or any combination thereof, who is an Owner or which otherwise becomes subject to the Declaration for assessment by the Association, shall be a Class A Member of the Association; provided, however, that any such individual, group of individuals, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of a debt or obligation shall not be a Class A Member solely on account of such interest. Each Class A Member shall be entitled to one (1) vote for each Unit in which such Member holds the interest required for Class A membership, provided that there shall be only one (1) vote for each Unit irrespective of the number of Owners for such Unit.

(b) The Class B Member shall be the Declarant, its nominee or nominees, and shall include every individual, group of individuals, corporation, partnership, trust other legal entity, or any combination thereof, who shall obtain any Class B membership by assignment from the Declarant which specifically assigns the rights of Class B membership. The Class B Member or Members shall have one (1) Class B membership for each Unit in which such Member holds the interest

otherwise required for Class A membership. Each Class B Member shall be entitled to three (3) votes for each Class B membership which it holds. The Class B membership shall cease and be converted to Class A membership on the first to happen of the following events:

- (i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (ii) on July 1, 2004.

Upon lapse or surrender of any of the Class B memberships as provided for in this Article, the Declarant shall thereafter remain a Class A Member of the Association as to each and every Unit in which the Declarant then holds the interest otherwise required for such Class A membership.

The Members of the Association shall have no preemptive rights, as such Members, to acquire any memberships of the Association that may at any time be issued by the Association except as may be specifically provided in this Article.

#### ARTICLE IV

Section 1. Member's Right of Enjoyment. Subject to easements and restrictions of record which affect or pertain to the Property and/or the Common Areas and Community Facilities (including the Easement Areas), every Member shall have a right and easement of enjoyment in and to the Common Areas and Community Facilities, if any, and such easement shall be appurtenant to and shall pass with the fee title to every Unit subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, and with the consent of two-thirds (2/3) of each class of the then Members of the Association, voting separately, to borrow money for the purpose of improving the Common Areas and Community Facilities and the Easement Areas in a manner designed to promote the enjoyment and welfare of the Members and in aid thereof to mortgage any of the Common Areas and Community Facilities; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Property of the Association against Mortgage default and foreclosures; provided, however, that the same are in conformity with the other provisions of this Declaration; and

(c) The right of the Association to adopt reasonable rules respecting use of the Common Areas and Community Facilities and to reasonably limit the number of guests of Members who use any Common Areas and Community Facilities which may be developed upon the Property; and

(d) The right of the Association to suspend a Member's voting rights and the rights to use of Common Areas and Community Facilities, if any, for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of any of the published rules and regulations of the Association; and

(e) The right of the Association, acting by and through its Board of Directors and after approval of two thirds (2/3) of each class of the then Members by execution of a recordable document, to dedicate or transfer all or any part of the Common Areas and Community Facilities or the Easement Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the Board of Directors; and

(f) The right of the Association, acting by and through its Board of Directors and after approval of two thirds (2/3) of each class of the then Members by execution of a recordable document, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other individual; provided, however, that no such licenses, rights-of-way or easements shall be unreasonably and permanently inconsistent with the rights of the Members to the use and enjoyment of the Common Areas and Community Facilities.

Section 2. Delegation of Right of Use. Any Member of the Association may delegate his rights to the use and enjoyment of the Common Areas and Community Facilities, if any, to the members of his family who reside permanently with him and to his tenants, contract purchasers who reside on the Property and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

## ARTICLE V

Section 1. Annual Maintenance Assessments. Except as assessment of the Declarant is limited by the provisions of Article VI of this Declaration, each individual, group of individuals, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes an Owner of a Unit within the Property (i.e., each Class A Member of the Association), by acceptance of a deed or other conveyance, shall be deemed to covenant and agree to pay the Association, in advance, an annual assessment required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

(a) The cost of all operating expenses of the Common Areas and Community Facilities, and the Easement Areas, and the services

furnished to or in connection with the Common Areas and Community Facilities, and the Easement Areas, including charges by the Association for any services furnished by it; and

(b) The cost of necessary management and administration of the Common Areas and Community Facilities, and the Easement Areas, including fees to any Management Agent; and

(c) The amount of all taxes and assessments levied against the Common Areas and Community Facilities; and

(d) The cost of hazard and liability insurance on the Common Areas and Community Facilities and the Easement Areas and the cost of such other insurance as the Association may purchase with respect to the Common Areas and Community Facilities, the Easement Areas, or the Property; and

(e) The cost of utilities and other services which may be provided by the Association or for which the Association shall be responsible to maintain or repair for the Common Areas and Community Facilities and the Easement Areas, and the maintenance, replacement or repair of such utilities; and

(f) The cost of maintaining, replacing, repairing and landscaping the Common Areas and Community Facilities and the Easement Areas, if any, including, without limitation, maintenance of any storm water detention basins or ponds or the like located upon the Common Areas and Community Facilities and the Easement Areas, the cost of maintaining, repairing and landscaping any portion of the Units as required by this Declaration, and the cost of maintenance of all roads, easements, entrance features and monuments, fences, irrigation systems, lighting, landscaping, pathways, traffic islands or walkways upon the Property and providing access to the Property to the extent required by any easements, restrictions or agreements of record which require such contribution by the Declarant, its predecessors in title, or its successors in title, together with such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith; and

(g) The cost of funding all reserves, including insurance deductibles, established by the Association, including, when appropriate, a general operating reserve and a reserve for replacements.

The Board of Directors shall determine the amount of the maintenance assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, annual assessments may be levied and collected on a monthly, quarterly or semi-annual basis rather than on the annual basis hereinabove provided for.

The Board of Directors shall prepare, or cause the preparation of, an annual operating budget for the Association which shall provide, without limitation, for the management, operation and maintenance of the Common Areas and Community Facilities and the Easement Areas. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual maintenance assessment against each Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Units and the annual maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board of Directors. Written notice of the annual maintenance assessments shall thereupon be sent to the Members. The omission of the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not in any respect be deemed a waiver of the right to modify the assessment provided for in this Article or a release of any Member from the obligation to pay the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period, but the annual maintenance assessment fixed for the preceding period shall continue until a new maintenance assessment is fixed. No Owner may exempt himself from liability for maintenance assessments by abandonment of any Unit belonging to him or by the abandonment of his right to the use and enjoyment of the Common Areas and Community Facilities or for any other reason whatsoever.

Except as may be otherwise provided for in this Declaration, this Declaration does not contemplate that the Association shall have any responsibility for the maintenance or repair of the Units or their appurtenances. The responsibility and duties of the Association for maintenance and repairs shall be limited to the obligations of the Declarant and/or its predecessors in title for maintenance or repair, including but not limited to easements for ingress and egress to the Project, as set forth in easements and agreements of record, the Common Areas and Community Facilities, the Easement Areas and utilities which the Association is required to repair or maintain. The Owner of any Unit shall, at his own expense and except as provided above, maintain the interior and exterior of his Unit and all appurtenances thereto including grass, bushes, shrubs, trees and other landscape improvements in good order, condition and repair and in a clean, sightly and sanitary condition at all times.

