

DECLARATION OF RESTRICTIONS AND COVENANTS  
AZALEA WALK COMMUNITY  
TIFTON, TIFT COUNTY, GEORGIA

THIS DECLARATION is made by PETER M. GARVEY and RICHARD H. MARBUT (hereinafter sometimes called "*Declarant*").

RECITALS

Declarant is the owner of the real property described in Exhibit "A" attached hereto and made a part hereof.

Declarant desires to subject the real property described in Exhibit "A" to the provisions of this Declaration, and to avail the Community of the provisions and benefits of the Georgia Property Owners' Association Act codified at O.C.G.A. Section 4403-220, et seq.:

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A", including the improvements constructed or to be constructed thereon, is hereby subject to the provisions of this Declaration, and the provisions of O.C.G.A. Section 44-3-220, et seq. and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants and restrictions (sometimes referred to herein collectively as "*covenants and restrictions*") hereinafter set forth, which are for the purpose of protecting the value and desirability of the property and which shall run with the title to the real property described in Exhibit "A", and shall be binding on all persons having any right, title, or interest in all or any part thereof, and their respective heirs, legal representatives, successors, successors in title, and assigns, and shall inure to the benefit of the Association and each and every owner as those terms are defined herein.

ARTICLE I

DEFINITIONS

- A. "The Act" shall mean the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq., as the same is or may be hereinafter amended.
- B. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may be hereinafter amended.
- C. "Assessment" shall mean a share of Association Expenses required for the payment of the Association Expenses which from time to time are assessed against the Lots and the Owners.
- D. "Association" shall mean and refer to the Azalea Walk P.O.A., Inc., a non-profit Georgia corporation, its successors and assigns.
- E. "Board of Directors" shall mean the Board of Directors of the Association, the members of which shall be appointed and elected from time to time as provided in this Declaration, the Articles of Incorporation, and the By-Laws. The Board of Directors shall be the governing body of the Association.
- F. "By-Laws" shall mean the By-Laws of the Association, as the same may be hereinafter amended.
- G. "Common Area" means all real and personal property submitted to the Declaration which is owned or leased by the Association for common use and enjoyment of the members or owners. "Common Area" as defined herein may sometimes be referred to as "Common Elements" and shall include but may not be limited to, the property more particularly described on the attached Exhibit "B" which is made a part hereof.

H. "Common Expenses" means all expenditures lawfully made or incurred by or on behalf of the Association together with all funds lawfully assessed for the creation and maintenance of reserves pursuant to the provisions of this Declaration.

I. "Community" shall mean and refer to that certain real property described in Exhibit "A" attached hereto.

J. "Declarant" shall mean and refer to RICHARD H. MARBUT and PETER M. GARVEY, and to their successors in title to all or any portion of the Community.

K. "Declaration" or "Declaration of Restrictions and Covenants" shall mean this instrument.

L. "Lot" shall mean any one of the 22 lots located within the Community which constitutes a single dwelling site designated on the plat of survey prepared for Peter M. Garvey and Richard Marbut by Central Surveying dated May 2, 1997, and recorded in the Office of the Clerk of Superior Court of Tift County, Georgia, as well as any building or any portion of any building located thereon which is intended for independent residential use, with the exception of the Common Area.

M. "Lot Owner" or "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot located within the Community, excluding, however, any person holding such interest merely as security for the performance or satisfaction of any obligation.

N. "Mortgage" means any mortgage, deed to secure debt, security deed, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of any objection.

O. "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

P. "Surplus" shall mean the excess of all receipts of the Association from the Owners and any other income accruing to the Association over and above the amount of Association Expenses.

Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of gender shall include all genders; and the use of the term "including" shall mean "including without limitation." This Declaration shall be liberally construed in favor of the parties seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the marketability and desirability of the Properties by providing a plan for the development, use, and enjoyment thereof. The headings used herein are for indexing purposes only, and shall not be used as a means of interpreting or construing the substantive provisions hereof.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Subject to Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property referred to herein as the Community and more particularly described on Exhibit "A." The Community shall be comprised of 22 Lots, together with roads, utility systems, and other improvements serving the Lots.

