

# Town Houses

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STATE OF GEORGIA  
ATHENS-CLARKE COUNTY

## DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR ALLEN'S LANDING

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR ALLEN'S LANDING is made this \_\_\_\_\_ day of January, 2001, by Peter B's Construction, Inc. (hereinafter referred to as "Declarant").

### BACKGROUND STATEMENT

Declarant is the owner of certain real property in Athens-Clarke County, Georgia which is more particularly described in Exhibit "A" attached hereto and made a part hereof.

Declarant has developed on the real property described above, a development to be known as Allen's Landing (hereinafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Allen's Landing, the planned unit development made subject to this Declaration, by the recording of this Declaration and amendments thereto. Declarant desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration.

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

The Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to this Declaration of Covenants, Restrictions and Easements, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The Covenants, Restrictions and Easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

The Declarant has determined that it is in the mutual benefit of all owners of residential property in the Subdivision to maintain the lawns and landscaping in a uniform and attractive manner. Therefore, to assure the aforementioned, it shall be the responsibility of the Association to provide for landscaping maintenance and lawn maintenance for the front, rear and side yards of the lots.

### ARTICLE I DEFINITIONS

The following words, when used in this Declaration of Covenants, Restrictions and Easements, shall have the following meanings:

1.1 Association. "Association" means Allen's Landing Homeowners Association, Inc. (a non-profit, nonstock, membership corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

1.2 Board. "Board" means the Board of Directors of the Association.

1.3 By-Laws. "By-Laws" means the By-Laws of the Association.

1.4 Commencement Date. "Commencement Date" means the date on which the first Residence is sold to a third party other than Declarant.

1.5 Common Property. "Common Property" means all real property described in Exhibit A less and except the twelve (12) Lots described herein (together with any and all improvements now or hereafter located thereon) owned by the Association or the Declarant or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

1.6 Declarant. "Declarant" means Peter B's Construction, Inc., a Georgia corporation qualified to do business in the State of Georgia, and its successors-in-title and assigns, provided any such successors-in-title or assigns shall acquire for the purpose of sale of any remaining unsold portions of the real property described in Exhibit "A," provided further, in the instrument or conveyance to any such successor-in-title or assign, such successor-in-title or assign 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; provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant, in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A," attached hereto, and which is now subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" at one time.

1.7 Member. "Member" means any member of the Association.

1.8 Membership. "Membership" means the collective total of all Members of the Association.

1.9 Occupant. "Occupant" shall mean any person occupying all or any portion of a Residence located within the Development for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

1.10 Owner. "Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.11 Property. "Property" means that certain real property hereinabove described.

1.12 Residence. "Residence" or "Lot" shall include the structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A structure and the land owned as a part thereof (the Lot) shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Lot and structure located thereon shall have been conveyed to a third party other than the builder thereof. The Owner of a Residence shall notify the Association of its designee immediately upon issuance of a Certificate of Occupancy for the Residence.

1.13 Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.14 Structure. "Structure" means any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any

building or part thereof, garage, porch, shed, or any other temporary or permanent improvements to such Lot.

1.15 Lot. "Lot" means each tract or parcel of land designated as a "Lot" on the plat of the subject property described in Exhibit A attached hereto and made a part hereof as set forth hereinabove. Specifically, the aforementioned plat designates the twelve (12) Lots and is recorded at Plat Book 36, Page 110, in the Office of the Clerk of the Superior Court of Athens-Clarke County, Georgia.

ARTICLE II  
COMMON PROPERTY

2.01 Conveyance of Common Property

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

(b) The Declarant, may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the Development.

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

2.02 Right of Enjoyment. Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Section 2.03(f) and 3.05.

2.03 Rights of the Association. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right, and where applicable, the obligation, of the Association acting through the Board to:

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

(b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of the Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including Common Property and revenues from assessments, user fees and other sources; and provided, however, that, during the period when the Declarant has the right to appoint members of the Board, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without approval by Declarant and a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws

of the Association;

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

(d) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

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

(f) suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;

(g) sell, lease or otherwise convey all or any part of its properties and interests therein;

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

(i) maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads of Athens-Clarke County, Georgia.