If the Board of Directors determines (i) that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or (ii) that the need for maintenance, repair or replacement in the Common Areas and Community Facilities or the Easement Areas was caused through the wilful or negligent act of any Owner, his or her family, guests, lessees or invitees, and it is not covered and paid for by insurance, except in an emergency

situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary by the Board of Directors. Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days after the date of such notice within which to complete maintenance, repair or replacement, or if the maintenance, repair or replacement is not capable of completion within such time period, to commence such maintenance, repair or replacement within ten (10) days and prosecute the same diligently and without interruption to completion. If the Board determines that an emergency exists, or if an Owner does not comply with the demand given by the Association as herein provided, the Association may provide any such maintenance, repair or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject and shall become and be a lien against the Unit and personal obligation of the Owner, as hereinafter provided.

Section 2. Special Maintenance Assessments. In addition to the regular maintenance assessments authorized by this Article, the Association may levy in any assessment year a special maintenance assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or inordinate repair or replacement of any improvement located upon or forming a part of the Common Areas and Community Facilities and the Easement Areas, including the necessary fixtures and personal property related thereto, or for such other purposes as the Board of Directors may consider appropriate; provided that any such assessment shall have the assent of the Members representing two-thirds (2/3) of each class of the then Members of the Association. A meeting of the Members shall be duly called for this purpose, pursuant to Section 5 below.

Section 3. Reserves for Replacements. The Association shall establish and maintain a reserve fund for replacements by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the State of Georgia or by any agency of the United States of America, or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacements may be expended only for the purpose of effecting the replacement of improvement on the Common Areas and Community Facilities, the Easement Areas, or major repairs to any sidewalks, parking areas, streets, or roadways developed as part of the Property or providing access to the Property, equipment replacement, insurance deductibles, and for start-up expenses and operating contingencies of a non-recurring nature relating to the Common Areas and Community Facilities and the Easement Areas.

The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Owner in any such reserves shall be considered an appurtenance of his Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Unit to which it appertains and shall be deemed to be transferred with such Unit. The calculation and assessment of the reserves for replacement shall not commence with regard to any improvement until the improvement has been completed as evidenced by any authority requiring such escrow funds.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following conveyance of the first Unit, the maximum annual maintenance assessment for each Unit to which Class A membership is appurtenant shall be \$275.00. Payment of the assessment shall commence following the conveyance of the Common Areas and Community Facilities. The annual maintenance assessment shall be levied at a uniform rate for each Unit to which Class A membership is appurtenant. The actual sums assessed annually by the Association may be at any lower amount than the maximum stated herein. There shall be proration for such annual maintenance assessment if an Owner owns a Unit for less than a full calendar year. Declarant shall be entitled to collect at closing such annual maintenance assessment for the year in which the closing occurs and, if after November 1 of any year, for the next succeeding calendar year.

Section 5. Increase in Maximum Annual Maintenance Assessment.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit, the maximum annual maintenance assessment for all Class A memberships hereinabove provided for, may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the Members. The maximum annual assessment may be increased above five percent (5%) upon assent of at least two-thirds (2/3) of each class of the then Members at a meeting called for that purpose. The notice for any such meeting shall comply with the requirements of the By-Laws of the Association.

Written notice of any meeting called for the purpose of increasing the maximum annual assessment of the Association or authorizing any special assessment shall be sent to all Members 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 proxies entitled to cast sixty percent (60%) of all the votes of each class of the then Members 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.

## ARTICLE VI

Section 1. Non-Payment of Assessments. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Unit or Units belonging to the Member against whom such assessment is levied and shall bind such Unit or Units in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Member to pay such assessment shall, in addition, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without foreclosing or waiving the lien herein created to secure the same.

Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within thirty (30) days after it is due shall bear interest at a rate not to exceed six percent (6%) per annum as established by the Board of Directors; and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to also pay such "late charge" as the Board may fix. The Association may bring an action at law against the Member personally obligated to pay the same, or foreclose on the lien against the Unit or Units then belonging to said Owner in the manner now or hereafter provided for the foreclosure of Mortgages, Deeds to Secure Debt or other liens on real Property in the State of Georgia containing a power of sale or consent to a decree, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law; in either of which events interest, costs and reasonable attorney's fees of fifteen percent (15%) of the sum claimed shall be added to the amount of each assessment. Any Owner who does not pay any assessment levied pursuant to this Declaration on or before the date when due shall not be entitled to use any recreational facilities located in the Common Areas and Community Facilities until such assessment is paid in full.

The Association shall notify the Holder of the First Mortgage on any Unit for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the Owner of such Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of sixty (60) days, but any failure to give such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any priorities established in this Article.

Each Owner whose Unit is encumbered or may later become encumbered by a First Mortgage shall provide the name and address of said Mortgagee within thirty (30) days of said Owner's ownership

of said Unit or within thirty (30) days of the date on which each such Mortgage is obtained by said Member. Any Owner failing to so provide shall pay the expenses of the Association to determine the name and address of the First Mortgagee.

The Board of Directors may, without any liability, post a list of Owners who are delinquent in the payment of any assessments or other fees which may become due the Association, including any installment thereof which becomes delinquent, in any prominent location upon the Property.

Section 2. Assessment Certificates. The Association shall, upon demand at any time, furnish to any Member liable for any assessment levied pursuant to this Declaration (or any other party legitimately interested in the same) a certificate in writing signed by an officer of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated. A charge not to exceed Ten and no/100 Dollars (\$10.00) may be levied in advance by the Association for each certificate so delivered.

Section 3. Priority of Lien. The lien established by this Declaration shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following.

(a) General and special assessments for ad valorem real estate taxes on the Unit; and

(b) The liens of any Mortgage or encumbrances duly recorded on the Unit prior to the assessment thereon of the lien provided for in this Declaration, or duly recorded on said Unit after receipt of a written statement from the Board of Directors, reflecting that payments of the assessment on said Unit were current as of the date of recordation of said Mortgage or encumbrance.