Section 2. Lots and Other Interests Subject to Plan of Development. Every purchaser of a Lot shall purchase such Lot and every mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's plan of development as herein set forth. Any provisions of this Declaration to the contrary

notwithstanding, the provisions of this Declaration may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and pass with the title to every Lot, whether or not the same shall be referred to in any deed conveying title to any Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable fees for the use of any recreational facility situated upon the Common Area.
- (b) The right of the Association to suspend the voting rights of an Owner, for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (c) The right of the Association to dedicate or transfer all of any part of the Common Area to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed to by the members. No such deed or transfer shall be effective unless an instrument agreeing to such deed or transfer has been recorded. A vote of 70% of the members shall be required to approve such deed or transfer.
- (d) The right of the Association to make repairs to the Common Areas, including but not limited to any roads, easements, gas lines and gas lights, or the entrance.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Areas to the residing members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE IV

#### POWERS OF THE ASSOCIATION AND BOARD OF DIRECTORS

The powers of the Association and the Board of Directors shall be as set forth and shall be subject to the limitations and restrictions set forth in the Act, the Georgia Non-Profit Corporation Act, this Declaration, the Articles of Incorporation, and the By-Laws of the Association.

### ARTICLE V

#### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Common Area. The Association, subject to the rights of Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon, and shall keep the same in good, clean, substantial, attractive, and sanitary conditions, order, and repair. The Association's rights shall extend to and include the private drive, Perimeter Road, as well as that property owned by the City of Tifton or Tift County, Georgia, to the betterment of the subdivision.

Section 2. Maintenance of Yards. The Association shall be responsible for the maintenance (mowing and edging) of the grass located on each improved home lot. The Owner shall be responsible for keeping said property in good, clean, and attractive condition, except for the cutting of the grass. No significant alteration of the front yard area may be made without first obtaining the approval of the Association. Cost for the maintenance (mowing and edging) shall be paid from accounts established for this purpose collected from Owners and held by the Association. Any Owner may prevent the Association from mowing any fenced in area by giving the Association written notice thereof and by keeping the fence locked.

Otherwise, the Owner shall provide the Association sufficient access to any fenced in area or else Owner must keep the grass mowed at Owner's expense. Owner shall not be entitled to any reduction in Owner's dues if the Owner elects to cut his own grass in a fenced in area. The Association shall have the right to mow around or move at Owner's risk any personal property at the time of mowing.

Section 3. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof to the extent it deems advisable, as well as such other personnel as the Association shall deem to be necessary or advisable for the proper operation of the Association, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts. The Association may obtain and pay for legal, accounting, and management services necessary or desirable in connection with the operation of the Common Area, the enforcement of this Declaration, or other Association business.

Section 4. Personal Property for Common Use. The Association may acquire, hold, and own tangible and intangible personal property and may dispose of the same by sale or otherwise subject to such restrictions as may from time to time be provided by the Articles or By-Laws.

Section 5. Rules and Regulations. The Association from time to time may adopt, alter, amend, and rescind reasonable rules and regulations governing the use of the Common Area. The rules and regulations shall be consistent with the rights and duties established by this Declaration.

Section 6. Taxes and Insurance. The Association shall at all times pay the real property ad valorem taxes, if any, assessed against property owned by the Association and any other governmental liens which may be assessed against the property owned by the Association.

The Association may procure, maintain, and pay for adequate policies of public liability insurance upon the Common Area. Any insurance policies shall be in the name of the Association and be for the benefit of the Association members and such other parties as the Association deems proper. The insurance policy or policies shall be in such amounts and subject to such conditions and with such provisions as the officers or the Board of Directors may determine, provided the same are not inconsistent with any provisions of this Declaration. The Board of Directors may obtain such other type of insurance as they deem advisable.

Section 7. Implied Right. The Association may exercise any of the rights and privileges given it expressly by this Declaration, its Articles or By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege granted herein or reasonably necessary to effectuate any right or privilege granted herein.

Section 8. Restrictions on Capital Improvements. At all times hereafter, all capital improvements to the Common Area, except for replacement or repair of those items installed by the Declarant and except for personal property related to the maintenance of the Common Area, shall require the approval of seventy per cent (70%) of the votes entitled to be cast.

