

By Laws
And
Covenants
Of
Butler Creek Homeowners Association, Inc.
July 16, 1996

The following documents are the amended versions of the By Laws and Declaration of Covenants, Conditions, Restrictions and Easements for Butler Creek on file in the State of Georgia, county of Cobb (cross reference Deed Book 4616, page 13), as amended the 22nd day of April, 1996. This integrated document has not been formerly filed with the State of Georgia and is provided as a convenience to the homeowners of Butler Creek. This document may not be used in a court of law, however, it will be recognized as binding with respect to a homeowners rights and obligations between that homeowner and the Butler Creek Homeowners Association, Inc.

BUTLER CREEK
COBB COUNTY, GEORGIA

STATE OF GEORGIA
COUNTY OF COBB

DECLARATION OF COVENANTS, CONDITIONS
RESTRICTION AND EASEMENTS FOR BUTLER CREEK

THIS DECLARATION, made this ___ day of _____, 19___, by POLYGON PROPERTIES, INC. (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of certain real property, which real property is more particularly describes in Exhibit A attached hereto and by reference made a part hereof; and

WHEREAS, Developer desires to provide for the preservation and enhancements of the property values in Butler Creek and for the maintenance of the property and improvements thereon, and to this end desires to subject the real property describes in Exhibit A to the covenants, conditions, restriction, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values in Butler Creek, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

NOW, THEREFOR, Developer hereby declares that all of the real property described in Exhibit A and any additional property as may be subsequent amendment hereto be added to and subjected to this Declaration shall beheld, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I
DEFINITIONS

Section 1. "Architectural Control Committee" shall mean and refer to Tom Eubanks, Robert D Gibson and Neal C. Peavy, or such other individuals as Developer may appoint, until all lots in Butler Creek shall have been fully developed and permanent improvements constructed thereon and sold to permanent residents; at which time such term shall mean and refer to those persons selected annually by the Owners in compliance with the by-laws of the Association to serve of said committee.

Section 2. "Association" shall mean and refer to Butler Creek Homeowners Association, Inc, its successors and assigns.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association.

Section 4. "Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners.

Section 5. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration and the By-laws and Articles of Incorporation of the Association.

Section 6. "Declaration" shall mean the covenants, conditions, restrictions and easements and all other provisions herein set forth in this entire document, as may from time to time be amended.

Section 7. "Developer" shall mean and refer to (i) POLYGON PROPERTIES, INC., residents of the State of Georgia, or (ii) any successor-in-title or and successor-in-interest to Butler Creek to all or any portion of the Property, provided in the instrument of conveyance to any such successor-in-title or interest, such successor-in-title is expressly designated as the "Developer" hereunder by the grantor of such conveyance, which grantor shall be the Developer hereunder at the time of such conveyance.

Section 8. "Lot" shall mean and refer to any parcel of land shown upon any recorded subdivision plat of the Property upon which a single-family residence may be constructed.

Section 9 "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 11. "Plat" shall mean and refer to that certain Final Subdivision Plat for Butler Creek.

Section 12. "Property" shall mean and refer to that certain real property described in Exhibit A attached hereto and by reference made a part thereof, together with such additional real property as may by subsequent amendment be added to and subjected to this Declaration. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982).

Section 13. "Structure" shall mean and refer to: (i) 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, gazebo, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarter (including any house trailer) or any other temporary or permanent improvement to such Lot; (ii) any excavation, grading, fill

ditch, diversion dam or other thing, object or device which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and (iii) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (ii) of this Section 13 applies to such change.

Section 14. "Act" shall mean the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such act may be amended from time to time.

ARTICLE II Architectural Control Committee

Section 1. Purpose, Powers and Duties of the Architectural Control Committee. The purpose of the Architectural Control Committee is to assure that the installation, construction or alteration of any Structure on any Lot is submitted to the Architectural Control Committee for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of development of the Property; and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including without being limited to, the power and duty to approve or disapprove plans and specification for any installation, construction or alteration of Structure on any Lot.