Notwithstanding any other provision of this Declaration to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Unit, as in this Article provided, shall be subordinate to the lien of any Mortgage or other encumbrance duly recorded on such Unit and made in good faith and for value received and shall in no way affect the rights of the Holder of any such Mortgage or other encumbrance; provided however, that such subordination shall apply only to assessments, and installments thereof, which have become due and payable prior to a sale or transfer of the Unit pursuant to a foreclosure of such Mortgage or other encumbrance or any deed, assignment or other proceeding or arrangement in lieu of foreclosure. Any Holder of any Mortgage or other encumbrance duly recorded on the Unit and made in good faith and for value received who comes into possession of the Unit pursuant to a foreclosure of such Mortgage or other encumbrance, or any deed, assignment or other proceeding or arrangement in lieu of

foreclosure, and any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid maintenance assessments levied against the Unit which accrued prior to the time such purchaser comes into possession of the Unit or prior to the foreclosure sale. Such foreclosure, deed, assignment or other proceeding or arrangement in lieu of foreclosure shall not, however, relieve the Mortgagee in possession or the purchaser at any foreclosure sale from any liability for any maintenance assessments thereafter becoming due. Sale or transfer of a Unit other than as described above shall not affect the assessment lien. No sale or transfer of any kind shall relieve the Unit Owner from liability for any future assessments or liens.

No amendment to this Section shall affect the rights of the Holder of any First Mortgage on any Unit (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the Holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

The Board of Directors may, in its sole and absolute discretion, extend the provisions of this Section to the Holders of Mortgages (or the indebtedness secured thereby) not otherwise entitled hereto.

Section 4. Additional Default. Any recorded First Mortgage on a Unit on the Property shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default under such Mortgage (or the indebtedness secured thereby); but failure to include such a provision in any such Mortgage shall not affect the validity or priority thereof and the protection extended to the Holder of such Mortgage (or the indebtedness secured thereby) by reason of Section 3 of this Article shall not be altered, modified or diminished by reason of such failure. The provisions of this Section 4 shall not pertain with respect to any Mortgage wherein the Department of Housing and Urban Development has any interest whatsoever.

Section 5. Commencement of Annual Assessments. After conveyance of the Common Areas and Community Facilities and completion of all amenities thereon, the annual maintenance assessment for each Class A membership shall commence and be due and payable. Prior to conveyance of the Common Areas and Community Facilities and completion of all amenities thereon, payment of the annual maintenance assessment shall be optional. Except as otherwise herein provided, the annual assessment for any Unit shall become due and payable and a lien on January 1 of each year.

Section 6. Assessment of Declarant. Until the lapse of the Class B memberships, as above provided, the Declarant shall be subject to assessment by the Association only as hereinafter provided. The Declarant shall, commencing as of the date of the conveyance of the first Unit, pay to the Association its pro rata share of the

annual sum budgeted for reserves for replacements. Until the lapse of the Class B memberships, as aforesaid, the Declarant shall be responsible for payment of all budgeted expenses of the Association to the extent that the same are not funded by maintenance assessments paid to the Association. After lapse of the Class B memberships, but only thereafter, the Declarant shall be assessed only for Units owned from time to time by Declarant.

Section 7. Exempt Property. No portion of the Common Areas and Community Facilities shall be subject to assessment of any kind by the Association.

## ARTICLE VII

### Section 1. Architectural and Environmental Control Committee.

Except for construction or development by, for or under contract with the Declarant, and except for any improvements to the Common Areas and Community Facilities and the Easement Areas accomplished by the Declarant concurrently with said construction and development, and except for purposes of proper maintenance and repair, no building, home, fence, wall or other improvements or structures shall be commenced, directed, placed, moved, altered or maintained upon the Property or any Unit, nor shall any exterior addition to or change (including any change of color) or other alteration thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Architectural and Environmental Control Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by an Architectural and Environmental Control Committee designated by the Board of Directors.

### Section 2. Architectural and Environmental Control Committee-Operation.

The Board of Directors shall appoint an Architectural and Environmental Control Committee. The Architectural and Environmental Control Committee shall be composed of three (3) or more natural individuals designated from time to time by the Board of Directors. The affirmative vote of a majority of the Members of the Architectural and Environmental Control Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article.

Section 3. Approvals, etc. Upon approval by the Architectural and Environmental Control Committee of any plans and specifications submitted pursuant to the provisions of this Article, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of such Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. In the event the Committee fails to approve or disapprove any plans and specifications which may be submitted to it pursuant to the provisions of this Article within thirty (30) days after such plans and specifications (and all other materials and information required by the Architectural and Environmental Control Committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with.

Section 4. Limitations. Construction or alterations in accordance with plans and specifications approved by the Architectural and Environmental Control Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the same are approved by the Committee (whether by affirmative action or by forbearance from action, as in Section 3 of this Article above), and shall be substantially completed within twelve (12) months following the date of commencement, or within such other period as the Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviation from the plans and specifications approved by the Committee without the prior consent in writing of the Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

Section 5. Certificate of Compliance. Upon the completion of any construction or alterations or other improvements to a Unit in accordance with plans and specifications approved by the Architectural and Environmental Control Committee, the Architectural and Environmental Control Committee shall, at the request of the Owners thereof, issue a certificate of compliance which shall be prima facie evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Architectural and Environmental Control Committee and constructed or installed in full compliance with the provisions of this Declaration.

Section 6. Rules and Regulations, etc. The Architectural and Environmental Control Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval

and may publish and record such statements of policy, standards, guidelines and establish such criteria relative to architectural styles or details, fences, colors, setbacks, materials or other matters relative to architectural control and the protection of the environment, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The Architectural and Environmental Control Committee may charge and collect a reasonable fee for examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. The decisions of the Architectural and Environmental Control Committee shall be final except that any Member who is aggrieved by an action or forbearance from action by the Committee (or by any policy, standards or guidelines established by the Committee) may within thirty (30) days from the date of such decision, appeal the decision of the Architectural and Environmental Control Committee to the Board of Directors. Upon such request, the Member shall be entitled to a hearing before the Board of Directors of the Association. The decision of the Board of Directors shall be final.

Section 7. Prohibited Uses and Nuisances. Except for the activities of the Declarant during the construction, marketing, sales, or development of the Property, or except with the prior written approval of the Board of Directors of the Association or the Architectural and Environmental Control Committee, or as may be necessary in connection with reasonable and necessary repairs or maintenance to any dwelling or upon the Common Areas or Common Facilities or upon the Easement Areas:

(a) No noxious or offensive trade or activity shall be carried on at or within any Unit, nor shall anything be done therein or thereon, which may be or become an annoyance or nuisance to the neighborhood or other Owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Unit or upon the exterior of any other improvements.

(b) The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited in any Unit or upon any of the Common Areas, except that this shall not prohibit the keeping of dogs, cats, or caged birds as domestic pets provided they are not kept, bred or maintained for commercial purposes and, provided further, that such domestic pets are not a source of annoyance or nuisance to the other Owners. The Board of Directors or, upon resolution of the Board of Directors, the Architectural and Environmental Control Committee, shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to

other Owners, and such determination shall be final. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Common Areas unless accompanied by a responsible individual and unless they are carried or leashed. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.