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

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

2.06 Maintenance and Repair. The Association shall provide maintenance and repair as follows:

(a) Except as may be herein otherwise specifically provided, the responsibility of the Association with respect to maintenance, repair and replacement shall be to maintain, repair or replace all portions of the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping, and street-light systems, and improvements situated on the Common Property. In addition, the Association shall maintain grass, entranceways and other landscaping located along or in dedicated rights of way which were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority; the Association shall maintain all paved areas such as roads, retaining walls, sidewalks, and driveways that are not otherwise maintained by the appropriate governmental body.

The Association shall also have the right, but not the obligation to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit Owners.

(b) As provided in the BACKGROUND STATEMENT hereinabove, the Association shall be responsible for the landscaping and lawn maintenance of the front, rear, and side yards of the lots.

(c) The Association shall not be liable for injury or damage to a person or property caused by the elements or by any Owner, or by any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment, the responsibility for the maintenance of which is that of the Association, nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property which may be stored in or upon any part of the Common Property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform such function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority.

2.07 Utility Easements. In order to efficiently provide electrical utility service to residences situate on lots in the Subdivision, the Declarant may install electrical service meters on a residence which may service the other residences which adjoins same. The Declarant, therefore, may install electrical wiring and service through the attics or floor trusses of certain units to service other adjacent units.

Upon installation of the aforementioned electrical wiring and service, there shall be established a perpetual easement to each lot owner for the specific purpose of repairing and maintaining said electrical wiring where same traverses an adjacent owner's lot.

### ARTICLE III HOMEOWNERS' ASSOCIATION

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

3.02 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions and Easements. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.03.

#### 3.03 Voting Rights.

(a) Each Owner of a Residence, with the exception of Declarant, shall be a Class A Member and shall be entitled to one (1) Class A vote per Residence. Where such Owner is a group or entity other than an individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.

(b) The Declarant shall be the sole Class B Member and shall be entitled to vote three (3) votes for each Lot or Residence owned; provided, however, in no event shall the Class B Member

have less than the total number of Class A votes plus one (1). The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.08 below.

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

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

(a) shall be subject to the Right of Abatement, as defined in Section 7.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of the Restrictions within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.10 or 7.02 hereof;

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

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.05, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.06 Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

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

3.08 Control by Declarant.

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association until 15 days after the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of the recording of this Declaration; (ii) the date upon which all of the Lots have been conveyed by Declarant to Owners other than a person or persons constituting Declarant, or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant, provided, however, that the Owners shall be entitled to elect certain members of the Board of the Association in accordance with the terms of the By-Laws of the Association which shall not be removable by the Declarant acting alone.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The Association may

exercise any other right or privilege given to it reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

#### ARTICLE IV ASSESSMENTS

4.01 Covenant for Assessments and Creation of Lien and Personal Obligation. Each Owner of a Residence, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Residence, whether or not the covenant contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

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

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

(c) that there is hereby created a continuing charge and lien upon all Residences owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees;

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

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

(f) that all annual, special and specific assessments (together with interest thereon as provided in Section 4.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Residence owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in Section 4.01 (c) of this Declaration) as personal obligation which will survive any sale or transfer of the Residence owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.02 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the new community of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

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

#### 4.04 Annual Assessment.

(a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot shall be subject to an annual assessment of TWENTY FIVE AND NO/100 DOLLARS(\$25.00) per Residence. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. Declarant may bill each Owner the annual assessment on a monthly, quarterly or annual basis, as it deems fit. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date. For so long as Declarant has the right to appoint and remove Directors and Officers of the Association, the annual assessment shall not be reduced below \$25.00 without the express written consent of Declarant.

(b) Commencing with the first Assessment Year and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment year not more than ten percent (10%) above the annual assessment for the previous Assessment Year without a vote of the Membership.

(c) Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than ten percent (10%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

4.05 Special Assessments. In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the written approval of the members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

#### 4.06 Assessment Procedures.

(a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article IV, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs will be covered by Special Assessments. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall be become due on the thirtieth (30<sup>th</sup>) day following such written notice or the Due Date, whichever is later. In the event that the Board fails for any reason to fix the annual assessment for any year, then until such time as an assessment shall have been determined, the assessment in effect for the previous year shall continue. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article IV.

(b) All Members of the Association shall be given written notice by the Board not less than

thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(c) and Section 4.05 of this Article IV. Such written notice shall specify under which sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting may be called by the Board subject to the same notice requirement, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

4.07 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Residences.

4.08 Contribution By Declarant. For so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for the reserve allowance), and the sum of annual, special and specific assessments collected by the Association in any Assessment Year, and such specific assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

4.09 Effect of Nonpayment of Assessments. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection of such Owner, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Residence enforceable in accordance with the provisions of this Declaration.

