

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
THE HILLS ASSOCIATION

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DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
THE HILLS ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth by RIVERPART, LTD., a Georgia Limited Partnership acting by and through its sole General Partner, RIVER NORTH DEVELOPMENT CORPORATION, a Georgia corporation (hereinafter sometimes called "Declarant");

W I T N E S S E T H :

WHEREAS, Declarant is the owner of the real property described in Section 1 of Article II of this Declaration; and

WHEREAS, Declarant desires to subject said real property described in Section 1 of Article II hereof to the provisions of this Declaration and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Section 1 of Article II of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens (sometimes referred to herein collectively as "covenants and restrictions") hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof.

ARTICLE I

DEFINITIONS

Unless the context shall prohibit, certain words used in this Declaration shall have the definitional meaning set forth in Exhibit "A" attached hereto and by reference made a part hereof.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subjected to the covenants, conditions, restrictions, easements, assessments and liens 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 described in Exhibit "B" attached hereto and by reference made a part hereof.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more supplementary declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration as hereinafter provided in Article IX hereof.

## ARTICLE III

### 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 by conveyance of that Lot. Membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

Section 2. Voting. The Association shall have two classes of membership.

(a) Class A: Initially, the Class A members of the Association shall be the Owners of Lots located in the Community, with the exception of Declarant. If the same Owner owns more than one Lot, such Owner shall be a Class A member and shall have membership privileges and pay assessments with respect to each Lot so owned. Class A membership shall be a nonvoting membership except on such matters and in such events as hereinafter specified. Class A members shall be entitled to full voting privileges at such time as the Class B membership, as hereinafter defined, shall terminate and cease to exist. Before the termination of such Class B membership, Class A members shall be entitled to vote only on (i) any proposal to change the method of determining the amount of the annual assessment to be levied by the Association, (ii) any proposal to change the method of approving the annual assessment, (iii) the annual budget and the regular annual assessments therefor as provided in Section 3 of Article IV hereof; (iv) except as otherwise specifically provided in Section 3(b) of Article VII hereof, any proposal that a

special assessment be levied by Association, (v) any proposal to subject additional properties, other than by Declarant (or its mortgagee or assignee as herein provided), to the provisions of this Declaration and the jurisdiction of the Association, (vi) any proposal to dedicate or transfer all or any part of the real property of the Association to any public agency or authority (vii) any proposal of merger, consolidation or dissolution; (viii) except as otherwise specifically provided in Article V of the Articles of Incorporation, any proposal to amend the Articles of Incorporation of the Association; and (ix) any proposal to subject any real property owned by the Association to any mortgage. When entitled to vote, Class A members shall be entitled to one vote for each Lot owned. When more than one person owns a Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons and an attempt by two or more of them to cast such vote or votes, such persons shall not be recognized and such vote or votes shall not be counted.

(b) Class B: The sole Class B member of the Association shall be the Declarant. Class B membership shall be a full voting membership, and, during its existence, any act of the Association requiring the approval or affirmative vote of the membership shall not be valid unless approved by the Class B member. At the election of the Class B member, the Class B membership shall terminate and cease to exist at any time on or before the completion of development of construction (and sale, if developed or constructed for sale) of all Lots to be developed or constructed in the Community (i.e., said real property described in said Exhibit "B" attached hereto and all or any portion of said real property described in said Exhibit "C" attached hereto which may hereafter be subjected to the provisions of this Declaration as herein provided), but in no event later than December 31, 1998. From and after the date on which the Class B membership shall so terminate and cease to exist, the Class B member shall be and become a Class A member with respect to any Lot owned by it, and in which event it shall be entitled to one vote for each Lot so owned.

Section 3. Meetings. Except as may be herein otherwise provided, all matters concerning meetings of members of the Association, including the time within which and the manner in which notice of any meetings shall be given to said members, and the quorum required for the transaction of business at any of such meetings shall be as specified in the Articles of Incorporation or By-Laws of the Association, as amended from time to time, and by law.

Section 4. Casting of Votes. Subject to the provisions of this Declaration and the Articles of Incorporation, the votes of the members shall be cast under rules and procedures as may be prescribed in the By-Laws of the Association, as amended from time to time, or by law.

Section 5. 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 sub-

stantially 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 between 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 IV

#### ASSESSMENTS

Section 1. Purpose of Assessments. The assessments provided for herein shall be used for the purpose of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots in the Community and in particular for the acquisition, improvement, maintenance and operation of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Property, including but not limited to the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association assessments which shall be fixed, established and collected from time to time as herein provided. Such assessments, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on and a continuing lien upon the Lot against which each such assessment is made. Such lien shall be perfected by filing of record in the office of the Clerk of the Superior Court of the County in which the Lot is located a claim of lien within ninety (90) days after the assessment, or portion thereof, for which a lien is claimed became due. The claim of lien shall be substantially in the form attached hereto as Exhibit "D" and, by this reference, made a part hereof. Such a claim of lien shall also secure all assessments, or portions thereof, which come due thereafter until the claim of lien is cancelled of record. Also, each Owner shall be personally liable for the portion of any assessment coming due while he is the Owner of a Lot, and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. Provided, however, any person who becomes the Owner of a Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage on the Lot or pursuant to any proceeding in lieu of the foreclosure of such mortgages shall be liable only for assessments coming due after the date such person so acquires title to the Lot, except for claims for a share of such assessments resulting from a reallocation of such assessments as to all Lots in the Community including the Lot subject to such first mortgage.

Section 3. Regular Annual Assessments. It shall be the duty of the Board of Directors of the Association at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated costs of operating the Association during the coming year. Such budget (and the assessments levied to satisfy the same) shall make provision for the buildup and maintenance of an adequate reserve fund for repair and replacement of those portions of the Common Property that must be repaired or replaced on a periodic basis. This provision is for the benefit of, and is intended to be relied upon by all mortgagees holding first mortgages on any Lot in the Community. The Board shall cause the budget, and the assessments to be levied against each Lot Owner for the following year, to be delivered to each Lot Owner at least thirty (30) days prior to the annual meeting. The budget and the assessments therefor shall become effective unless disapproved at the annual meeting by a vote of members of the Association representing at least a majority of the votes of the entire membership. In the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall be determined at a subsequent special meeting, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only. Except as otherwise provided in Section 3(b) of Article VII, any such special assessment shall have the assent of members of the Association representing at least a majority of the votes which the Class A members of the Association present, or represented by proxy, are entitled to cast at a meeting duly called for such purpose and by Declarant so long as Declarant shall own one or more Lots in the Community.

Section 5. Uniform Rate of Assessment. Except as otherwise provided in Section 9 of this Article IV, both annual and special assessments must be fixed at a uniform rate for all Lots.

Section 6. Assessment: Due Dates.

(a) The annual assessment payable to the Association, as provided for in this Article IV, shall commence as to each Lot on the date upon which the Lot is subjected to this Declaration (such date being hereinafter sometimes referred to as "the commencement date"). The first annual assessment payable to the Association shall be adjusted according to the number of days remaining in the assessment year as of the commencement date. Unless otherwise provided by the Board of Directors of the Association, such prorated assessment shall be paid in equal monthly installments commencing on the commencement date. The Association's Board of Directors shall fix the amount of the annual assessment payable



to the Association against each Lot and send written notice of same to every Owner subject thereto in advance of each annual assessment period. Unless otherwise provided by the Association's Board of Directors, and subject to the foregoing provisions of this Section, one-twelfth (1/12th) of the annual assessment for each Lot shall become due and payable to the Association on the first day of each month during the assessment year and shall be paid to the Association when due without further notice from the Association; provided, however, that each Owner shall have the right to prepay any one or more of such installments.

(b) The special assessments payable to the Association, as provided for in this Article IV, shall be due on the date(s) specified by the Association's Board of Directors.

(c) The Association shall, upon demand at any time, furnish to any Owner liable for any such assessment a certificate in writing signed by either the President or Treasurer of the Association, or by the manager of the Association, if any, setting forth whether the same has been paid. A reasonable charge, as determined by the Association, may be made for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(d) The Board of Directors of the Association shall have the right to waive all or any portion of any annual assessment, and, except as otherwise provided in Section 9 of this Article IV, such waiver shall be uniform as to all Lots.