## ARTICLE VI

### COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Real and Personal Obligations of the Assessment. The Declarant, for each Lot owned within the properties, hereby covenants and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, (a) Annual assessments or charges, and (b) Special assessments for capital improvements and for the purpose of eliminating a deficit, such assessments to be established and collected as herein provided. The Annual and Special Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and attorney's fees, shall also be the

personal obligation of the person who is the Owner of such property at the time when the assessment falls due. Obligation for delinquent assessments shall pass to his successor in title. Assessments against the Lot Owners shall be made to raise funds to pay the common expenses of the Property and contribute a pro rata share of the maintenance of the Common Areas and front, rear, and side yards of the Community and shall be governed by the following provisions:

(a) Liability. Each Lot Owner shall be liable to the Association for all sums as are lawfully assessed by the Association against him or his Lot or Lots in accordance with the terms and provisions of this Declaration and the Articles of Incorporation and By-Laws. In addition to exercising the remedies provided for herein, the Association may enforce such liability by an action at law to recover all amounts assessed against each unit owner in accordance with the provisions of this Declaration.

(b) Creation of the Lien and Personal Obligation for Assessment. Each owner of any Lot by acceptance of a deed or other conveyance thereof, whether or not it shall be expressed in any such deed or other conveyance, covenants and agrees to pay to the Association assessment which shall be fixed, established, and collected as herein provided; however, nothing contained herein shall be construed to obligate Declarant to pay assessments on Lots prior to the sale of said Lots.

(c) Uniform Rate Assessment. All annual assessments shall be fixed at a uniform rate for all Lots except as follows:

(i) Any common expenses benefitting less than all of the Lots may be specially assessed equitably among all of the Lots so benefitted, as determined by the Board, except that the mowing expense shall not be abated even if an Owner elects to mow his own grass unless the Board votes otherwise;

(ii) Any common expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against the Lot or Lots, the conduct of any occupant, licensee, or invitee of which occasioned any such common expenses;

(iii) Any common expenses significantly disproportionately benefitting all of the Lots should be assessed equitably among all of the Lots in the Community as determined by the Board.

(iv) Lots owned by Declarant shall not be assessed prior to Declarant's sale of said Lots to third parties.

Nothing contained herein shall permit the Association to specially or disproportionately allocate common expenses for periodic maintenance, repair, and replacement of any portion of the Common Area or the mowing of the Lots which the Association has the obligation to maintain, repair, or replace.

(d) Purpose. Assessments shall be levied against the Lot Owners and the Lots to defray the common expenses of the Property. The common expenses of the Property shall be all of the expenditures which are made or incurred by or on behalf of the Association in connection with the exercise of its powers and responsibilities, and shall include but not be limited to the following:

- (i) Ad valorem taxes assessed against the property of the Association;
- (ii) the expense of performing the maintenance and any necessary restoration of the entrance, gas lights and gas lines, Perimeter Road, fences, and roadway and fence landscaping;
- (iii) common utility bills and charges for other common services;

- (iv) premiums for all insurance policies maintained by the Association;
- (v) the expenses of performing the maintenance, repair, renovation, restoration, and replacement work which is the responsibility of the Association hereunder;
- (vi) the expenses of performing the maintenance and restoration, including but not limited to mowing and edging of all grassed areas and replacing shrubs within the Community;
- (vii) such other costs and expenses as may be determined from time to time by the Board of Directors to be common expenses;
- (viii) management fee, if any, and expenses of administration of the Association; and
- (ix) the creation and maintenance of such reserve funds as are required to be maintained by the Board of Directors as they shall determine, including but not limited to a reserve for repairs and maintenance.

(e) Budget Payment Dates. No less than thirty (30) days prior to the commencement of each fiscal year of the Association, the Board of Directors shall adopt a budget for the succeeding fiscal year, which budget (i) shall estimate the amount of common expenses which are anticipated to be incurred during such year, and (ii) shall make provision for an adequate reserve fund for maintenance, repair, and replacement of those portions of the common elements that must be replaced on a periodic basis. Prior to the commencement of such fiscal year, the Board of Directors shall furnish a copy of such budget to each Lot Owner, together with a written statement of the amount of such common expenses which shall be assessed against such Lot Owner for such fiscal year. Unless otherwise determined by the Board of Directors, such assessment shall be due on January 1 of each year. The annual assessment shall be prorated into twelve monthly installments unless the Board of Directors elects otherwise. In addition, any fees, charges, and other amounts payable by any Lot Owner to the Association shall be added to and shall, unless paid at the time the same are incurred or at some other time determined by the Board of Directors, be due and payable as part of the installment of the assessment next coming due. **Failure of the Board to act in a timely manner shall not excuse any Owner from paying his share of the budget of the assessment when the same is adopted.**