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

4.11 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the Approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.

4.12 Specific Assessments The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association which benefit less than all of the Residences, which may be

specifically assessed equitably among all of the Residences which are benefitted according to the benefit received;

(b) Reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws.

ARTICLE V  
GENERAL COVENANTS AND RESTRICTIONS

5.01 Application. The covenants and restrictions contained in this Article V shall pertain and apply to all Lots and to all Structures erected or placed thereon.

5.02 Restriction of Uses. Lots may be used for single-family residences only and for no other purposes provided that Declarant and its duly authorized agents, representatives and employees shall have an easement for the maintenance of signs, a sales office, a business office and models on the property, together with such other facilities as, in the opinion of Declarant, may be reasonably required or convenient to the construction, completion, development or sale of the Lots so long as Declarant owns any Lot for sale.

5.03 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, or transfer.

5.04 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval of the Association. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Development Guidelines of the Association.

5.05 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot.

5.06 Signs

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

(i) such signs as may be required by legal proceedings;

(ii) not more than one "For Sale" or "For Rent" sign as to each Residence provided that such sign may only be displayed in a window of such Residence, provided, however, that any such sign shall be subject to any rules and regulations of the Association adopted with respect thereto; and, provided, further that if, at the time of any desired use of such sign, the Association is making signs available for the use of Owners, the signs made available by the Association must be used;

(iii) directional signs for vehicular or pedestrian safety in accordance with plans as specifications approved by the Association; and

(b) The Association shall also have the right to approve the location, color, size, design, lettering, and all other particulars of property identification markers, of receptacles for the receipt of mail, or similarly delivered materials, and of name signs for such receptacles.

5.07 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the Association of plans and specifications for such fences and walls.

5.08 Antennae, Etc. No exterior television or radio antennae or satellite dish or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval of the Association. No antennae shall be installed or used for the purpose of the transmitting of electronic signals.

5.09 Clotheslines, Solar Equipment, Garbage Cans, Etc. All clotheslines, equipment, garbage cans, woodpiles and solar equipment shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets, and may be maintained in the rear yard on a Lot only.

5.10 Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, in good condition and repair, including, but not limited to the repairing and painting (or other appropriate external care) of all Structures. If in the opinion of the Association, any Owner shall fail to perform the duties imposed by this Section, the Association shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, the Association shall have the Right to Abatement as provided in Section 7.02 hereof.

5.11 Commercial and Recreational Vehicles and Trailers. No commercial vehicle, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on the Development on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view by neighboring residences and streets.

5.12 Non-Discrimination. No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

5.13 Animals. No animals or birds, other than a reasonable number of generally recognized house pets, shall be kept or maintained on any portion of the Property and then only if they are kept or maintained solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. Pets shall be under leash when walked or exercised in the Common Elements and the Owner shall clean up after a pet while in a Common Element.

5.14 Solid Waste.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or Common Property.

(b) Except during approved construction and as approved by the appropriate governmental authority, no person shall turn rubbish, garbage, or any other form of solid waste on the Lot or on Common Property.

(c) Except for building materials employed during the course of construction of any Structure approved by the Association, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed in a manner set forth by the Association. Guidelines

relating to the type of containers permitted, the manner of storage and the place of pick-up may also be established by the Association.

5.15 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become any annoyance or nuisance to the commLoty.

5.16 Rules and Regulations. Reasonable rules and regulations concerning the use of the Lots may be adopted, promulgated, revoked, made and amended from time to time by the Board of Directors. Copies of such rules and regulations and amendments thereto shall be furnished by the Board of Directors to all Owners. Such rules and regulations shall be binding upon the Owners and Occupants of Lots until and unless any such rule or regulation is specifically overruled and cancelled in a regular or special meeting of the Association by the vote of Owners holding a majority of the total votes in the Association. As provided in Article IV and VII hereof, the Association may impose fines for violations of any such rules and regulations as are determined by the Board of Directors.

## ARTICLE VI

### EASEMENTS, ZONING AND OTHER RESTRICTIONS

#### 6.01 Easements.

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

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

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

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

(iv) the planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.

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

6.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.

6.03 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 6.01.

6.04 Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by

applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by Declarant, the most restrictive provision shall govern and control.