Section 7. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment, or portion thereof, not paid when due shall be delinquent. If the same is not paid within five (5) days after the due date, then a late charge equal to ten (10%) percent of the amount thereof or \$5.00 whichever is greater shall also be due and payable to the Association. If any assessment or portion thereof is delinquent for a period of more than five (5) days, then, if not paid within ten (10) days after written notice is given to the Lot Owner to make such payment, the entire unpaid balance of the assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full. Any assessment or portion thereof not paid when due shall bear interest from the date of delinquency until paid at the maximum legal rate. The Board of Directors of the Association may suspend the voting rights of the Lot Owner and right to use the recreational facilities situated on the Common Property during the period in which any assessment or portion thereof remains unpaid and may bring an action at law against the Lot Owner or Owners personally obligated to pay the same or foreclose its lien against such Owner's Lot, in which event late charges, interest, costs and attorney's fees in an amount equal to the greater of \$250.00 or fifteen (15%) percent of the past due amount plus interest due thereon, may be added to the amount of such assessment or portion thereof which is past due. All payments on account shall be applied first to late charges, then interest, and then to the

assessment lien first due. All late charges and interest collected shall be credited to the common expense fund. Each Lot Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien against his Lot in the same manner as other liens for the improvement of real property. The lien provided for in this Article IV shall be in favor of the Association and shall be for the benefit of all Lot Owners. The Association shall have the power to bid in the Lot at any judicial or foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property and facilities located thereon or abandonment of his Lot.

Section 8. Priority of Lien. The lien of the assessments provided for in this Article IV shall be prior and superior to all other liens except only (a) ad valorem taxes and (b) all sums unpaid on a first mortgage, on the Lot, if any. The sale or transfer of any Lot which is subject to a first mortgage pursuant to the judicial sale or foreclosure thereof, or pursuant to any proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to the payments thereof which became due prior to such sale or transfer, except for claims for a share of such assessments resulting from a reallocation of such assessments to all Lots in the Community including the Lot subject to such mortgage. No sale or transfer shall relieve the acquirer of title, and the successors-in-title and assigns thereof from liability for any assessments thereafter becoming due on the Lot or from the lien thereof. Provided, however, the Association may at any time, either before or after a first mortgage is placed on a Lot, waive, relinquish or quitclaim in whole or in part the right of the Association to assessments provided for herein with respect to such Lot coming due during the period while such Lot is or may be held for liquidation by the first mortgagee pursuant to such sale or transfer.

Section 9. Exempt Property. Notwithstanding the foregoing provisions of this Article IV, all Lots located on any real property made subject to this Declaration shall be exempt from the assessments created herein until conveyed by Declarant to another Lot Owner. With respect to the annual assessment for the assessment year in which a Lot is first conveyed by Declarant to a Lot Owner, the annual assessment payable by such Lot Owner shall be prorated and payable as aforesaid. Provided, however, that all Lots on any property made subject to this Declaration and not so conveyed by Declarant shall be and become subject to such assessments as of the beginning of the assessment year next following the assessment year in which the Class B membership of the Association shall terminate and cease to exist. Thereupon, such assessments shall be imposed at such rates and on such terms and conditions as may then be applicable to all Lots conveyed by the Declarant prior thereto. Provided, further,

notwithstanding the foregoing, any Lots rented by Declarant shall become subject to said assessments (on a prorated basis if during an assessment year) as of the date the Lot is so rented. Every grantee of any interest in any property located in the Community, by acceptance of a deed or other conveyance of such interest, agrees that any Lots owned by Declarant shall be exempt from said assessments as herein set forth.

Section 10. Maximum Amount of Assessments. Notwithstanding the foregoing provisions of this Article IV, until the assessment year next following the assessment year in which the Class B membership of the Association shall terminate and cease to exist, the regular annual assessments to be levied against each Lot pursuant to the provisions of Section 3 of this Article IV shall not exceed the amount of \$ 120.00, as the same may be increased in the manner hereinafter described. Beginning with the assessment year commencing on January 1, 1981, the maximum regular annual assessment herein provided may be increased by the Board of Directors of the Association in conformance with the rise of the numerical rating for the preceding month of October above such rating for October, 1980, as established by the Atlanta, Georgia Consumer Price Index for Urban Wage Earners and Clerical Workers, Series A-27 (published by the Department of Labor, Washington, D.C.), or by the successor thereto, or by another comparable price index should that described herein be discontinued or no longer be available to the Association. The method of computation to be employed when using said Consumer Price Index shall be as follows: The Consumer Price Index will establish a numerical rating for the month of October, 1980. This will be the base rating. In determining the adjustment percentage to be applied for any subsequent year, this base rating shall be divided into the numerical rating established by the Consumer Price Index for the month of October immediately preceding the assessment year for which such regular annual assessment is to be levied. The adjustment percentage shall be multiplied by \$ 120.00 to obtain the maximum regular annual assessment for the assessment year in question.

From and after the assessment year next following the assessment year in which the Class B membership shall terminate and cease to exist, there shall be no limitations on the amount of the regular annual assessments which shall be levied against each Lot pursuant to the provisions of Section 3 of this Article IV.

## ARTICLE V

### ADMINISTRATION

Section 1. Responsibility for Administration. The maintenance, repair, replacement and operation of the Common Property and facilities located thereon shall be the responsibility of the Association. Such

administration shall be governed by this Declaration and the Articles of Incorporation and By-Laws of the Association, as amended from time to time. The powers and duties of the Association shall be those set forth in said documents together with those reasonably implied to effect their respective purposes, and shall be exercised in the manner provided therein. The Association shall accept such conveyance of Common Property as are made from time to time to the Association by the Declarant.

Section 2. Management Agreements. The Association's Board of Directors may enter into such management agreements as it may deem necessary or advisable for the administration and operation of the property subject to the Association's jurisdiction. In furtherance of the foregoing, unless each holder of a first mortgage lien on Lots in the Community shall agree in writing that the same shall not be required, the Board of Directors of the Association shall employ a professional manager for the administration and operation of the Common Property. The written approval of each such first mortgage lien holder shall be required prior to the effectuation of any decision by the Association to terminate professional management and assume self-management of the Association. Provided, however, any management agreement shall be terminable by the Board of Directors for cause upon thirty (30) days written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. All costs and expenses incident to the employment of a manager, including the cost of acquiring any bond with respect thereto, shall be common expenses payable from the common expense fund. Any such management agreement may provide that, during his tenure, the person with whom the Association contracts for such administration and operation (herein sometimes referred to as the "manager") shall be authorized and responsible for exercising all powers and duties specifically and exclusively assigned or reserved to the officers, directors or members of the Association by this Declaration and the Association's Articles of Incorporation or By-Laws. Each Lot Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into as hereinabove provided.

Section 3. Limitation of Liability; Indemnification. Notwithstanding the duty of the Association to maintain, repair and replace the Common Property and facilities, the Association shall not be liable for injury or damage caused by any latent condition of such property and facilities nor for injury or damage caused by the elements, its members or other persons, nor shall any officer or director of the Association be liable to any of its members for injury or damage caused

by such officer or director in the performance of his duties unless due to the willful misfeasance or malfeasance of such officer or director. Each officer or director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been such an officer or director, whether or not he is such an officer or director at the time such expenses and liabilities are incurred, except in such cases wherein the officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. Provided, however, in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association.

## ARTICLE VI

### PROPERTY RIGHTS, EASEMENTS AND USE RESTRICTIONS

The real property which is now or hereafter made subject to this Declaration shall be and is hereby made subject to the property rights, easements and use restrictions set forth in Exhibit "E" attached hereto and by this reference made a part hereof.

## ARTICLE VII

### INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements constructed on the Common Property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors of the Association or its manager shall also obtain a public liability policy covering the Common Property and facilities thereon for the hazards of premises operation or actions arising out of bodily injury, property damage, false arrest, invasion of privacy and libel and slander caused by the negligence of the Association or any of its agents, which public liability policy shall be at least \$1,000,000.00 single limit as respects the hazards enumerated herein. Premiums for all such insurance shall be common expenses paid

for by the Association. Such insurance shall be governed by the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Georgia.

(b) Exclusive authority to negotiate and accept settlement under policies hereafter in force on the Common Property shall be vested in the Association's Board of Directors.

(c) The Association's Board of Directors or its manager shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all insurable improvements constructed on the Common Property.