(c) No burning of any trash and no accumulation or storage of litter, lumber, debris, detritus, flotsam, scrap metals, refuse, rubbish, rubble, bulk materials, waste, new or used building materials, or trash of any kind shall be permitted in any Unit.

(d) Except as herein elsewhere provided, no junk vehicle, commercial vehicle, trailer, camper, camp truck, house trailer, boat or other similar machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Unit and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Areas and Community Facilities) shall be kept upon the Property nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon.

(e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any portion of the Property. Garbage, trash and other refuse shall be placed in covered containers.

(f) Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, television cable or similar transmission line shall be installed or maintained above the surface of the ground.

(g) No Unit shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

(h) No structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, dogtrot, pigsty, chicken coop, stable, outdoor clothes dryer, shed or other buildings shall be erected, used or maintained on the Property at any time.

(i) Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" and such promotional sign or signs as may be maintained by the Declarant or the Association, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Unit.

Provided, however, that one sign not exceeding two (2) square feet in area and not illuminated may be attached to a Unit where a professional office (as defined below) is maintained, and provided further, that one temporary real estate sign not exceeding six (6) square feet in area, may be erected upon the Property in front of or may be attached to any Unit placed upon the market for sale or rent. Any such temporary real estate sign shall be removed promptly following the sale or rental of such Unit. The provisions of this subsection shall not apply to any Institutional Mortgagee of any Unit who comes into possession of the Unit by reason of any remedies provided by law or in such Mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, assignment or deed in lieu of foreclosure.

(j) No structure, planting or other material (except as erected or planted by Declarant) shall be placed or permitted to remain upon any portion of the Property which may damage or interfere with any easement for the installation or maintenance of utilities easements or easements for use or ingress and egress or which may unreasonably change, obstruct or retard direction or flow of any drainage channels.

(k) No outside television aerial, satellite dish, or radio antennae, or other aerial, antennae or dish for either reception or transmission, shall be maintained upon the Property except that such aerials, antennae or dishes may be erected and maintained within the Units located upon the Property.

(l) No Owner shall make any private or exclusive or proprietary use of any of the Common Areas and Community Facilities except with the specific approval of the Architectural and Environmental Control Committee and then only on a temporary basis and no Owner shall engage or direct any employee of the Association to do any private business of the Owner during the hours such employee is employed by the Association, nor shall any Owner direct, supervise or in any manner attempt to assert control over any employee of the Association.

(m) The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk storage and basement area, whether or not finished) of residences constructed on Units shall contain not less than 1,200 square feet, subject to zoning conditions. No dwelling shall be constructed which exceeds three (3) stories in height.

#### Section 8. Residential Use Leasing.

(a) All Units shall be used for private residential purposes exclusively, except that a professional office may be maintained in a Unit, if such maintenance and use is limited to the individual actually residing in the Unit and, if such maintenance and use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation. As used in this Declaration, the term

"professional office" shall mean rooms used for office purposes by a Member of any recognized profession, including doctors, dentists, lawyers, architects and the like, but not including medical or dental clinics. Nothing contained in this Declaration shall be construed to prohibit the Declarant from the use of any Unit for promotional or display purposes, as "model homes," as a sales office, or the like.

(b) Units may be rented only in their entirety; no fraction or portion may be rented, and no transient tenants may be accommodated therein. All leases and lessees are subject to the provisions of the Declaration and By-Laws and must be in writing. All rental periods must be for a term of not less than six (6) months. The Unit Owner must make available to the tenant copies of the Declaration, the By-Laws and any rules and regulations promulgated pursuant thereto. Any lease of a Unit shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Unit Owner agrees that any lease of a Unit shall contain the following language and that if such language is not expressly contained therein, such language shall be incorporated into any such lease by the existence of this covenant. Any lessee, by occupancy of a Unit, agrees to the applicability of this covenant and the incorporation of this covenant and the following language into the lease:

(i) Any lessee (tenant) of a Unit agrees to abide by and comply with all provisions of the Declaration, the Association By-Laws and all rules and regulations promulgated pursuant thereto. The above provisions shall not be construed to release the Unit Owner from any obligation, including the obligation for assessments for which he or she would otherwise be responsible, and the lessee and Owner shall be jointly and severally liable therefor.

(ii) Any violation of the Declaration, the Association By-Laws or the rules and regulations adopted in accordance therewith shall be deemed to be a violation of the terms and provisions of the lease and thereby authorize the Owner/lessor to terminate the lease without liability and to evict the tenant/lessee in accordance with Georgia law.

(iii) Any tenant charged with the violation of the Declaration, the Association By-Laws or any rules and regulations adopted pursuant thereto shall be entitled to the same rights to which the Unit Owner would be entitled under the Declaration, the By-Laws or the rules and regulations adopted.

Section 9. Fences. No fence shall be more than six (6) feet in height. Except as may be required of Declarant by governmental entities, installation of chain link and other wire fencing by Unit Owners is specifically prohibited. The erection of all fences shall

be subject to the provisions of Article VII of this Declaration. Except as may be erected by Declarant, there shall be no fences in front of any Unit.

Section 10. House Rules, etc. There shall be no violation of any rules for the use of the Common Areas and Community Facilities or "house rules" or other community rules and regulations not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the Association and promulgated among the membership in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules.

Section 11. Enforcement - Right to Remove or Correct Violations.

In the event any violation or attempted violation of any of these Covenants and Restrictions shall occur or be maintained within any Unit, or in the event of any other conduct in violation of any of the provisions or requirements of this Declaration, then the same shall be considered to have been undertaken in violation of this Declaration and without the approval of the Architectural and Environmental Control Committee required herein and, upon written notice from the Architectural and Environmental Control Committee, such violation shall be promptly removed or abated. In the event the same is not removed, or the violation is not otherwise terminated or abated, within fifteen (15) days (or such shorter period as may be required in any such notice) after notice of such violation is delivered to the Owner of the Unit within which such violation exists, or to the Member responsible for such violation if the same shall be committed or attempted on premises other than the Unit owned by such Member, then the Association shall have the right, through its agents and employees (but only after a resolution of the Architectural and Environmental Control Committee) to enter such Unit and to take such steps as may be necessary to remove or otherwise terminate or abate such violation, and the cost thereof may be assessed against the Unit upon which such violation occurred and when so assessed, a statement for the amount thereof shall be rendered to the Owner of said Unit, at which time the assessment shall become due and payable and a continuing lien upon such Unit, and a binding personal obligation of the Owner of such Unit, in all respects (and subject to the same limitations) as provided in this Declaration. The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect any Unit, at any reasonable time and upon reasonable prior notice, for the purpose of ascertaining whether any violation of the provisions of this Article or any of the other provisions or requirements of this Declaration exist within such Unit; and neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

## ARTICLE VIII

### Section 1. Common Areas and Community Facilities, and Easement Areas Insurance.

(a) The Board shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board of Directors deems appropriate, insuring all Common Areas and Community Facilities or the Easement Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage and vandalism and malicious mischief, and coverage usually provided by the standard "all risk" endorsement. Such insurance coverage to be in an amount sufficient to cover the full replacement cost (without depreciation) of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board of Directors shall conduct, at least once every two (2) years, an insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all insured Common Areas and Community Facilities and Easement Areas.