(f) Special Assessments. If for any reason, including nonpayment of any Lot Owner's assessments, an annual budget adopted by the Board of Directors for any fiscal year proves inadequate to defray the common expenses for such fiscal year, the Board of Directors may, at any time, levy a special assessment to raise the additional funds necessary to defray such common expenses, which special assessment shall be due and payable at such time and in such installments as the Board of Directors shall determine. Additionally, the Board of Directors shall be authorized to levy special assessments under the circumstances described in this Declaration.

(g) Special Assessments for Capital Improvements. In addition to the assessments which shall be levied against the Lot Owners, the Board of Directors shall be authorized, upon the affirmative vote of 70% of the Lot Owners entitled to cast votes to levy a special assessment for the purpose of defraying, in whole or in part, the costs of any capital improvements to be made upon the common elements, or for the costs of making repairs or replacements which are not provided for in the then current budget of the Association. Any such special assessments for the capital improvements and repairs shall be payable at such time and in such installments as the Board of Directors shall determine.

(h) Collection. In addition to all other remedies provided by law, including those set forth in O.C.G.A. Section 44-3-222, et seq., as amended, the Association may enforce collection of the assessments for which a lot Owner is liable, together with all

other amounts as may be owned by such Lot Owner to the Association, as hereinafter provided.

(i) In the event that any Lot Owner shall fail to pay any installment of any assessment levied against him within ten (10) days after such installment shall be due and payable and within five (5) days after written notice is mailed to the Lot Owner, the entire unpaid balance of such assessment for the remainder of the fiscal year, at the option of the Board of Directors, shall be accelerated and be declared immediately due and payable in full, without notice to such Lot Owner.

(ii) In the event that any Lot Owner shall fail to pay within five (5) days after the same shall be due, any amounts due and payable to the Association, such Lot Owner shall be liable for the payment of, and shall pay, in addition to the amounts so due the Association:

(a) A late charge equal to Ten Dollars (\$10.00) or ten percent (10%) of the amount so due, whichever is the greater;

(b) interest on the amount so due, and the aforesaid late charge appertaining thereto, from the date same were due and payable, at the rate of ten percent (10%) per annum, until paid.

(c) the cost of collection, including court costs, the expenses of sale, any expenses required for the protection and preservation of the Lots, and fifteen percent (15%) of the total amount due as reasonable attorney's fees; and

(d) in the event the Association shall seek to foreclose its lien on the Lot of such owner, the fair rental value of the Lot from the time of the institution of suit until sale of the unit at foreclosure (or until the judgment rendered in such suit is otherwise satisfied).

(iii) All sums lawfully assessed by the Association against any Lot Owner or Property Owner's Association Lot, whether for the share of the common expenses pertaining to that Lot, fines, or otherwise and all reasonable charges made to any Lot Owner or Lot for material furnished or services rendered by the Association at the Owner's request to or on behalf of the Lot Owner or Lot, shall, from the time the sums become due and payable, be the personal obligation of the Lot Owner and constitute a lien in favor of the Association on the Lot prior and superior to all other liens whatsoever except:

(a) Liens for ad valorem taxes on the Lot;

(b) The lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of the Declaration; and

(c) The lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee of the mortgage is the seller of the Lot.

The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien for assessment shall be required.

(iv) The rights of a Lot Owner and all persons entitled to occupy the Lot of such owner, to use the common elements shall be suspended for the period of time any amount due and owing to the Association in regard to any Lot owned by such Owner shall remain unpaid; provided, however, that no such suspension

shall deny any Lot Owner, or the occupants of any Lot, access to the Lot owned or occupied, nor cause any hazardous or unsanitary condition to exist.

(i) Fee for Statements of Amounts Due. The Association may require the payment of a fee, not to exceed Ten Dollars (\$10.00) as a prerequisite to its issuance of any statement pursuant to the Act or this Declaration.