(d) The Association's Board of Directors or its manager shall be required to make every reasonable effort to secure insurance policies that will provide for the following: (1) a waiver of subrogation by the insurer as to any claims against the Association, its Board of Directors, its manager, or its members and their respective families, tenants, agents and guests, with respect to property coverage, except for arson and fraud; (2) a waiver by the insurer of its right to repair or reconstruct instead of paying cash; (3) that the policies cannot be cancelled, invalidated or suspended on account of the conduct of any one or more members or on account of the conduct of any director, officer or employee of the Association or its manager 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 by the Association, its agent, mortgagee or any member.

Section 2. Insurance Trustee. All casualty insurance policies purchased by the Association shall provide that proceeds covering property losses shall be paid to an insurance trustee, which shall be the Association, or a bank or other financial institution having trust powers with offices in Georgia, as may from time to time be approved by the Board of Directors of the Association, which insurance trustee is herein sometimes referred to as the "Depositary". In the event that the Association shall act as insurance trustee, then the provisions of this Declaration which by their context contemplate the "Depositary" as a party separate from the Association shall not apply.

Section 3. Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the Common Property and facilities,

the Association's Board of Directors or its manager shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty. Subject to subsections (b) and (d) hereof, all such damage or destruction shall be repaired or reconstructed as soon as practicable after any such casualty shall occur.

(b) In the event such damage or destruction is not covered by insurance or the insurance proceeds paid to the Association are not sufficient to defray the cost of such repair or reconstruction, then, without a vote of the Class A members, the Association's Board of Directors may levy a special assessment in a total amount of not more than \$500.00 per lot to provide funds for such repair or reconstruction. In the event the aforementioned special assessment in the total amount of \$500.00 per lot and the insurance proceeds paid to the Depositary, if any, are not sufficient to defray the cost of such repair or reconstruction, then, subject to approval by the Association membership, as provided in Section 4 of Article IV hereof, the Association's Board of Directors may levy a special assessment of not more than the amount so approved by the membership to provide funds for such repair or reconstruction. Unless the estimated cost to repair or reconstruct is \$5,000.00 or less, the proceeds from insurance and special assessments, if any, shall be deposited with the Depositary and disbursed as hereinafter provided.

(c) In the event that the insurance proceeds and assessments, if any, paid to the Depositary are in excess of the Depositary's expenses and cost of repair or reconstruction, such excess shall be disbursed to the Association as hereinafter provided.

(d) Any such damage or destruction to the Common Property and facilities shall be repaired or reconstructed unless a special assessment requiring Class A membership approval shall be required and the Class A members of the Association shall fail to approve the same within sixty (60) days after the casualty, in which event the damaged or destroyed area or areas shall not be repaired or reconstructed, but rather shall be cleaned up and maintained in a neat and attractive condition. If, for any reason, the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction is not made available to the Association within thirty (30) days after the casualty, then said sixty-day period shall be extended correspondingly until such information shall be made available to the Association. In all cases, the Depositary may rely upon a certificate signed by the President and Secretary of the Association, to determine whether damage or destruction is to be repaired or reconstructed.

Section 4. Disbursement of Proceeds.

(a) If the damage or destruction is not to be repaired, then, after paying or making provision for the expenses of the Depositary, the net proceeds of any insurance paid to the Depositary shall be disbursed to the Association to pay for the cost of cleaning up the Common Property and for such other purposes as the Board of Directors of the Association shall determine.

(b) If the damage or destruction for which the insurance proceeds are paid to the Depositary is to be repaired or reconstructed, then, after paying or making provision for the expenses of the Depositary, the remaining proceeds shall be disbursed to defray the cost of such repairs or reconstruction as herein provided. Any proceeds remaining after defraying such costs shall be disbursed to the Association for such purposes as the Board of Directors of the Association shall determine.

(i) Minor Damage. If the amount of the estimated cost of reconstruction and repair is \$5,000.00 or less, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon written request to the Depositary by the holder of any mortgage affecting that portion of the Common Property being repaired or reconstructed, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage. Under the latter circumstances, any special assessments collected by the Association for repair or reconstruction shall also be deposited with the Depositary and disbursed in the same manner.

(ii) Major Damage. If the amount of the estimated cost of reconstruction and repair is more than \$5,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of a registered architect or licensed professional engineer selected and employed by the Board of Directors of the Association to supervise the work, or upon approval of a builder selected and employed by the Board of Directors of the Association to supervise or perform the work provided such builder is approved by the holder of any mortgage affecting that portion of the Common Property being repaired or reconstructed.

(iii) Certificate. Notwithstanding the provisions herein, the Depositary shall not be required to determine whether or not sums paid by Lot Owners upon assessment shall be deposited by the Association with the Depositary, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of any third party, nor whether a disbursement is to be made from the construction fund, nor to determine any other fact or matter relating to its duties hereunder. Instead, the Depositary may rely upon a certificate of the Association made by its President and Secretary or manager, if any, as to any or all of such matters and



stating the name of the payee and the amount to be paid; provided that when the holder of any mortgage encumbering that portion of the Common Property which is being repaired or reconstructed shall specifically request the Depositary to do so in writing, the approval of a registered architect, licensed professional engineer or approved builder shall be first obtained by the Association.

## ARTICLE VIII

### CONDEMNATION

Section 1. General. Whenever any part of the Common Property shall be taken by any authority having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association and unless otherwise provided by law at the time of such taking, any award made therefor shall be deposited by the Association with the Depositary and disbursed as hereinafter provided.

Section 2. Disbursement of Award. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking the Class B member (if such membership shall then exist) and at least a majority of the Class A members of the Association, as well as the holders of all first mortgages encumbering the Lots of such Class A members and the holders of any mortgages encumbering all or any part of the Common Property so taken, shall otherwise agree, the Association shall restore or replace such improvements, so taken on the remaining land included in the Common Property to the extent funds are available therefor in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article VII hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Property, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then, subject to the consent of the holders of any mortgages encumbering all or any portion of the Common Property so taken, such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine. With respect to the disbursement of funds under this Section, the provisions of Article VII hereof shall apply so far as the same may appertain, and the Depositary shall be entitled to rely upon the certificate of the Association as provided in Section 4 of said Article VII hereof.

## ARTICLE IX

### ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation Without Approval of Class A Membership.

(a) As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option from time to time at any time until the Class B membership in the Association shall terminate and cease to exist or until December 31, 1998, whichever first occurs, to subject all or any portion of the real property described in Exhibit "C" attached hereto and by reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of the Superior Court of the County in which the Community is located a supplementary declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such supplementary declaration unless otherwise provided therein.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not, and shall not be implied or construed so as to, impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association, nor shall such rights impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Annexation With Approval of Class A Membership. Subject to the consent of the owner thereof, upon the affirmative vote of a majority of the Class A members of the Association present or represented by proxy at a meeting duly called for such purpose, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of the Superior Court of the County in which the Community is located a supplementary declaration in respect to the property being annexed. Any such supplementary declaration shall be signed by the President and Secretary of the Association and any such annexation shall be effective upon the filing for record of such supplementary declaration unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the Class A members of the Association called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Association.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Enforcement. Each Lot Owner shall comply strictly with the By-Laws and rules and regulations of the Association, as any of the same may be amended from time to time, and with the covenants and restrictions set forth in this Declaration. In the event of a violation or breach, or threatened violation or breach, of any of the

same, Declarant, the Association or any aggrieved Lot Owner, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. Should the Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the violating Lot Owner. Inasmuch as the enforcement of the provisions of this Declaration and the By-Laws and such rules and regulations is essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Lot Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Lot Owner, in addition to all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. Further, in any case of flagrant or repeated violation by a Lot Owner, then, in addition to the foregoing remedies, the Board of Directors of the Association may levy summary charges against the Lot Owner for such violation, provided that no summary charges may be levied for more than \$5.00 for any one violation; but each day or time a violation is continued or repeated after written notice is given to the Lot Owner to cease and desist, shall be considered a separate violation. Collection of summary charges may be enforced against a Lot Owner as if such charges were a common expense owed by the Lot Owner involved. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Lot Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence therein or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its exercise or enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach of the provisions of this Declaration, or the By-Laws, or such rules and regulations, however long continued, or for imposing provisions which may be unenforceable.