Section 2. Meetings. The Architectural Control Committee shall hold regular meetings at least once every month or more often as may be established by the Architectural Control Committee. Special meetings may be called by the Architectural Control Committee. Regular and special meetings of the Architectural Control Committee shall be held at such time and at such place as the Architectural Control Committee shall specify. Notice of each regular or special meeting of the Architectural Control Committee shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the Architectural Control Committee who signs a waiver of notice either before or after the meeting. Attendance of a member of the Architectural Control Committee at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections with respect to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the Architectural Control Committee, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the Architectural Control Committee present at any regular or special meeting thereof, at which a quorum is present, shall constitute the act of the Architectural Control Committee. In the absence of a quorum, any member of the Architectural Control Committee present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a

quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. Any action required to be taken at a meeting of the Architectural Control Committee, or any action which may be taken at a meeting if written consent is obtained from all members of the Architectural Control Committee, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

Section 3. Action of Members of Architectural Control Committee. Any member of the Architectural Control Committee may be authorized by the Architectural Control Committee to exercise the full authority of the Architectural Control Committee with respect to all matters over which the Architectural Control Committee has authority as may be specified by resolution of the Architectural Control Committee. The action of such member with respect to the matters specified shall be final and binding upon the Architectural Control Committee and upon any applicant for an approval permit or authorization, subject, however, to review any modification by the Architectural Control Committee on its own motion or appeal by the applicant to the Architectural Control Committee as provided herein. Written notice of the decision of such member shall, within five (5) days thereof, be given to any applicant for an approval permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the Architectural Control Committee. Upon filing of any such request, the matter with respect to which such request was filed, shall be submitted to, and reviewed promptly by, the Architectural Control Committee, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the Architectural Control Committee with respect to such matters shall be final and binding

Section 4. Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specification therefor shall have been first submitted to and approved in writing by the Architectural Control Committee. Such plans and specification shall be in such form and shall contain such information as may be reasonably required by the Architectural Control Committee, including, without being limited to:

- (a) a site plan showing the location of all proposed and existing Structures on the Lot, including buildings setbacks, open space, driveways, walkways and parking spaces, including the number thereof;
- (b) floor plans;
- (c) exterior elevations of all proposed Structures and alterations to existing structures, as such structures will appear after all back-filling and landscaping are completed;
- (d) Specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors of all proposed Structures and alterations to existing Structures, and also showing front, side and rear elevations thereof; and

- (e) Plans for landscaping and grading;
- (f) Estimated reasonable time frame for commencement through completion. For structures not commenced within one year of the approved start date, plans must be resubmitted for approval. Unfinished structures exceeding the approved finished date by more than one year can be considered violations.

Section 5. Approval of Builders. Any builder or landscaper, prior to performing any work on any Lot in the Property, must first be approved by the Architectural Control Committee as to financial stability, building or landscaping experience and ability to build or landscape structures or grounds of the class and type of those which are to be built on the Property. Such approval may be granted or withheld in the sole and uncontrolled discretion of the Architectural Control Committee. No Person shall be approved as a builder or landscaper unless such Person obtains his income primarily from construction or landscaping of the type which builder or landscaper is to perform upon the Property. No Owner will be permitted to act as his own builder or contractor except where such Owner obtains his income primarily from the construction of the type of Structure to be constructed on the Property and otherwise meets the qualifications for approval by the Architectural Control Committee as herein above set forth. This section shall apply only to original construction of improvements on Lots. Approval of builders and landscapers by the Architectural Control Committee shall not be required for additions, modifications or maintenance of existing structures or for landscaping Lots which have existing structures.

Section 6. Approval and Disapproval of Plans and Specifications: (a) The Architectural Control Committee shall have the right to approve or disapprove any plans and specifications submitted to it in its sole and uncontrolled discretion, which approval or disapproval may be based upon any grounds, including purely aesthetic consideration which shall be deemed sufficient.