(c) All Property insurance policies obtained by the Board may contain reasonable deductibles, and the amounts thereof shall be added to the face amounts of such policies in determining whether such insurance coverage equals at least the full replacement cost of such insured improvements.

Provided, that unless a higher maximum amount is required by State law, the maximum deductible amount for any policy or policies covering the Common Area and Common Facilities and Easement Areas shall not exceed the lesser of \$10,000 or 1% of the face amount of such policy or policies and the maximum deductible amount for any policy or policies covering the Units shall not exceed the lesser of \$1,000 or 1% of the replacement cost of such Unit or Units.

(d) All such insurance coverage obtained by the Board on Common Areas and Community Facilities and Easement Areas shall be written in the name of the Association and costs of all such coverage shall be a common expense of the Association and subject to the provisions of Article V of this Declaration. Exclusive authority to adjust losses under policies obtained by the Board and hereafter in force with respect to the Units shall be vested in the Board. Insofar as permitted by law, the Association shall be required to make a good faith effort to secure insurance policies with the provisions hereinafter set forth:

- (i) All policies shall be written with a company licensed to do business in the State of Georgia and holding a rating of A-XI or better in the financial category as established by Best's Insurance Reports if such a company is available and, if not available, its equivalent rating or the best rating possible.

- (ii) All property insurance policies shall be for the benefit of the Association.
- (iii) All property insurance policies shall contain a waiver by the insurer of its right to repair and reconstruct instead of paying cash.
- (iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by Owners or their Mortgagees.
- (v) All policies shall contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, or their respective families, tenants, agents, and guests, or on account of the acts of any director, officer, employee, or agent of the Association or of its management agent without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.
- (vi) All policies shall contain "Agreed Amount and Inflation Guard Endorsement" and a "Construction Code Endorsement."

Section 2. Owner's Insurance. It shall be the responsibility, and obligation of each Owner to obtain insurance, at his own expense, affording public liability coverage and/or fire, hazard and property damage coverage upon his Unit.

Section 3. Assessments. If the damage or destruction to Common Areas and Community Facilities or the Easement Areas for which the insurance proceeds are paid to the Association is to be repaired or reconstructed, and such proceeds together with the deductible amounts maintained on reserve are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment or assessments against all Unit Owners to provide sufficient funds to pay such excess cost of repair or reconstruction. Additional assessments, as needed, may be made in like manner at any time during or following the completion of such repair or reconstruction.

Section 4. Repair and Reconstruction. If the damage or destruction to Common Areas and Community Facilities or the Easement Areas is to be repaired or reconstructed, the funds for the payment of repair or reconstruction shall consist of the proceeds of insurance, reserves for deductible amounts and funds collected by the Association from assessments as provided herein and shall be disbursed in payment of such costs in the discretion of the Board of Directors.

## ARTICLE IX

Section 1. Management Agent. The Board of Directors may employ on behalf of the Association a management agent or manager (the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing, including without limitation:

(a) To establish (with the approval of the Board of Directors of the Association) and provide for the collection of the annual maintenance assessments and any other assessments provided for in this Declaration and to provide for the enforcement of liens therefor in a manner consistent with law and the provisions of this Declaration;

(b) To provide for the care, upkeep, maintenance and surveillance of the Common Areas and Community Facilities and the Easement Areas;

(c) To designate, hire and dismiss such personnel as may be required for the good working order, maintenance and efficient operation of the Common Areas and Community Facilities and the Easement Areas;

(d) To promulgate (with the approval of the Board of Directors of the Association) and enforce such rules and regulations and such restrictions or requirements, "house rules" or the like as may be deemed proper respecting the use of the Common Areas and Community Facilities; and

(e) To provide such other services (including accounting services) for the Association as may be consistent with law and the provisions of this Declaration.

Any management agreement entered into by the Association shall provide, inter alia, that such agreement may be terminated with or without cause by either party upon thirty (30) days' written notice thereof to the other party. The term of any such management agreement shall not exceed one (1) year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one-year periods.

Section 2. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to individuals or property or Units caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas and Community Facilities, or the Easement Areas, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, for articles which may be stored upon the

Common Areas and Community Facilities. No diminution or abatement of assessments, or the Easement Areas, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas and Community Facilities or the Easement Areas, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

## ARTICLE X

### Section 1. Reservation of Easement Rights by the Declarant.

The Declarant hereby reserves a non-exclusive easement and right-of-way in, through, over and across the Common Areas and Community Facilities and the Easement Areas for the purposes of storage of building supplies and materials, the installation, construction, maintenance, reconstruction and repair of sanitary sewer lines, water lines, cables, storm drains, easements and appurtenances to any of the same, and for all other purposes reasonable related to the completion of construction and the provision of utility services, whether public or private, to the Property, in the vicinity of the Property. Any and all instruments of conveyancing made by the Declarant to the Association with respect to any of the Common Areas and Community Facilities, the Easement Areas or easements shall be conclusively deemed to incorporate this reservation, whether or not specifically set forth in such instruments. At the request in writing of the Declarant, the Association shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of this reservation as may be necessary.

### Section 2. Easements for Utilities and Related Purposes.

The Association is authorized and empowered to grant (and shall from time to time grant) such other licenses, easements and rights-of-way over the Common Areas and Community Facilities and the Easement Areas for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm drains, cables, underground conduits and such other purposes related to the provision of utility services to the community as may be considered necessary and appropriate by the Board of Directors for the orderly maintenance, preservation and enjoyment of the Common Areas and Community Facilities and the Easement Areas and for the preservation of the health, safety, convenience and welfare of the Owners of the Units.

Section 3. Additional Easement Rights. The Association shall have the right to enter upon the Common Areas and Community Facilities and the Easement Areas and, to the extent required, to enter upon each Unit and any portion thereof for the purpose of installing, maintaining, repairing or replacing sanitary or storm sewer lines, water lines and such other utilities as may be located under or cross under any such Unit or Units and any Property conveyed

therewith; for the purpose of repairing, maintaining or replacing Community Facilities and the Easement Areas or any improvements or structures located on Common Areas or the Easement Areas; and for the purpose of repairing, maintaining or landscaping that portion of each Unit and any Property conveyed therewith for which the Association has been given or may assume that responsibility or obligation, and for those purposes an easement is hereby reserved in favor of the Association.