Section 2. Rights of Third Parties. This Declaration shall be recorded in the public real estate records of the Clerk of the Superior Court of the County in which the Community is located and shall inure to the benefit of Declarant, the Association, the Lot Owners and the holders

of mortgages affecting any property within the Community, their respective heirs, legal representatives, successors-in-title, successors and assigns; and by such recording no owner of property not located within the Community shall have any right, title or interest whatsoever in the Community or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of the Class B member and mortgagees as herein provided, the Lot Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any such owner.

Section 3. 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 with 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 (i) by at least a majority of the votes which the Class A members of the Association present, or represented by proxy, are entitled to cast at a meeting duly called for such purpose, and (ii) by the Class B member of the Association, so long as such membership shall exist. The time within which and the manner in which notice of any such meeting shall be given to said members, and the quorum required for the transaction of business at any such meeting shall be as specified in the By-Laws of the Association. Further, no such renewal or extension shall be effective unless there is filed for record in the Office of Clerk of the Superior Court of the County in which the Community is located, on or before the effective date thereof, an instrument executed by the President and Secretary of the Association which shall state the terms of such renewal or extension and which shall contain a certification by such Secretary that such extension and renewal was duly approved by the Class A members of the Association and by the Class B member, if the Class B membership shall then exist. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of 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 4. 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 pur-

chase 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 or materially alter or change any Lot Owner's right to the use and enjoyment of the Common Property as set forth herein unless any such Lot Owner shall consent thereto in writing. Further, this Declaration may be amended by the Association at any time and from time to time during said first period, and at any time and from time to time during the period of any extension and renewal thereof. Any such amendment shall require the approval (i) of at least a majority of the votes which the Class A members of the Association present, or represented by proxy, are entitled to cast at a meeting duly called for such purpose, and (ii) by the Class B member of the Association, so long as such membership shall exist. The time within which and the manner in which notice of any such meeting shall be given to said members, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Association. 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. Further, no amendment by the Association shall be effective unless there is filed for record in the Office of the Superior Court of the County in which the Community is located, on or before the effective date thereof, an instrument executed by the President and Secretary of the Association which shall state the terms of such amendment and which shall contain a certification by such Secretary that such amendment was duly approved by the Class A members of the Association and by the Class B member, if the Class B membership shall then exist. The written consent thereto of any mortgage holder affected thereby shall also 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.

Section 5. Partition. The Common Property shall remain undivided and no Lot Owner nor any other person shall bring any action for partition or division of the whole or any part thereof without the written consent of all owners of all portions of the property located within the Community and without the written consent of all holders of all mortgages encumbering any portion of the property, including but not necessarily limited to the Lots, located within the Community.

Section 6. Obligations to Mortgagees. The following provisions are established for the benefit of the holders of mortgages encumbering any Lots now or hereafter located within the Community. In the event of any conflict between other provisions in this Declaration, or in the Articles of Incorporation or By-Laws of the Association or other Association document and the following provisions, the latter shall control:

(a) Each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot and the Association shall be obligated to notify the holder of any first mortgage encumbering such Owner's Lot of any default by such Owner in the performance of any of such Owner's obligations (including failure to pay assessments as and when due) under this Declaration, or the Articles of Incorporation or By-Laws of the Association or other Association document, which is not cured within thirty (30) days from the date of any such default. Such Owner hereby consents to such notification to any such mortgage holder by the Association.

(b) Written notice by the Association shall be sent to the holders of all first mortgages encumbering any of the Lots located within the Community setting forth the purpose of the meeting not less than thirty (30) days in advance of any meeting being called for the purpose of amending, extending or renewing any of the provisions of this Declaration or the Articles of Incorporation or By-Laws of the Association. No such amendment, extension or renewal shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot located within the Community unless such mortgage holder shall consent thereto in writing. Further, no such amendment, extension or renewal shall change the membership or voting rights of the Lot Owners in the Association or the ratio for levying and collecting assessments as herein provided without the written consent of the holder of any first mortgage encumbering any Lot affected thereby.

(c) Notwithstanding the provisions of Section 2 of Article IX hereof the Association shall not annex additional lands to this Declaration and to the jurisdiction of the Association without the written consent of all holders of first mortgages encumbering any of the Lots located within the Community; provided, however, this provision shall not be construed to limit the right of the Declarant to annex all or any part of the real property described in Exhibit "C" attached hereto as herein otherwise provided. Also, except as to the Association's right to grant easements for utilities and similar or related purposes, no portion of the Common Property shall be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of all holders of first mortgages encumbering any of the Lots in the Community.

(d) The Lot Owners shall not by an act or omission seek to abandon the status of the Community as established pursuant to the provisions of this Declaration, except as may be provided by statute in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain, without the written consent of the holders of all mortgages encumbering any Lot located within the Community.

(e) The holder of any first mortgage on any Lot in the Community shall, upon request, be entitled to: (i) inspect the books

and records of the Association during normal business hours; (ii) receive annual reports and other financial data, including an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and (iii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(f) If any Lot or portion thereof or the Common Property or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any first mortgage of a Lot will be entitled to timely written notice of any such proceeding or proposed acquisition and no provision of any document establishing the Community will entitle the owner of a Lot or other party to priority over such holder with respect to the distribution to such Lot of the proceeds of any award or settlement.

(g) With respect to substantial damage to or destruction of any Lot or any part of the Common Property and facilities, the holder of any first mortgage of a Lot will be entitled to timely written notice of such damage or destruction and no provision of any document establishing the Community will entitle the owner of a Lot or other party to priority over such holder with respect to any distribution to such Lot of any insurance proceeds.

Section 7. No Right of First Refusal. The right of a Lot Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association.

Section 8. Leases. With the exception of a lender in possession of a Lot following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Lot Owner shall be permitted to lease less than the entire Lot. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the By-Laws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any Lot Owner to lease his Lot.

Section 9. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Class B member or Directors of the Association, 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 10. Gender and Grammar. The singular wherever 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 11. 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 applicability 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 12. 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, has executed this instrument under seal this 10<sup>th</sup> day of July, 1980.

Signed, sealed and delivered in the presence of:

RIVERPART, LTD., a Georgia Limited Partnership acting by and through its sole General Partner, RIVER NORTH DEVELOPMENT CORPORATION, a Georgia corporation

RIVER NORTH DEVELOPMENT CORPORATION

BY:

ITS:

ATTEST:

ITS:

Kay Mansell  
Unofficial Witness  
D.W. Rydell  
Notary Public in and for Dallas County, Texas

My Commission Expires: 12/3/81

[CORPORATE SEAL]



EXHIBIT "A"

TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
THE HILLS ASSOCIATION

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DEFINITIONS

The following words, when used in this Declaration or in any supplemental declaration (unless the context shall prohibit), shall have the following meanings:

A. "Architectural Control Committee" shall mean, as follows: So long as Declarant shall own one or more Lots in the Community, the Architectural Control Committee shall mean Declarant, or one or more persons appointed by Declarant to perform the functions of the Architectural Control Committee. After Declarant shall cease to own any Lots in the Community, the Architectural Control Committee shall mean the Board of Directors of the Association, or three or more persons appointed by the Board of Directors of the Association to perform the functions of the Architectural Control Committee. Persons appointed to the Architectural Control Committee need not be Lot Owners and persons appointed by Declarant or the Board of Directors of the Association shall serve at the pleasure of the Declarant or the Board of Directors of the Association, as the case may be.

B. "Association" shall mean and refer to THE HILLS ASSOCIATION, INC., a nonprofit Georgia Corporation, its successors and assigns.

C. "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned or operated by the Association for the common use and enjoyment of all of the Owners in the Community.

D. "Community" shall mean and refer to that certain real property described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant (or its mortgagee or transferee as provided in the Declaration) by supplementary declaration of all or any portion of the real property described in Exhibit "C" attached hereto, and (ii) such additions thereto as may be made by the Association by supplementary declaration of other real property.