## ARTICLE VII ENFORCEMENT

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

### 7.02 Right of Abatement.

(a) Except where different notice provisions are provided in Section 5.10, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of the violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Section 6.10 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and accordance with the provisions of this Section, and with the cost thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by Law or 18% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 7.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise to be imposed upon the Lot after such entry whether arising from or imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

7.03 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available by law or in equity, to enforce the provisions hereof.

### 7.04 Collection of Assessment and Enforcement of Lien.

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

(b) As an additional remedy, but in no way as limitation on the remedies, if any assessment, interest, costs or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: to sell the said Lot

or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Athens-Clarke County, Georgia to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Athens-Clarke County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of the assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns or such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

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

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

#### ARTICLE VIII DURATION AND AMENDMENT

8.01 Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court, Athens-Clarke County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the Office of the Clerk of the Superior Court of Athens-Clarke County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of those Class A Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

8.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors or officers of the Association, Declarant may amend this

Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Athens-Clarke County, Georgia, without the approval of any Member or mortgagee; provided, however, that (f) in the event that such amendment materially alters or changes any Owner's rights to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affect the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 8.02 shall be certified by Declarant, as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recording or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 8.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of the Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict thereof, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation and the Veterans Administration, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure a mortgage loan on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

8.03 Amendment by Association. Amendments to this Declaration, other than those authorized by Section 8.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners, and, where required, the Declarant and any mortgagee, to any amendments of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the Agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

#### ARTICLE IX MISCELLANEOUS

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

9.02 Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

9.03 Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

9.04 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

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

- (a) Declarant: Peter B's Construction, Inc.
- (b) Owners: Each Owner's address as registered with the Association in accordance with the By-Laws.

Any written communication transmitted in accordance with this Section 9.05 shall be deemed received on the third (3<sup>rd</sup>) day following the day such written notice is deposited in the United States Mail.

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

#### 9.07 Insurance

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in the amount adequate to cover the cost or replacement of such improvements in the event of loss or any and /or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders and insured by giving thirty (30) days prior written notice of any cancellation of such policies.

Notwithstanding the preceding provision, the Board may at its discretion, require each Owner to name the Association as an additional insured party under each Owner's respective homeowners insurance policy. If the Board determines that this method of coverage is adequate, then this alternative method of coverage may be implemented in lieu of a policy or policies owned by the Association as described in the preceding paragraph.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvements covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost or repair or reconstruction or the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote

thereon, and, so long as the Declarant has the right to appoint and remove directors and officers, the Declarant, otherwise agree. If, for any reason, either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

(c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

(d) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time, by either the Veterans Administration or Federation Housing Administration, their successors and assigns, for similar type residential subdivision communities.

#### ARTICLE X MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on Residences in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

10.01 Notice of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Residence on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner or a Residence subject to the mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residence of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible mortgagees.

10.02 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage

Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first mortgagees or at least (2/3) of the total Members of the Association vote entitled to vote thereon consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Residence;
- (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of Common Property. (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);
- (d) fail to maintain insurance, as required by this Declaration; or
- (e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against the Common Property and may pay overdue premiums or casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**10.03 No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**10.04 Notice to Association.** Upon request, Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Residence.

**10.05 Amendment by Board.** Should the Veterans Administration, or the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**10.06 Applicability of Article X.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

**10.07 Failure of Mortgagee to Respond.** Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

Signed, sealed and delivered  
in the presence of:

PETER B'S CONSTRUCTION, INC.

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

\_\_\_\_\_  
Notary Public ATTEST: \_\_\_\_\_

The Association, by execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Association's obligations under this Declaration of Covenants, Restrictions and Easements.

Signed, sealed and delivered  
in the presence of:

ALLEN'S LANDING HOMEOWNERS  
ASSOCIATION, INC.

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

\_\_\_\_\_  
Notary Public ATTEST: \_\_\_\_\_

## EXHIBIT A

All that tract or parcel of land, together with all improvements thereon, situate, lying and being in the 241<sup>st</sup> District, G.M., Athens-Clarke County, Georgia and being more particularly shown on that plat of survey entitled "Final Plat: Allen's Landing, Section One," dated December 7, 2000, prepared by Landmark Engineering Corporation, Registered Land Surveyors, and recorded in Plat Book 36, Page 110 in the Office of the clerk of the Superior Court of Athens-Clarke County, Georgia, reference to which is hereby made for a more particular description of the property herein conveyed.