Section 4. Additional Easement Rights of Declarant. The Declarant and its agents, representatives and employees, shall have, and there is hereby reserved thereunto, an easement for the maintenance of sales offices and/or model Units on the Property and an easement as required for the development, construction and/or sale of the Units on the Property (including an easement for on-site sale signage) for so long as Declarant owns any Class A membership or Class B membership in the Property.

#### ARTICLE XI

Section 1. Amendment. Prior to the sale of the first Unit by Declarant, this Declaration may be amended from time to time by Declarant. Subject to the other limitations set forth in this Declaration, during the initial twenty (20) year term hereof, this Declaration may be amended only by an instrument executed and acknowledged by ninety percent (90%) of the Unit Owners, which instrument shall be recorded among the Forsyth County, Georgia records. Subject to the other limitations set forth in this Declaration, after the initial twenty (20) year term hereof, this Declaration may be amended by an instrument executed and acknowledged by seventy-five percent (75%) of the Unit Owners, which instrument shall be recorded among the Forsyth County, Georgia records. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording.

In the event that any portion of the Property shall be financed by or shall be bought by Declarant or any successors or assigns to be financed by loans insured by the Veterans Administration or the Federal Housing Administration or, in the event that any loans secured by First Mortgage on any Units are purchased by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or by any Institutional Mortgagee or by a similar type organization, the Board of Directors of the Association may, without the assent of the membership, amend this Declaration and do such other acts as are necessary to comply with the requirements of the Veterans Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or such similar organization as the case may be. Any such amendment must be properly recorded.

Section 2. Duration. Unless amended in accordance with the provisions of this Declaration, and except where permanent easements or other permanent rights or interests are herein created, the Covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years.

Section 3. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any individual or individuals violating or attempting to violate any Covenant or Restriction, either to restrain or enjoin violation or to recover damages or both, and against any Unit to enforce the lien created hereby; the failure or forbearance by the Association or the Owner of any Unit to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The provisions hereof may be enforced, without limitation, by the Association, by any Owner or Mortgagee of any Unit which becomes subject to the provisions hereof, and by any other individual, firm, corporation or legal entity who has any right to the use of any of the Common Areas and Community Facilities owned by the Association. Social Members may only seek to enforce those provisions of this Declaration which directly affect the areas of use and enjoyment specifically designated for Social Members.

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 4. Successors of Declarant. Any and all rights, reservations, easements, interest, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant, with or without notice to the Association.

Section 5. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers any Unit, any deed purporting to effect such transfer shall contain a provision incorporating by reference this Declaration. In the event a deed fails to contain the provision as provided herein, this Declaration shall be incorporated into such deed by reference and all transfers shall be subject to the provisions contained herein.

Section 6. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail postpaid, to the last know address of the individual who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 7. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Areas and Community Facilities by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Areas and Community Facilities.

Section 8. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

Section 9. Consents. Any other provision of this Declaration to the contrary notwithstanding, neither the Members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of the Institutional Mortgagees holding first priority Mortgages of record on the Units of which the Board of Directors have been notified:

(a) abandon, partition, subdivide, encumber, sell or transfer any of the Common Areas and Community Facilities; provided, however, that the granting of rights-of-way, easements and the like for public utilities or for other purposes consistent with the use of the Common Areas and Community Facilities by the Members of the Association, the granting of easements in the Easement Areas, or the dedication of streets and other rights of way in the subdivision shall not be an action requiring any approval within the meaning of this Section; or

(b) abandon or terminate the Declaration; or

(c) modify the method of determining and collecting common expense assessments or other assessments as provided for in this Declaration; or

(d) resolve to use the proceeds of casualty insurance for any purpose other than the repair, replacement or reconstruction of the Common Areas and Community Facilities or the Easement Areas; or

(e) modify or amend any material or substantive provision of this Declaration which will adversely affect the interest of the Institutional Mortgagees holding first priority Mortgages.

Section 10. Consent of Federal Housing Administration, Veterans Administration and Federal National Mortgage Association.

Provided that any Unit in the project is then encumbered by a Mortgage which is insured by the Veterans Administration, Federal Housing Administration, or by the Federal National Mortgage Association and provided further that there are then Class B memberships of the Association outstanding, neither the Members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of the above-mentioned institution or institutions insuring Mortgages on any Units:

- (a) abandon, partition, subdivide, encumber, sell, dedicate or transfer any of the Common Areas and Community Facilities; or
- (b) annex any Additional Property; or
- (c) modify or amend any material or substantive provisions of the Declaration.

Section 11. Additional Rights of Mortgagees - Notice. The Association shall promptly notify the Holder of the First Mortgage on any Unit for which any assessment levied pursuant to the Declaration or any installment thereof, becomes delinquent for a period in excess of sixty (60) days, and the Association shall promptly notify the Holder of the First Mortgage on any Unit with respect to which any default in any other provision of this Declaration remains uncured for a period in excess of sixty (60) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any First Mortgage on any Unit, and the protection extended in this Declaration to the Holder of any such Mortgage shall not be altered, modified or diminished by reason of such failure.

No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to this Declaration except after ten (10) days written notice to the Mortgagee holding the first priority Mortgage on the Unit which is the subject matter of such suit or proceeding.

Any Institutional Mortgagee may pay any taxes, utility charges or other charge levied against the Common Areas and Community Facilities which are in default and which may or have become a charge or lien against any of the Common Areas and Community Facilities, and any such Mortgagee may pay any overdue premiums on any hazard insurance policy or secure new hazard insurance coverage on the lapse of any policy, with respect to any Unit in which it holds a security interest or the Common Areas and Community Facilities. Any Mortgagee who advances any such payment shall be due immediate reimbursement of the amount so advanced from the Association.

Section 12. Condemnation or Eminent Domain. In the event any part of the Common Areas and Community Facilities is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, then the Board of Directors of the Association shall give prompt written notice of any such proceeding or proposed acquisition to the Holders of all First Mortgages of record on the Units. No provision of this Declaration or the By-Laws of the Association shall entitle any Member to any priority over the Mortgagee holding a first priority Mortgage of record on his Unit with respect to the distribution to such Member of the proceeds of any condemnation or settlement relating to a taking of the Common Areas and Community Facilities.

Section 13. Captions and Gender. The captions contained in this Declaration are for convenience only, are not a part of this Declaration, and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall also include the plural.