E. "Declarant" shall mean and refer to (i) RIVERPART, LTD., a Georgia Limited Partnership, acting by and through its sole General Partner River North Development Corporation, a Georgia Corporation; or (ii) any

successor-in-title to the said RIVERPART, LTD. to all or some portion of the property then subject to this Declaration, provided in the instrument of conveyance to any such successor-in-title, such successor-in-title is expressly designated as the "Declarant" hereunder at the time of such conveyance; or (iii) should all of the property then owned by Declarant and subjected to this Declaration be or become subject to a mortgage given by "Declarant", then all the rights, privileges and options herein reserved to "Declarant" shall inure to the benefit of the holder of such mortgage upon becoming the owner of all the property then subject thereto through whatever means, or to the purchaser of all such property at a judicial or foreclosure sale made pursuant to any power of sale contained in such mortgage; and, further, all the rights, privileges and options herein reserved to "Declarant" may be transferred to the successor-in-title of any such acquirer of title to such property, provided in the instrument of conveyance to such successor-in-title, such successor-in-title is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. At any one time, only one person may be "Declarant" under this Declaration. In the event that more than one of the persons specified in (ii) and (iii) above become entitled to succeed to the interests of "Declarant" as therein provided, then, as between such persons, any person entitled to be "Declarant" by virtue of (iii) above, shall be "Declarant" instead of any person entitled to be Declarant by virtue of (ii) above.

F. "Lot" shall mean and refer to any numbered plot of land comprising a single dwelling site designated on a plat of survey recorded in the office of the Clerk of the Superior Court of Jones County, Georgia, which is subject to this Declaration.

G. "Majority" means more than fifty (50%) percent.

H. "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 an obligation.

I. "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.

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

EXHIBIT "B"

TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
THE HILLS ASSOCIATION

ALL THOSE LOTS OR PARCELS OF LAND lying and being in Land Lot 168 of the 8th Land District of Jones County, Georgia and being Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of RIVER HILLS SUBDIVISION as per plat of survey prepared by Tribble & Richardson, Inc., dated June 8, 1979, last revised May 20, 1980, and recorded in Plat Book 6, page 192, Jones County, Georgia Records, which recorded plat of survey is incorporated herein and by reference made a part hereof for a more complete description of the above-described property.

ALSO:

ALL THOSE LOTS OR PARCELS OF LAND lying and being in Land Lot 168 of the 8th Land District of Jones County, Georgia and being Lots 5, 6, 7, 8, 9, 10 and 11 of Section III, Unit I, Block "Y" of RIVER NORTH SUBDIVISION as per plat of survey prepared by Tribble & Richardson, Inc., dated May 16, 1979, last revised May 20, 1980, and recorded in Plat Book 6, page 193, Jones County, Georgia Records, which recorded plat of survey is incorporated herein and by reference made a part hereof for a more complete description of the above-described property.

EXHIBIT "C"

TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
THE HILLS ASSOCIATION

TRACT 1

Beginning at a concrete monument common to land lots 142, 143, 146 and 147 in the 8th land district of Jones County, Georgia. Said concrete monument being the Point of Reference and the Point of Beginning. Thence, North 73°-16' East, 244.51 feet to an iron pin marking the centerline of a creek. Thence, along centerline of creek, South 27°-00' East, 37.94 feet to an iron pin. Thence, along centerline of creek, South 63°-20' East, 78.20 feet to an iron pin. Thence, along centerline of creek, South 73°-21' East, 63.04 feet to an iron pin. Thence, along centerline of creek, South 63°-46' East, 46.79 feet to an iron pin. Thence, along centerline of creek, South 26°-38' East, 65.92 feet to an iron pin. Thence, along centerline of creek, South 74°-22' East, 47.35 feet to an iron pin. Thence, along centerline of creek, South 74°-52' East, 54.62 feet to an iron pin. Thence, along centerline of creek, South 79°-16' East, 64.46 feet to an iron pin. Thence, along centerline of creek, North 66°-25' East, 48.24 feet to an iron pin. Thence, along centerline of creek, South 86°-54' East, 49.06 feet to an iron pin. Thence, along centerline of creek, South 30°-55' East, 182.64 feet to an iron pin. Thence, along centerline of creek, South 48°-01' East, 100.00 feet to an iron pin marking the centerline intersection of said creek with Town Creek. Thence, along centerline of Town Creek, North 20°-21' East, 100.00 feet to an iron pin. Thence, along centerline of Town Creek, North 31°-43' East, 39.99 feet to an iron pin. Thence, along centerline of Town Creek, North 22°-05' East, 98.43 feet to an iron pin. Thence, along centerline of Town Creek, North 11°-49' West, 92.62 feet to an iron pin. Thence along centerline of Town Creek, North 14°-38' West, 122.75 feet. Thence, North 62°-45' East, 223.83 feet. Thence, North 77°-12' East, 171.22 feet. Thence, North 38°-09' East, 265.56 feet. Thence, North 73°-16' East, 2897.08 feet to an iron marker on the western most right-of-way line of Upper River Road. Thence along western most right-of-way line of Upper River Road, North 9°-08' East, 1340.95 feet. Thence, along western most right-of-way of Upper River Road, North 24°-29' West, 665.40 feet (chord). Thence, along western most right-of-way line of Upper River Road North 58°-18' West, 497.97 feet. Thence, along western most right-of-way of Upper River Road, North 39°-57' West, 615.87 feet (chord). Thence, along western most right-of-way line of Upper River Road, North 21°-38' West, 799.10 feet. Thence, along western most right-of-way of Upper River Road, North 23°-11' West, 226.34 feet (chord) to an iron marker. Thence, South 46°-35'-14" West, 2663.18 feet to an iron marker. Thence, North 44°-45'-46" West, 667.70 feet to an iron marker. Thence, South 46°-26' West, 15,492.77 feet to an iron marker on the east bank of the Ocmulgee River. Thence, along a tie line on

the east bank of the Ocmulgee, South 48°-45' East, 565.06 feet to a traverse point. Thence, along a tie line on the east bank of the Ocmulgee River, South 49°-12' East, 3611.53 feet to an iron pipe. Thence, along a tie line on the east bank of the Ocmulgee River, South 45°-01' East, 736.58 feet to an iron pipe. Thence, along a tie line on the east bank of the Ocmulgee River, South 41°-10' East, 706.61 feet to an iron marker on the east bank of the Ocmulgee River. The centerline of the Ocmulgee River being the property line and also the county line dividing Jones and Bibb Counties. Thence, from iron marker on the east bank of the Ocmulgee River North 47°-10' East, 2608.03 feet to an iron marker. Thence, South 44°-27' East, 4638.02 feet to an iron marker. Thence, North 47°-29' East, 632.15 feet to an iron pipe. Thence, South 43°-24' East, 757.59 feet to an iron pipe. Thence, North 46°-54' East, 2968.42 feet to an iron marker. Thence, North 43°-30' West, 2968.06 feet to an iron marker. Thence, North 45°-38' West, 451.05 feet to an iron marker. Thence, North 43°-21' West, 2637.03 feet to an iron marker. Thence, North 43°-02' West, 368.26 feet to an iron marker. Thence, North 75°-25' West, 297.49 feet to an iron marker. Thence, North 53°-00' West, 80.03 feet to an iron marker in the centerline of a dirt road. Thence, near or along centerline of dirt road, North 52°-27' West, 359.46 feet. Thence, near or along centerline of dirt road, North 44°-10' West, 230.56 feet. Thence, near or along centerline of dirt road, North 29°-43' West, 272.74 feet. Thence, near or along centerline of dirt road, North 46°-09' West, 122.68 feet. Thence, near or along centerline of dirt road, North 65°-31' West, 128.78 feet. Thence, near or along centerline of dirt road, North 78°-40' West, 299.44 feet. Thence, near or along centerline of dirt road, South 82°-49' West, 199.33 feet. Thence, near or along centerline of dirt road, North 58°-47' West, 109.05 feet. Thence, near or along centerline of dirt road, North 40°-39' West, 92.11 feet. Thence, near or along centerline of dirt road, North 35°-23' West, 328.42 feet. Thence, near or along centerline of dirt road, North 51°-53' West, 97.90 feet. Thence, near or along centerline of dirt road, South 81°-27' West, 123.48 feet to an iron pipe. Thence, North 46°-29' East, 2073.74 feet to an iron marker. Thence, North 46°-34' East, 4464.38 feet to an iron marker. Thence, North 46°-31' East, 92.00 feet to a concrete monument marking the Point of Beginning. Tract 1 containing 1912.93 acres excluding islands and water area in the Ocmulgee River and being in land lots: 122, 123, 142, 143, 146, 165, 168, 170, 171, 184, 185, 186, 187, 190, 191 and 192 of the 8th land district, Jones County, Georgia. Reference being made to a plat prepared by Tribble & Richardson, Inc., entitled "Survey for Riverpart Limited, a Georgia Limited Partnership" and shown as being Parcel 1 on Sheet 1 of 3 and Parcel 3 on sheet 2 of 3.