- (b) Upon approval by the Architectural Control Committee of any plans and specification submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing shall be returned to the applicant submitting the same. Approval of any plans and specification for use in connection with any Lot or Structure shall not be deemed a waiver of the Architectural Control Committee's right, in its sole discretion, to disapprove similar plans and specification or any of the features or elements included therein if such plans, specification, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approvals may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.
- (c) Neither Developer 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, approval of plans and specifications by the Architectural Control Committee shall not be deemed to represent or warrant to any Person the quality, function or operation of the structure or of any construction, workmanship, engineering, materials or equipment. Neither Developer nor any member of the Architectural Control Committee shall be liable in damages or in any other respect to anyone submitting plans or specifications for approval under this Article, or to any Owner, or to any other Person having an interest in any of the Property by reason of mistake in judgment, negligence, misfeasance or nonfeasance arising out of or in connection with the approval or disapproval of failure to approve or disapprove any such plans or specifications. By submission of such plans and specifications to the Architectural Control Committee, every Owner of any Lot releases and agrees to hold harmless and to defend Developer and any member of the Architectural Control Committee from any such alleged liability, claim and/or damage.

Section 7. Obligation to Act. The Architectural Control Committee shall take action of any plans and specifications submitted as herein provided within forty-five (45) days after receipt thereof. Approval by the Architectural Control Committee, if granted, together with any conditions imposed by the Architectural Control Committee, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the Architectural Control Committee to take action within forty-five (45) days of the receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

Section 8. Right of Inspection. The Architectural Control Committee, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Lot or Structures thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration and the Architectural Control Committee shall not be deemed to have committed a trespass or other wrongful act solely be reason of such entry or inspection.

Section 9. Violations. (a) If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the Architectural Control Committee such violation shall have occurred, the Architectural Control Committee shall be entitled and empowered to enjoin or remove any such construction. Any costs and expenses incurred by the Architectural Control Committee in enjoining and/or removing any construction or improvements shall be added to and become a part of the assessment to which the Owner and his Lot are subject.

(b) The Architectural Control Committee shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within twenty (20) days after the mailing of the aforesaid notice of violation, then the Architectural Control Committee shall have the right of

abatement as provided in Section 1(b) of Article X hereof. In addition to the right of abatement, the Board, upon being informed of such violation by the Architectural Control Committee, shall be entitled to seek equitable relief to enjoin such construction.

Section 10. Fees. The Architectural Control Committee may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 8 hereof. The fee shall be established from time to time by the Architectural Control Committee.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to this Declaration shall be a mandatory member of the Association. The foregoing is not intended to include such persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration and shall pass automatically to an Owner's successor-in-title to the Lot.

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

Class A. Initially, the Class A members shall be all Owners, with the exception of the Developer, and shall be entitled to one vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be members. 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.

Class B. The Class B member shall be the Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events:

- (a) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or
- (b) seven (7) years from the date this Declaration is filed of record in the Office of the Clerk of the Superior Court of Cobb County; or
- (c) when, in its discretion the Developer so determines.

ARTICLE IV PROPERTY RIGHTS

Section 1. Member's Easement of Enjoyment. Subject to the provisions herein, every member of the Association shall have a right of easement of use and enjoyment in and to the Common Area (including, without limitation, the right of pedestrian (but not vehicle) access, ingress and egress to and from his Lot over those portions of the Common Area from time to time designated for such purposes and the right of use of such recreational facilities as may be erected and maintained by the Association for

such purposes from time to time), which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- (a) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area.
- (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility now or hereafter located or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use such recreational facilities.
- (c) the right of the Association to suspend any Owner's voting rights and rights to use any recreational facilities within the Common Area for any period during which any assessment of the Association against said Owner's Lot remains unpaid.
- (d) the right of the Association to borrow money for the purposes of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon and, upon the assent of two-thirds of the Class A members and the Class B members, if any, to give as security a mortgage conveying all or any portion of the Common Area. The lien and encumbrance of any such mortgage, however, shall be subject and subordinate to all rights, interests, easements and privileges herein reserved or established for the benefit of Developer, ant Owner, or the holder of any mortgage, irrespective of when executed, given by Developer or any Owner.
- (e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded.
- (f) the easements reserved in Article VIII of this Declaration.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of use and enjoyment in and to the Common Area and the improvements thereon, if any, to the members of his family, his tenants, guests and invitees, subject to such regulations as may be established from time to time by the Association.