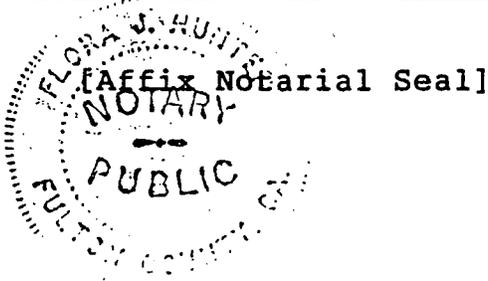
IN WITNESS WHEREOF, the Declarant has, on the day and year first above written, caused these presents to be executed and sealed in its corporate name by Douglas W. Puvogel, as attorney-in-fact, and does hereby appoint the Undersigned, as its true and lawful attorney-in-fact to acknowledge and deliver these presents as its act and deed.

Signed, sealed and delivered on the 28 day of April, 1994 in the presence of:

Jessie M. Frederich  
Unofficial Witness

Flora J. Hunter  
Notary Public

My Commission Expires:  
Notary Public, Fulton County, Georgia  
My Commission Expires Nov. 19, 1994



PULTE HOME CORPORATION,  
a Michigan corporation

By: [Signature]  
Douglas W. Puvogel (Pursuant to Power of Attorney and Grant of Agency executed by Robert K. Burgess, President of Pulte Home Corporation, which Power of Attorney and Grant of Agency is recorded in the real property records of Forsyth County, Georgia at Deed Book 745, pages 258-263)

[CORPORATE SEAL]

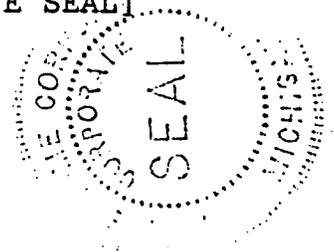


EXHIBIT A

Legal Description

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 1128, 1129, 1160 and 1161, 2nd District, 1st Section, Forsyth County, Georgia being more particularly described as follows:

BEGINNING at an iron pin located at the intersection of the southeasterly right-of-way line of Brookwood Road (60 foot right-of-way) and the easterly right-of-way line of McGinnis Ferry Road (80 foot right-of-way), thence traveling in a northeasterly direction along the southeasterly right-of-way line of Brookwood Road 1,550.14 feet to an iron pin placed at the True Point of Beginning.

From the True Point of Beginning as thus established, thence continuing along the southeasterly right-of-way line of Brookwood Road along the arc of a curve to the left (radius equals 889.95 feet) an arc distance of 363.94 feet to a point, said arc being subtended by a chord bearing North 52°17'21" East and having a chord length of 361.40 feet; thence continuing along said right-of-way North 40°34'26" East 44.85 feet to a point; thence North 33°40'54" East 50.00 feet to a point; thence North 40°34'26" East 433.87 feet to a point; thence along the arc of a curve to the left (radius equals 3,830.25 feet) an arc distance of 139.25 feet to a point, said arc being subtended by a chord bearing North 39°31'57" East and having a chord length of 139.25; thence leaving the southeasterly right-of-way line of Brookwood Road and traveling South 51°23'29" East 236.87 feet to a point; thence traveling South 62°53'05" East 80.68 feet to a point; thence traveling South 21°34'00" West 155.00 feet to a point; thence traveling South 25°50'51" West 50.18 feet to a point; thence traveling South 20°13'31" West 160.00 feet to a point; thence traveling South 45°13'48" East 41.73 feet to a point; thence traveling South 36°57'46" East 197.25 feet to a point; thence traveling South 11°09'01" West 194.70 feet to a point; thence traveling South 14°04'29" East 63.81 feet to a point; thence traveling South 83°47'57" West 128.75 feet; thence North 87°33'42" West 130.69 feet to a point; thence traveling North 50°32'18" West 66.97 feet to a point; thence traveling South 56°03'37" West 122.66 feet to a point; thence travel South 73°10'22" West 120.06 feet to a point; thence travel North 79°30'58" West 137.00 feet to a point; thence traveling North 66°49'31" West 172.43 feet to a point; thence traveling North 48°08'39" West 72.63 feet to a point; thence traveling North 33°49'19" West 73.59 feet to a point; thence traveling North 25°59'44" West 107.80 feet to the True Point of Beginning.

The above-described property, consisting of approximately 13.41 acres subdivided into 26 residential building lots and a Recreation Area, is more particularly shown on that certain final plat for the Summit at Brookwood Unit 1-A by John E. Didicher, Georgia Registered Land Surveyor No. 1905, dated January 21, 1994, recorded in Plat Book 40, pages 19 and 20, Forsyth County, Georgia records.

Pulte/Summit at Brookwood  
(Additional Property)

Exhibit B

Legal Description

All that tract or parcel of land lying and being in Land Lots 1128, 1129, 1160 and 1161, 1st District, 2nd Section, Forsyth County, Georgia, being more particularly described as follows:

To find the True Point of Beginning, begin at the intersection of the southern right-of-way line of Brookwood Road (60-foot right-of-way) and the northeastern right-of-way line of McGinnis Ferry Road (80-foot right-of-way); thence travelling along the southern right-of-way line of Brookwood Road 1,550.14 feet to an iron pin placed and the True Point of Beginning;

From the True Point of Beginning as thus established, thence continuing along the southerly and easterly right-of-way line of Brookwood Road along the arc of a curve to the left (radius = 889.95 feet) an arc distance of 361.48 feet to a point, said arc being subtended by a chord bearing North 52°17'21" East and having a chord length of 358.97 feet; thence travelling North 40°34'26" East 528.36 feet to a point; thence travelling along the arc of a curve to the left (radius = 3,830.25 feet) an arc distance of 419.55 feet to a point, said arc being subtended by a chord bearing North 37°26'09" East and having a chord length of 419.34 feet; thence travelling North 34°17'52" East 341.82 feet to a point; thence leaving the right-of-way line of Brookwood Road and travelling South 88°21'17" East 65.64 feet; thence travelling South 76°37'54" East 33.66 feet; thence travelling North 89°44'11" East 155.53 feet to a point; thence travelling South 88°37'57" East 90.61 feet; thence travelling South 88°32'40" East 226.22 feet; thence travelling South 13°25'38" East 90.77 feet; thence travelling South 02°28'53" West 109.27 feet; thence travelling South 01°50'42" East 88.53 feet; thence travelling South 65°15'25" East 39.21 feet; thence travelling South 00°46'40" East 343.58 feet; thence travelling South 27°47'58" West 23.05 feet; thence travelling South 89°07'40" East 298.72 feet to an iron pin found; thence travelling North 89°05'59" East 70.60 feet; thence travelling North 89°05'59" East 746.25 feet to a ½" rebar found in the centerline of a creek ("Point A"); thence travelling along the centerline of said creek, and the meanderings thereof, the following courses and distances: South 00°24'59" West 0.40 feet; thence South 37°58'15" West 17.66 feet; thence South 04°39'23" West 7.35 feet; thence South 50°04'01" East 22.49 feet; thence South 03°31'55" East 37.46 feet; thence South 19°17'18" West 28.09 feet; thence South 06°07'00" West 41.89 feet; thence South 74°41'26" East 17.72 feet; thence South 16°58'07" West 29.72 feet; thence South 01°02'51" East 27.02 feet; thence South 53°03'33" West 25.49 feet; thence South