## TRACT 2

Beginning at an iron marker common to land lots: 118, 119, 122 and 123 in the 8th land district of Jones County, Georgia. Said iron marker being the Point of Reference and the Point of Beginning. Thence, South 42°-56' East, 2903.13 feet to an iron marker. Thence, South 46°-47' West, 2324.90 feet to an iron marker. Thence, North 80°-41' West, 461.78 feet to an iron marker on the eastern most right-of-way of Upper River Road. Thence, along eastern most right-of-way of Upper River Road, North 23°-10' East, 87.14 feet (chord) to an iron marker. Thence, along eastern most right-of-way line of Upper River Road, North 22°-19' East, 143.83 feet to an iron marker. Thence, along eastern most right-of-way of Upper River Road, North 15°-49' East, 567.69 feet (chord) to an iron marker. Thence, along eastern most right-of-way line of Upper River Road, North 9°-19' East, 1510.08 feet to an iron marker. Thence, along eastern most right-of-way of Upper River Road, North 24°-29' West, 754.42 feet (chord) to an iron marker. Thence, along eastern most right-of-way line of Upper River Road, North 58°-18' West, 497.97 feet to an iron marker. Thence, along eastern most right-of-way of Upper River Road, North 39°-57' West, 565.55 feet (chord) to an iron marker. Thence, along eastern most right-of-way line of Upper River Road, North 21°-38' West, 799.10 feet to an iron marker. Thence, along eastern most right-of-way of Upper River Road, North 23°-49' West, 256.94 feet (chord) to an iron marker. Thence, North 46°-34' East, 224.50 feet to an iron marker. Thence, South 42°-17' East, 1515.10 feet to an iron marker marking the Point of Beginning. Tract 2 containing 99.96 acres and being in land lots 122 and 123 of the 8th land district, Jones County, Georgia. Reference being made to a plat prepared by Tribble & Richardson, Inc. entitled "Boundary Survey for Riverpart Limited, a Georgia Limited Partnership" and shown as being Parcel 2 on Sheet 1 of 3.

## TRACT 3

Beginning at an iron pin at the north west of Southern Railroad (150' R/W) and River North Boulevard (100' R/W) intersection. Said iron pin being the Point of Reference and the Point of Beginning. Thence, along Southern Railroad right-of-way, North 51°-35'-14" West, 216.20 feet (chord) to an iron pin. Thence, continuing along Southern Railroad right-of-way, North 53°-40'-14" West, 321.66 feet to an iron marker. Thence, North 0°-44'-21" East, 203.32 feet to an iron pin on the west bank of the Ocmulgee River. Thence, along a tie line on the west bank of the Ocmulgee River, South 68°-42'-05" East, 167.18 feet to a traverse point. Thence, along a tie line on the west bank of the Ocmulgee River, South 60°-00'-22" East, 296.90 feet to a traverse point. Thence, along a tie line on the west bank of the Ocmulgee River, South 33°-02'-22" East,

208.00 feet to a traverse point. Thence, along a tie line on the west bank of the Ocmulgee River, South 54°-00'-22" East, 241.40 feet to a traverse point. Thence, along a tie line on the west bank of the Ocmulgee River, South 44°-21'-22" East, 207.80 feet to a traverse point. Said traverse point being approximately 100 feet from the centerline of a tributary branch. The centerline of the Ocmulgee River being the property line and also the county line dividing Jones and Bibb Counties. Thence, along a tie line, South 36°-32'-38" West, 171.20 feet to a traverse point. Said traverse point being approximately 15 feet from the centerline of tributary branch. Thence, along a tie line, South 19°-58'-38" West, 49.20 feet to an iron pin on the Southern Railroad right-of-way. Said iron pin being approximately 70 feet from centerline of tributary branch. The centerline of the tributary branch being the property line. Thence along the Southern Railroad right-of-way, North 43°-01'-14" West, 236.40 feet to an iron pin. Thence, along the Southern Railroad right-of-way, North 44°-32'-14" West, 124.00 feet (chord) to an iron pin intersecting the eastern most right-of-way line of River North Boulevard. Thence, (chord) crossing River North Boulevard, North 47°-16'-14" West, 100.70/ ~~K&W~~ feet to an iron pin marking the Point of Beginning. Tract 3 containing approximately 9.8 acres including water surface area in the Ocmulgee River and being in land lots 343 and 344 of the 13th land district, Bibb County, Georgia. Reference being made to a plat prepared by Tribble & Richardson, Inc., dated December 8, 1978, entitled "Survey for Riverpart Limited, a Georgia Limited Partnership" and shown as being Parcel A on sheet 3 of 3.

#### TRACT 4

Beginning at an iron pin at the north west of Arkwright Road (80' R/W) and River North Boulevard (100' R/W) intersection. Said iron pin being the Point of Reference and the Point of Beginning. Thence, North 36°-03'-38" East, 114.20 feet to an iron pin at the south west of Southern Railroad (150' R/W) and River North Boulevard intersection. Thence, crossing River North Boulevard, South 46°-48'-11" East, 100.78 feet (chord) to an iron pin at the south east of Southern Railroad and River North Boulevard intersection. Thence, South 36°-03'-38" West, 102.00 feet to an iron pin at the north east of Arkwright Road and River North Boulevard intersection. Thence, crossing River North Boulevard, North 53°-45'-22" West, 100.00 feet to an iron pin marking the Point of Beginning. Tract 4 containing 0.25 acres and being in land lots 343 and 344 of the 13th land district, Bibb County, Georgia. Reference being made to a plat prepared by Tribble & Richardson, Inc., dated December 8, 1978, entitled "Survey for Riverpart Limited, a Georgia Limited Partnership" and shown as being Parcel B on sheet 3 of 3.

LESS AND EXCEPT from the above-described property:

ALL THOSE LOTS OR PARCELS OF LAND lying and being in Land Lots 122 and 123 of the 8th Land District of Jones County, Georgia and being Lots 1 through 22 inclusive of RIVER SUMMIT SUBDIVISION as per plat of survey prepared by Tribble & Richardson, Inc., dated January 2, 1979, last revised September 5, 1979, and recorded in Plat Book 6, page 134, Jones County, Georgia Records, which recorded plat of survey is incorporated herein and by reference made a part hereof for a more complete description of the above-described property; TOGETHER WITH those certain cul-de-sacs designated as "Coppergate Lane" and Saddle Ridge Cir." as shown on said recorded plat of survey.

ALSO LESS AND EXCEPT:

All those lots or parcels of land described in Exhibit "B" of this Declaration.



EXHIBIT "D"

TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
THE HILLS ASSOCIATION

---

NOTICE OF LIEN

STATE OF GEORGIA:

COUNTY OF JONES.

PURSUANT TO the provisions of Article IV of that certain Declaration of Covenants, Conditions, Restrictions and Easements for THE HILLS ASSOCIATION, recorded in Deed Book \_\_\_\_\_, page \_\_\_\_\_, Jones County, Georgia Records, The Hills Association, Inc. claims a lien against the following described property of \_\_\_\_\_, to-wit:

THIS claim of Lien is for unpaid and delinquent assessments in the amount of \$ \_\_\_\_\_, which, under and pursuant to the provisions of said Declaration, are past due as of the date hereof, together with interest thereon, late charges and costs of collection, including attorney's fees, as provided in said Declaration. In accordance with the provisions of said Declaration, this claim of Lien is filed within ninety (90) days after said assessments became due. Also, this claim of Lien is to secure any and all assessments, together with interest thereon, late charges and costs of collection, including attorney's fees, which may hereafter come due to THE HILLS ASSOCIATION, INC. in respect to the above described property until this claim of Lien is cancelled of record.