Section 3. Title to Common Area. Developer may from time to time convey to the Association, at no expense to the Association, real and personal property for the common use and enjoyment of the Owners. The Association hereby covenants and agrees to accept from Developer all such conveyances of real and personal property. Notwithstanding any legal presumption to the contrary, the fee simple title to such real and personal property designated as Common Area or for public use, together with all rights therein, shall be reserved to Developer until such time as the real and/or personal property is conveyed to the Association or to any municipality or other governmental body, agency or authority.

Section 4. No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration.

ARTICLE V
COVENANT FOR MAINTENANCE AND
CAPITAL IMPROVEMENT ASSESSMENTS

Section 1. Covenant for Assessments and Creation of Lien and Personal Obligations. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay the Association: (a) annual assessments or charges; and (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance to the terms of this Declaration. Except as otherwise provided herein, each Lot is hereby allocated equal liability for common expenses.

All such assessments, together with charges, interests, costs and reasonable attorney's fees actually incurred in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each easement is made. Such amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The lien provided for herein shall have such priority as provided in the Act.

No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Area, the Association's failure to provided services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting health, safety, pleasure and welfare of the Owners of the lots and the costs and expenses incident to the operation of the Association, including, without limitation, the maintenance and repair of the Common Area and improvements thereof, if any, the maintenance of services furnished by the Association, the purchase of insurance by the Association, the repair and replacement of improvements of the Common Area, payment of all taxes, insurance premiums and all costs and expenses incidental to the operation and administration of the Association, and establishment and maintenance of a reasonable reserve fund or funds.

Section 3. Computation of Annual Assessments. If the Association incurs ongoing Common Expenses, it shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association for the coming year, such budget to include a capital contribution of reserve account in accordance with the capital needs of the Association. The budget and the proposed annual assessments to be levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such

annual meeting. The annual assessments shall be equally divided among the Lots so that annual assessments shall be the same for each Lot. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Developer, so long as there is a Class B member, or (ii) a vote of the majority of the Owners voting in person or by proxy at such meeting. In the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then until a budget has been determined as provided herein, the budget and the annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, the Board may call a meeting of the Association for the approval of a special assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of at least two-thirds (2/3) of the Class A Members and the Class B members, if any, voting in person or by proxy at a meeting duly called for such purpose. Special assessments may also be levied by the Association if for any reason the annual assessments prove inadequate to defray the expenses of the Association in fulfilling its duties and obligations hereunder, subject to the consent of the members as set forth above.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Allocation of Liability for Common Expenses. Except as otherwise provided herein, each Lot is hereby allocated equal liability for Common Expenses.

- (a) Except as provided below, or elsewhere in the Act or the Association legal instruments, the amount of all Common Expenses shall be assessed against all the Lots.
- (b) The Board of Directors shall have the power to assess specially pursuant to this Paragraph and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board or Directors 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.
 - i) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility under this

Declaration, any common expenses benefiting less than all of the Lots or significantly disproportionately benefiting less than all of the Lots or significantly assessed equitably among all of the Lots which are benefited according to the benefit received.

- ii) Any common expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot or Lots.

For the purposes of section (b) of this section, nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall be paid in such manner and on such dates as may be fixed by the Board. Anything contained herein to the contrary notwithstanding, Developer, on behalf of itself and its successors and assigns, covenants and agrees to pay the annual assessment for each Lot owned by Developer which has constructed thereon a residence; provided, however, Developer shall not be responsible for assessments on Lots which do not have a residence constructed thereon. Developer shall however, fund any deficit which may exist between assessments and the annual budget for as long as there is a Class B member of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a specified Lot is binding upon the Association as of the date of its issuance.

Section 8. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent and the Owner shall be in default.

- (a) If any installment of the annual assessments or any part thereof is not paid within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid may be imposed without further notice or warning to the delinquent Owner and interest at the rate of ten (10%) percent per annum or such higher rate as may be permitted by the Act shall accrue from the due date.
- (b) If part payment of assessments and related charges is made, the amount received shall be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.
- (c) If assessments, fines or other charges, or any part thereof due from an Owner remain delinquent and unpaid for a period of greater than fifteen (15) days from the due date, a notice of delinquency may be given to that Owner stating that if the assessment or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board of Directors may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment. If an Owner fails to pay all

assessments and related charges currently due within ten (10) days of the date of the notice of delinquency, the Board of Directors may then accelerate and declare immediately due all installments of the annual assessment and of any special assessment, without further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in monthly installments for that fiscal year.