22°13'12" West 25.40 feet; thence South 14°46'07" West 23.55 feet; thence South 34°30'26" West 71.34 feet; thence South 09°34'33" West 46.81 feet; thence South 22°05'29" West 59.77 feet; thence South 28°48'11" East 8.65 feet; thence South 19°44'24" West 43.22 feet; thence South 27°01'54" East 31.67 feet; thence South 10°00'59" West 118.52 feet; thence South 46°12'52" West 36.85 feet; thence South 02°04'49" East 87.02 feet; thence South 02°39'10" East 71.76 feet; thence South 45°40'15" West 44.68 feet; thence North 58°35'19" West 27.61 feet; thence South 04°04'49" West 46.84 feet; thence South 33°48'31" West 35.85 feet; thence South 07°12'05" West 81.96 feet; thence South 10°49'14" West 17.50 feet; thence South 10°49'14" West 31.00 feet; thence South 64°34'33" East 30.48 feet; thence South 17°27'41" West 76.35 feet; thence North 61°11'24" East 13.72 feet; thence South 61°43'12" East 12.57 feet; thence South 29°29'22" East 45.52 feet; thence South 54°10'34" West 111.64 feet to a point ("Point B"); thence leaving the centerline of said creek and travelling South 89°00'46" West 245.69 feet; thence travelling along the arc of a curve to the left (radius = 325.00 feet) an arc distance of 173.54 feet to a point, said arc being subtended by a chord bearing North 16°17'03" West and having a chord length of 171.48 feet; thence travelling South 58°29'09" West 162.46 feet; thence travelling North 43°25'35" West 53.43 feet; thence travelling South 80°48'10" West 131.11 feet; thence travelling South 89°27'30" West 85.00 feet; thence travelling North 74°46'07" West 62.01 feet; thence travelling North 35°29'03" West 80.97 feet; thence travelling North 42°10'47" West 99.98 feet; thence travelling North 43°44'07" West 85.11 feet; thence travelling North 29°23'56" West 114.97 feet to a point; thence travelling North 47°11'30" West 87.42 feet; thence travelling South 78°08'21" West 230.25 feet; thence travelling North 32°08'39" West 123.95 feet; thence travelling North 26°14'37" West 116.95 feet; thence travelling North 43°43'22" West 105.55 feet; thence travelling North 64°25'52" West 94.38; thence travelling North 17°54'17" West 106.53 feet; thence travelling North 04°00'24" East 47.13 feet; thence travelling South 83°47'57" West 128.75 feet; thence travelling North 87°33'42" West 130.69 feet; thence travelling North 50°32'18" West 66.97; thence travelling South 56°03'37" West 122.66 feet; thence travelling South 73°10'22" West 120.66 feet; thence travelling North 79°30'58" West 137.00 feet to a point; thence travelling North 66°49'31" West 172.43 feet to a point; thence travelling North 48°08'39" West 72.63 feet to a point; thence travelling North 33°49'19" West 73.59 feet to a point; thence travelling North 25°59'44" West 113.80 feet to the True Point of Beginning.

The above-described property, consisting of "Pod A" and "Release Tract No. 1", containing approximately 53.259 acres, is more particularly shown on a Release Plat for Pulte Home Corporation by John E. Didicher, Georgia RLS No. 1905, dated May 6, 1994, last revised May 9, 1994 (Job No. 90273).

B-2/3

LESS AND EXCEPT:

All that tract or parcel of land being more particularly described on Exhibit A attached to this Declaration.

B-3/3

EXHIBIT "C"

Legal Description

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 1128, 1129, 1160 and 1161, 2nd District, 1st Section, Forsyth County, Georgia being more particularly described as follows:

BEGINNING at the intersection of the southeasterly right-of-way line of Brookwood Road (60 foot right-of-way) and the easterly right-of-way line of McGinnis Ferry Road (80 foot right-of-way); thence traveling along the southeasterly right-of-way line of Brookwood Road in a northeasterly direction 1,550.14 feet to a point; thence continuing along the southeasterly right-of-way line of Brookwood Road along the arc of a curve to the left (radius equals 889.95 feet) an arc distance of 363.94 feet to a point, said arc being subtended by a chord bearing North 52°17'21" East and having a chord length of 361.40 feet and ending at the True Point of Beginning.

From the True Point of Beginning as thus established, thence continuing along the southeasterly right-of-way line of Brookwood Road North 40°34'26" East 44.85 feet to a point; thence North 33°40'54" East 50.00 feet to a point; thence North 40°34'26" East 44.86 feet to a point; thence leaving the southeasterly right-of-way line of Brookwood Road and traveling South 50°16'02" East 133.63 feet to a point; thence traveling South 08°18'31" East 344.55 feet to a point on the proposed northern right-of-way line of Lakeheath Drive (right-of-way varies); thence traveling along the proposed northern right-of-way line of Lakeheath Drive along the arc of a curve to the right (radius equals 175 feet) an arc distance of 25.46 feet to a point, said arc being subtended by a chord bearing North 84°44'43" West and have a chord length of 25.44 feet; thence North 80°34'39" West 15.58 feet to a point; thence along the arc of a curve to the right (radius equals 248 feet) an arc distance of 196.27 feet to a point, said arc being subtended by a chord bearing North 57°54'20" West and have a chord length of 181.18 feet to a point; thence North 35°14'01" West 90.11 feet to a point; thence along the arc of a curve to the right (radius equals 20 feet) an arc distance of 29.99 feet to a point on the southeasterly right-of-way line of Brookwood Road, said arc being subtended by a chord bearing North 07°43'05" East and have a chord length of 27.26 feet; thence traveling along the southeasterly right-of-way line of Brookwood Road along the arc of a curve to the left (radius equal 889.95 feet) an arc distance of 156.82 feet to the True Point of Beginning, said arc being subtended by a chord bearing North 45°37'19" East and having a chord length of 156.62 feet.

The above-described parcel, containing approximately 1.80 acres of land, is shown as the Recreation Area on the Final Plat, The Summit at Brookwood Unit 1-A by John E. Didicher, Georgia Registered Land Surveyer No. 1905, dated January 21, 1994, recorded in Plat Book 40, pages 19 and 20, Forsyth County, Georgia records.