THIS \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

BY: \_\_\_\_\_

EXHIBIT "D"

EXHIBIT "E"

to

Declaration of Covenants, Conditions,  
Restrictions and Easements for  
THE HILLS ASSOCIATION

PART I

The following property rights, easements and use restrictions shall apply to the property which is now or hereinafter subjected to this Declaration:

Section 1. Use and Enjoyment. Every Owner of a Lot shall have a right and easement of use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(a) the right of the Association to limit the use and enjoyment of any recreational facility now or hereafter situated upon the Common Property to the Owners of Lots and their respective families,

tenants and guests; the right of the Association to limit the number of guests of Lot Owners and tenants; the right of the Association to charge reasonable fees for the actual use of or participation in a particular recreational facility or activity now or hereafter situated or provided upon the Common Property (which charges and fees, unless paid separately, shall be added to and become part of the assessment or portion thereof next coming due to which the Lot Owner is subject);

(b) the right of the Association to suspend the voting rights and right to use or participate in the recreational facilities or activities now or hereafter situated or provided upon the Common Property by a Lot Owner for any period during which any assessment against his Lot which is herein provided for remains unpaid; and, for a reasonable period of time for infraction of the Association's published rules and regulations;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for constructing, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community. Any provision of this Declaration or in any such mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not abrogate, diminish, modify, change, alter, rescind, cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community;

(d) the right of the Association to dedicate or transfer all or any portion of the Common Property to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved (i) by at least a majority of the votes which the Class A members of the Association present, or represented by proxy, are entitled to cast at a meeting duly called for such purpose; and (ii) by the Class B member of the Association, so long as such membership shall exist.

Section 2. Delegation of Use. Any Lot Owner may delegate, in accordance with the By-Laws and rules and regulations of the Association, his right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests.

Section 3. Utilities, etc. Declarant, so long as Declarant shall be a Class B member of the Association, and thereafter the Association upon a majority vote of its Board of Directors, is hereby authorized and empowered to grant such licenses and easements as either of them shall deem necessary and appropriate upon, across, above and under the Common Property and other lands located within the Community on which buildings or other structures have not or are not intended to be constructed for access, ingress, egress, installation, repairing, replacing and maintaining all utilities serving the Community or any portion thereof including, but not limited to gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system or security system which the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant or the Association, as the case may be, to install, repair, replace and maintain or to authorize the installation, repairing, replacing and maintaining of such poles, wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, Declarant, or the Association, as the case may be, shall have the right to execute and deliver such written document and every grantee of any interest in any property located within the Community consents thereto and further hereby agrees to give his specific written consent thereto in recordable form if requested by Declarant or the Board of Directors of the Association. Any license or easement granted pursuant hereto by Declarant or the Association shall be and remain in full force and effect perpetually or for such shorter period of time as may be specified in the particular instrument creating the same.

Section 4. Rules and Regulations. Reasonable rules and regulations concerning the use of the Common Property and facilities located thereon may be made and amended from time to time by the Board of Directors of the Association; provided that copies of such regulations and amendments thereto shall be furnished by the Association to all Lot Owners. Such regulations shall be binding upon the Lot Owners, their families, tenants, guests, invitees and agents, until and unless such regulation, rule or requirement be specifically overruled, cancelled or modified in a regular or special meeting by the vote of Class A members holding a majority of the total votes in the Association and by the vote of the Class B member so long as such membership shall exist.

Section 5. Motor Vehicles, Trailers, Boats, etc. Motor vehicles shall be parked only upon those portions of the Common Property designated for such purpose by the Association. Mobile homes, truck campers, trailers of any kind and boats shall be kept, placed, stored or parked only upon those portions of the Common Property, if any, designated specifically for such purpose by the Board of Directors of the Association. Further, although not expressly prohibited hereby, the Association may prohibit mobile homes, truck campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts and other such con-

trivances, or any of them, from being kept, placed, stored, parked or operated upon any portion of the Common Property if in the opinion of the Association such prohibition shall be in the best interests of the Community.

Section 6. Pets. No animals, livestock or poultry of any kind shall be permitted on the Common Property, except in accordance with the rules and regulations adopted by the Board of Directors of the Association.

Section 7. Waste Material Containers. No rubbish, trash, garbage or other waste material shall be kept or permitted upon the Common Property except in sanitary containers which may be located by the Association in appropriate areas.

Section 8. Prohibited Activities. Noxious or offensive activities shall not be carried on on the Common Property or in any facility located thereon. Each Lot Owner, his family, visitors, guests, servants and agents shall refrain from any act or use of the Common Property and facilities which could reasonably cause embarrassment, discomfort, annoyance or nuisance to other users thereof, or which could result in the cancellation of insurance on any portion of the Common Property and facilities, or which would be in violation of any law or governmental code or regulation.

Section 9. Antennas. No antenna or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic radiation shall be erected, used, or maintained outdoors on any portion of the Common Property, whether attached to a building or structure or otherwise, provided, however, Declarant and the Association shall have the right to erect, construct and maintain such devices or authorize the erection, construction and maintenance of such devices.

Section 10. 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 on any portion of the Common Property.

Section 11. No Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of any other Owner or Owners.

Section 12. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Common Property shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 13. Construction and Sale Period. Notwithstanding any provision contained in the Declaration to the contrary, it shall be expressly permissible for Declarant and the builder (if other than Declarant) of dwellings upon the Lots to maintain and carry on during the period of construction (if not already constructed) and sale of such dwellings, and upon such portion of Common Property as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction (if not already constructed) and sale of such dwellings, including, but without limitation, business offices, signs, model homes and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use dwellings owned by Declarant or such builder as model homes and offices for the sale of dwellings in the Community.

Section 14. Encroachments. If any portion of the Common Property encroaches upon any Lot or dwelling, or if any dwelling encroaches upon any other Lot or dwelling or upon any portion of the Common Property, as a result of construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Community, a valid easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. In the event any building, any dwelling, any adjoining dwelling, or any adjoining Common Property, shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then repaired or reconstructed, encroachments of portions of the Common Property upon any Lot or dwelling, or of any dwelling upon any other Lot or dwelling or upon any portion of the Common Property, due to such repair or reconstruction, shall be permitted, and valid easements for such encroachments and the maintenance, repair and replacement thereof shall exist.

## PART II

The following architectural, maintenance and use restrictions shall apply to each and every Lot now or hereafter subjected to this Declaration:

Section 1. Residential Use. All Lots shall be used for residential purposes and no business or business activity shall be carried on upon any Lot at any time, except with the written approval of the Architectural Control Committee; provided, however, that nothing herein shall prevent Declarant and Declarant's agents, affiliates and employees from using any Lot owned or leased by Declarant for the purpose of carrying on business related to the development and sale of property in the Community; provided further, private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwellings and is approved by the Architectural Control Committee.

Section 2. Subdivision of Lots. No Lot shall be partitioned or subdivided, or its boundary lines changed, except with the prior written approval of the Architectural Control Committee. Declarant, however, hereby expressly reserves the right to resubdivide and replat any two (2) or more Lots in order to create a modified residential Lot or Lots, and to take such other steps as reasonably may be necessary to make such resubdivided Lot or Lots suitable as a building site or sites. All of the covenants and restrictions set forth herein shall apply to each such Lot, if any, so created. Any such subdivision, boundary line change or replatted Lot shall not be in violation of applicable governmental subdivision and zoning regulations. Provided, however, no Lot shall be partitioned or resubdivided without the prior written approval of the holder of any mortgage encumbering such Lot.

Section 3. Architectural Control. To preserve the architectural appearance of the Community, after the purchase of any Lot from Declarant, no building, fence, wall, road, driveway, parking area, tennis court, swimming pool, or other structure or improvement of any kind shall be commenced, constructed, erected, placed, maintained, altered, changed, added to, modified or reconstructed on any Lot, nor shall any exterior addition to, or alteration, change or modification to any existing structure or improvement, or the color thereof, including without limitation, patio covers and antennas, be constructed, erected, placed or maintained on any Lot, until the plans and specifications therefor showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee. "Improvement" shall mean and include any improvement, change, alteration or modification of the appearance of a Lot from the state existing on the date of the conveyance of such Lot by Declarant to a Lot Owner. Before taking any action requiring approval under this Section, and before making any application to any lender for a loan to finance such construction, a Lot Owner shall submit to the Architectural Control Committee, a construction schedule and two complete sets of plans and specifications showing the nature, kind, shape, height, materials, color and location of the proposed improvements, as well as, where applicable, a site plan, landscape layout, floor plans, exterior elevations and exterior materials, colors and finishes. No changes or deviations in or from such plans and specifications as approved shall be made without the prior written approval of the Architectural Control Committee. No alteration, change or modification in the exterior appearance of any building, structure or other improvement shall be made without like approval by the Architectural Control Committee. All such plans and specifications shall be submitted in writing over signature of the Owner of the Lot or such Owner's authorized agent. Approval shall be based, among other things, on adequacy of site dimensions; conformity and harmony of external design with proposed or existing neighboring structures or improvements; effect of location and use of improvements on neighboring property, improvements, operations and uses; relation of topography, grade and finished ground elevation of the Lot to that of neighboring property; proper facing of main elevations with respect to nearby streets; preservation of aesthetic beauty; and conformity of the plans and specifications of the purposes and general plan and intent of this

Declaration. In any event, the Architectural Control Committee shall have the right to require any Lot Owner to remove or alter any improvement which has not received approval or is built or installed other than in accordance with the plans and specifications approved by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove in writing plans and specifications within thirty (30) days after the same have been submitted to it, approval shall not be required and this Section will be deemed to have been complied with. Neither Declarant, nor any member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. Further, neither Declarant, nor any member of the Architectural Control Committee shall be liable in damages to anyone submitting plans or specifications for approval under this Section, or to any owner of property affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Declarant, or any member of the Architectural Control Committee, to recover for any such damage.