## ARTICLE VII

### USE RESTRICTIONS

Section 1. Residential Use. All Lots shall be used for single-family residential purposes exclusively. Except as hereinafter provided, no house, structure, or other improvement shall be erected, altered, placed, maintained, or permitted to remain on any Lot other than one (1) single-family dwelling. No business or business activity shall be carried on or upon any Lot at any time except with the written approval of the Association. Nothing contained herein shall prohibit Declarant from using any Lot owned by Declarant for the purpose of carrying on business related to the development and management of the Community.

Section 2. Signs. No commercial signs, including "for rent" signs or advertising posters of any kind shall be erected, placed, or maintained on any Lot except as may be required by legal proceedings. Nothing herein shall be construed, however, to prevent Declarant from erecting, placing, or maintaining upon any Lot, or permitting the erection, placing, or maintaining upon any Lot by builders or residents, of such signs as Declarant may deem necessary or desirable during the period of the development and sale of the Lots and residences constructed thereon. Also, the provisions of this Section shall not apply to any mortgagee who becomes the owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage or deed to secure debt or as transferee pursuant to any proceeding in lieu thereof. Small "for sale" signs, including realtor signs, are permitted.

Section 3. Mail Boxes, Property Identification Markers, and Decorative Hardware. The Association shall have the right to approve the location, color, size, design, lettering, and all other particulars of mail and newspaper boxes, if any, and of name signs on such boxes, as well as property identification markers and decorative hardware, whether attached to such mail box, to any structure within the Lot, or affixed or erected upon the grounds of the Lot. All mail boxes shall be in style and shape approved by the Association.

Section 4. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, etc. shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Community. All rubbish, trash, and garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon. No garbage cans shall be allowed in the front (along Allison's Way) of any dwelling.

Section 5. Prohibited Structures. No mobile home, house trailer, factory, or manufactured assembled homes, modular homes, tent, shack, barn, or other outbuilding or structure (except accessory buildings otherwise permitted hereunder) shall be placed on any Lot at any time, either temporarily or permanently.

Section 6. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, provided that said pets are not kept, bred, or maintained for any commercial purpose, are not permitted to roam free, and in the sole discretion of the Board of Directors, do not endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any property located adjacent to the Community. Dogs which are household pets shall at all times, whenever they are outside a dwelling, be on a leash. No structure for the care, housing, or confinement of any pets shall be maintained on any Lot. Fences are permitted but must be made of wood and the size and color must be approved by the Board of Directors.

Section 7. Incapacitated Motor Vehicles. No automobile or motor driven vehicle may be left upon any Lot for a period longer than five (5) days in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and detrimental to the welfare of the neighborhood and must be removed from the Community. Any towed vehicle, boat, motor home, or mobile home regularly stored upon any Lot, or temporarily kept thereon for periods longer than twenty-four (24) hours each, shall be considered a nuisance and must be removed from the Community. The foregoing, however, does not apply to such boats or other vehicles, whether motor-driven or towed, as are stored wholly within a private garage or trailer storage areas, if any, designated by Declarant or the Association. No commercial vehicles may be parked, stored, or temporarily kept within the Community, unless such vehicles are stored wholly within private garages, are within the Community temporarily to service existing improvements, or are used in connection with the construction of improvements within the Community.

Section 8. Nuisance. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition of buildings or grounds on his or her Lot or Lots. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of property in the neighborhood by the Owners thereof.

Section 9. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

Section 10. Antennas. No Owner shall erect, use, or maintain any outdoor antenna or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic radiation, whether attached to a building or structure or otherwise without the prior written consent of the Board of Directors; provided, however, Declarant and the Association shall have the right to erect and maintain such devices or authorize the erection and maintenance of such devices. Each Owner acknowledges that this provision benefits all Owners.

Section 11. Property Maintenance. Each Owner shall keep and maintain all buildings on his Lot and shall not allow the same to deteriorate. Each Owner shall be responsible for repairing and maintaining his home and shall keep such hazard insurance as necessary to restore the building in case it is destroyed or damaged. All renovations affecting the outside of the buildings must be approved by the Association.