Section 4. Building Location. Since the establishment of inflexible building setback lines for locating houses or other structures tends to force construction of buildings both directly behind and directly to the side of other homes or buildings, with detrimental effect on privacy, view, preservation of important trees, etc., no specific setback lines are established by these covenants and restrictions other than those which may be required by applicable governmental rules and regulations and those which may be shown on recorded plats which shall be observed. Declarant, as to Lots owned by Declarant or with respect to which Declarant is the builder of the improvements being constructed thereon, or the Architectural Control Committee, as to Lots owned by persons other than Declarant (unless Declarant is the builder), reserves the right to control solely and absolutely the precise site and location of any proposed house, dwelling, building or other structure or improvement upon all Lots. Such location shall be determined, however, only after reasonable opportunity is afforded the Lot Owner to request a specific site.

Section 5. Other Building Requirements. The construction of improvements on the Lots shall be subject to the following provisions, none of which shall be construed as limiting the exercise of the discretion of the Declarant or the Architectural Control Committee pursuant to Sections 3 and 4 above.



(a) Subject to the approval of the plans and specifications, therefor, as required by Section 3 above, there shall be no minimum square footage requirements for any residence to be constructed on any Lot other than those that might be imposed by governmental ordinances, rules or regulations.

(b) The exterior of all houses and other structures must be completed within one (1) year after commencement of construction, except where, in the sole discretion of the Architectural Control Committee such completion within one (1) year is not possible or would result in great hardship to the Owner or builder due to strike, fire, national emergency or natural calamity.

(c) No exterior pole, tower, antenna or other device for the transmission or reception of television signals, radio signals or any other form of electromagnetic radiation shall be erected, placed or maintained on any Lot except as may be constructed by the Declarant or approved in writing by the Architectural Control Committee. Provided, however, that if cable television service is not available to the Lot, then the customary outdoor receiving antenna may be installed with the prior written consent of the Architectural Control Committee; and provided further, however, that such outdoor antenna shall be promptly taken down and removed by the Lot Owner at such Owner's expense if cable television service is made available to the Lot.

(d) The design, type, location, size, color and intensity of all exterior lights shall be subject to control by the Architectural Control Committee and only exterior lighting as shall have been installed by Declarant or approved in writing by the Architectural Control Committee shall be installed or used on any Lot.

(e) All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be kept on the Lot so as not to be visible from the adjoining Lot or Lots and from the street, except at such times when refuse collections are being made.

(f) Unless located within ten (10) feet of a main dwelling or accessory building or within ten (10) feet of an approved building site, no trees, shrubs, bushes or other vegetation having a trunk diameter of six (6) inches or more at a point two feet above ground level may be cut, pruned, mutilated or destroyed at any time by anyone other than Declarant without the prior written approval of the Architectural Control Committee; provided, however, that dead or diseased trees, shrubs, bushes and other vegetation shall be cut or removed promptly from any Lot by the Owner thereof after such dead or diseased condition is first brought to the attention of the Architectural Control Committee and permission for such cutting and removal has been obtained.

(g) No structure of a temporary character shall be placed upon any Lot at any time, except for shelters used by a building contractor during the course of construction. Such temporary shelters may not at any time be used as residences, nor be permitted to remain

on the Lot after completion of construction. Also, the use and location of such temporary shelters by building contractors must be approved by the Architectural Control Committee.

(h) No accessory building shall be placed, erected or maintained upon any part of any Lot except in connection with a residence already constructed or under construction at the time that such outbuilding is placed or erected upon the Lot.

(i) No mobile home, house trailer, tent, shack, barn or other outbuilding or structure (except accessory buildings permitted under Section (g) above, and except for shelters used by building contractors during the course of construction permitted under Section (g) above, shall be placed on any Lot at any time, either temporarily or permanently.

(j) No fence, wall, hedge or shrub planting which obstructs sight lines or elevations between two and six feet above roadways shall be placed or be permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines. The same sight line limitation shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such triangular area unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

(k) Every tank for the storage of fuel that is installed outside any dwelling or other structure on a Lot shall be either buried below the surface of the ground or shall be screened by fencing or shrubbery approved by the Architectural Control Committee.

Section 6. Recorded Plats. Lots subject to this Declaration shall be subject to those easements, if any, shown or set forth on any recorded subdivision plat thereof.

Section 7. Attachment of Utilities. Except as to dwellings constructed by Declarant or on Lots owned by Declarant, no permanent utility connection shall be made to any dwelling by any utility, public or private, until the Architectural Control Committee has verified general compliance with these covenants and restrictions and with the plans and specifications therefor submitted pursuant to Section 3 above, and has approved said utility connections in writing.

Section 8. Signs. No commercial signs, including "for rent" or "for sale" signs or advertising posters of any kind shall be erected, placed or maintained on any Lot, except as may be required by legal proceedings, or except only such signs as are hereinafter specified. The following signs shall be permitted on any Lot: professionally lettered builder or realtor signs or sign of the Lot Owner, also professionally lettered signs advertising the Lot and residence located thereon, if

any, for sale or rent; provided, however, that any such sign shall not be more than 18 x 24 inches in size; provided further, however, that no more than two such signs shall be erected, placed or maintained on any one Lot at the same time. The foregoing provisions of this section to the contrary notwithstanding, nothing herein shall be construed to prevent Declarant from erecting, placing or maintaining upon any Lot, or permitting the erection, placing or maintaining upon any Lot by builders of residences, of such signs as Declarant may deem necessary or desirable during the period of development, construction and sale of the Lots and/or residences constructed thereon. Also, the provisions of this Section shall not apply to anyone who becomes the owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage or as transferee pursuant to any proceeding in lieu thereof.

Section 9. Mail Boxes and Property Identification Markers. The Architectural Control Committee 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 for such boxes, as well as property identification markers.

Section 10. Required Maintenance. All Lots, including adjoining easements and rights-of-way, together with the exterior of all improvements located thereon, shall be maintained in a neat, attractive and safe condition by their respective Owners. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and caring for roofs, gutters, downspouts, building surfaces, trees, shrubs, grass, walks and other exterior improvements. The Declarant or the Architectural Control Committee may, after ten (10) days written notice to an Owner, enter upon his Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, for removing garbage or trash, or for performing such exterior maintenance as the Declarant or the Architectural Control Committee, in the exercise of its sole discretion, deems necessary or advisable. In such cases, the Lot Owner shall be personally liable for all costs and expenses of such maintenance, and liability therefor shall be a permanent charge and lien upon such Lot enforceable by the Architectural Control Committee in the same manner as other liens for the improvement of real property or by any other appropriate proceeding in law or in equity. Although notice given as herein provided shall be sufficient to give the Declarant or the Architectural Control Committee the right to enter upon such Lot and perform such maintenance, entry for such purpose shall be only between the hours of 9:00 a.m. and 5:00 p.m. on any day except Sunday, and such entrance shall not be deemed a trespass. The provisions of this Section shall not be construed, however, as an obligation on the part of the Declarant or the Architectural Control Committee to mow, clear, cut or prune any Lot, to provide garbage or trash removal service, or to perform such exterior maintenance.

Section 11. Nuisances. 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 Lot or Lots, irre-