Section 12. Common Areas Restrictions. The following covenants and restrictions shall apply to the Common Areas:

- (a) No excavation or disturbance of the natural terrain of the Common Area by other than the Declarant or the Association, in the course of development and maintenance of the development, shall be allowed therein.
- (b) No object, out of keeping with the Common Area as determined by the Association shall be located therein.
- (c) No plants may be positioned so as to extend into or permitted to grow into the Common Area.

(d) The Association shall, unless it decides otherwise, cut the grass and maintain all yards of the Community, except that a Lot Owner may maintain annual flowers in keeping with the overall decor of the property. No Lot Owner shall be permitted to plant any trees, shrubs, or any other large plant without the written permission of the Association. Part of the Association fees will be used to keep and maintain the grounds. The Association has the right, by a 70% vote of the Lot Owners, to discontinue the Association's keeping and maintaining the yards; and in the event the Association ceases to maintain the yards, then the same shall be kept and maintained by each Lot Owner. The Association shall have the right to enter upon each Lot and have the grass, woods, or other vegetation cut, debris removed, when, and as often as, the same is necessary in its judgment, and may have dead trees, shrubs, and other plants removed therefrom. The Association shall perform the work during daylight hours only.

(e) The Association shall further keep and maintain the fences and flower beds located along the fences and the private and public roadways in a manner prescribed by the Association.

(f) Common Areas include the private street designated herein as Perimeter Road which runs behind each Lot. Parking of motor vehicles on Common Areas is strictly prohibited. Violations will be subject to appropriate fines levied by the Board of Directors, and all such vehicles may be towed and impounded at Owner's expense.

### Section 13. Easements for Encroachments and Maintenance.

(a) The Association is hereby given a perpetual, alienable, and releasable easement, privilege and right on, over, and under the property and easements described on Exhibit "B.". No permanent structure shall be built over said easements; and should any Lot Owner build a fence over any easement and should the portion of the fence located on the easement need to be removed, the property Owner shall at the property Owner's sole expense repair the fence after the Association removes the same, which it may do to utilize its easement; and the Owner shall not prevent the Association from removing the fence located over said utility easement. The Association may further have the right to prevent any Lot Owner from keeping or maintaining a fence or any other structure on the property upon which any utility easement is located.

(b) The Association is also granted an easement on the front of each lot to keep and maintain the gas line as well as the gas lights located along Allison's Way. Said easement shall be 10 feet in width, running along the entire front part of the lot located along Allison's Way, with Allison's Way being one boundary line of said easement, as is also described on Exhibit "A."

## ARTICLE VIII

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot in the Community shall be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be members. Membership shall be appurtenant to the Lot to which it appertains and shall be transferred automatically. Notwithstanding the above, each Lot shall be entitled to one (1) vote in the Association. The vote for such Lot shall be exercised as said Owners determine, but in no event shall more than one vote be case with respect to any Lot.

Section 2. Amplification. The provisions of this Article are to be amplified by the Articles of Incorporation and By-Laws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners of Lots as set forth herein. In the event of any conflict or inconsistencies among this Declaration, the Articles of Incorporation, or the By-Laws of the Association, this Declaration and the Articles of Incorporation (in that order) shall prevail.

## ARTICLE IX

### DAMAGE TO OR DESTRUCTION OF COMMON ELEMENTS

Repair, reconstruction, or rebuilding of the common elements following damage or destruction to all or any portion of the common elements shall be governed by the following provisions:

- (a) Estimates of the Cost of Repair. As soon as practicable following the occurrence of any damage to, or destruction of any portion of the common elements, the Board of Directors shall obtain estimates of the cost of repairing and restoring such portion of the common elements so damaged or destroyed to substantially the same condition as such portion of the common elements were in prior to the occurrence of such damage and destruction.
- (b) Determination to Repair, Reconstruct, or Rebuild. Any damage to, or destruction of the common elements will be repaired, reconstructed, or rebuilt unless the Owners of the Lots to which 70% of the votes in the Association are allocated shall determine within 45 days after the occurrence of the casualty not to repair, reconstruct, or rebuild the same.
- (c) Manner of Repair, Reconstruction, or Rebuilding. All repairs, reconstruction, or rebuilding shall be made in accordance with the following provisions:
  - (i) The damage shall be repaired, reconstructed, or rebuilt substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, unless the Association votes otherwise;
  - (ii) All of the work of repairing, reconstruction, or rebuilding any portion of the common elements shall be performed under the supervision of the Board of Directors which, in discharging such supervisory responsibility, shall be authorized to employ such building supervisors and architects as the Board of Directors shall deem to be in the best interest of the Association.
- (d) Cost of Repairs, Reconstruction, or Rebuilding. The Board of Directors may levy a special assessment against all of the Lot Owners and Lots to raise the funds necessary to defray such cost.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Easements for Declarant. Declarant hereby reserves for itself, its successors and assigns, agents, employees, contractors, and sub-contractors, the following easement and rights-of-way in, on, over, under, and through any part of the Community for so long as Declarant owns any Lot primarily for the purpose of sale:

- (a) For the erection, installation, construction, and maintenance of wires, lines, and conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, television cables, and other utilities;
- (b) For the construction of improvements on the lots;
- (c) For the installation, construction, and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility facility;
- (d) For use as sales offices, model lots, and parking spaces in connection with their efforts to market Lots; and
- (e) For the maintenance of such other facilities as reasonably required, convenient, and incidental to the completion, improvement, and sale of lots.

Section 2. Easements for the Association. There is hereby created in favor of the Association, its Board of Directors, its members, agents, employees, and contractors, an easement to enter upon, enter in, or cross over the Lots for the purpose of providing the maintenance required by the Association in this Declaration. Specifically included herein is the easement for maintenance of all grassed areas within the Community, the private roadway (Perimeter Road), and the gas lights.

Section 3. Enforcement. The Association, or any Owner, including Declarant, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by any person to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run and bind the land so long as permitted by such law and such provisions may be renewed or extended in whole or in part beyond the initial period permitted by such law for successive periods not to exceed the period permitted by such law provided such renewal or extension is approved by at least seventy percent (70%) of the Lot Owners (or such greater percentage as required by law). Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance or a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 5. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or Purchaser to make or purchase mortgage loans on the Lots subject to this Declaration, or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration, provided any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing.

All amendments other than those specified hereinabove shall be adopted as follows:

(i) at least seventy percent (70%) of the Lot Owners shall be necessary to amend this Declaration. Notwithstanding anything to the contrary herein, it is expressly provided that any amendment which adversely affects the title to any Lot must be approved by the Owner of such Lot in writing.

(ii) The proposed amendment may be proposed by either the Lot Owners or Declarant. The Declarant, or the Association, may call a meeting of the Lot Owners to consider such a meeting upon a petition signed by at least twenty-five percent (25%) of the Lot Owners. If a meeting of the Lot Owners is called to consider such an amendment, the time within which and the manner by which notice of such meeting shall be given, the authorized use of proxies, and the quorum required for the transaction of business at such meeting shall correspond to the requirements for meetings of the Association.

(iii) The consent of the Lot Owners required to approve said amendments shall be obtained by affirmative vote, written consent, or a combination thereof. A meeting of the Lot Owners shall not be required in the event that the requisite approval of the Lot Owners is obtained by written consent. The required consent of Declarant shall be in writing.

No amendment to the provisions of this Declaration shall alter, modify, change, or rescind any right, title, interest, or privilege herein granted or accorded to the holder of any mortgage affecting any Lot unless such holder shall consent thereto in writing. The written consent thereto of any mortgage holder affected thereby shall be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section. No amendment shall become effective until filed with the Clerk of the Superior Court of Tift County, Georgia.

Section 6. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

Section 7. Gender and Grammar. The singular whenever used herein shall be construed to mean the plural when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 8. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 9. Captions. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed this instrument under their seal this \_\_\_\_ day of \_\_\_\_\_, 1998.

Signed, sealed, and delivered  
in the presence of: \_\_\_\_\_ (SEAL)  
PETER M. GARVEY

\_\_\_\_\_  
Notary Public

Signed, sealed, and delivered  
in the presence of: \_\_\_\_\_ (SEAL)  
RICHARD H. MARBUT, by Peter M. Garvey,  
his Attorney-in-Fact (Power of Attorney  
is recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_,  
of the Tift County Superior Court  
Clerk's Office deed records.)

\_\_\_\_\_  
Notary Public