- (d) If assessments and other charges or any part thereof remain unpaid more than forty-five (45) days after the assessment payments first become delinquent, the Association, acting through the Board of Directors, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, and Georgia Law and suspend the Owner's right to use the Common Area (provided, however, the Board may not limit ingress or egress to or from the Lot.)
- (e) The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

Section 9. Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Area; (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VI MAINTENANCE

Section 1. Association's Responsibility. Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area and improvements thereon, if any. The Association's responsibility with respect to the Common Area shall be deemed to include the maintenance, repair and replacement of (i) all roads, driveways, walks, parking areas and buildings and other improvements, if any, situated within the Common Area; (ii) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area; and (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area.

Section 2. Owner's Responsibilities. Each Owner of a Lot, whether vacant or occupied, shall keep and maintain his Lot and the exterior of any and all improvements located thereon in a neat, attractive and safe condition. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and care for roofs, gutters, down spouts, building surfaces, trees, shrubs, grass, walks and other exterior improvements. Should any Owner of a Lot fail to maintain his Lot or the improvements thereon as set forth herein above, the Architectural Control Committee, its agents and representatives, may, after thirty (30) days written notice to the Owner of such Lot, 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 Architectural Control Committee, in the exercise of its sole discretion, deems necessary or advisable. Such Owner shall be personally liable to the Architectural Control Committee for the direct and indirect cost of such maintenance, which costs shall be added to and become part of the assessment to which such Owner and his Lot are subject. Although notice given as herein provided shall be sufficient to give the Architectural Control Committee, its agents and representatives, the right to enter 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. and any day except Sunday. The provisions hereof shall not be construed, however, as an obligation on the part of the Architectural Control Committee to mow, clear, cur or prune any Lot; to provide garbage or trash removal service, or to perform such exterior maintenance.

ARTICLE VII EASEMENTS

Section 1. Utility Easements. There is hereby created in favor of the Association an easement upon, across, over, through and under all of the Common Area for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including but not limited to, water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association, to enter in or to cross over the Common Area and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Area and the Lots, as provided for herein. Notwithstanding anything to the contrary contained in the Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the property except as initially programmed and approved by the Developer or thereafter approved by Developer or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement be a separate recordable document, Developer or the Association shall have the right to grant such easement on the Common Area without conflicting with the terms hereof.

Section 2. Easements for Developer. Developer hereby reserves for itself, its successors and assigns, the following easements and right of ways in, on, over and through any part of the Property owned by Developer and the Common Area for so long as Developer owns any Lot primarily for the purpose of sale:

- (a) for the erection, installation, construction and maintenance of wires, lines and conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, television cables and other utilities;

- (b) for the construction of improvements on the Lots;
- (c) for the installation, construction and maintenance of storm-water drains, public and private sewers and for any other public or quasi-public utility facility;
- (d) for the use of the Common Area and any sales offices, model units and parking spaces in connection with its efforts to market Lots; and
- (e) for the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvements and sale of Lots.

Section 3. Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including any management company retained by the Association, to enter upon the Common Area and the Lots to perform their respective duties.

ARTICLE VIII GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon.

Section 1. Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind conducted in or from a Lot or any part of the Property, including business uses ancillary to a primary residential use, except that the Owner or occupant residing in a dwelling on a Lot may conduct such ancillary business activities within the dwelling so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the dwelling; (b) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees; provided, however, this provision shall not preclude delivery of materials or items by United States Postal delivery or by other customary parcel delivery services (U.P.S., Federal Express, etc.); (c) the business activity conforms to all zoning requirements for the Property; (d) the business activity does not increase traffic in the Property; (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; and (f) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the Board's sole discretion.

The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the

Association shall not be considered a trade or business within the meaning of the subparagraph.

Section 2. Common Area. The Common Area shall be used only by the Owners and their agents, servants, tenants, family members, invitees and licensees for access, ingress to and egress from their respective Lots and for such purposes as may be authorized by the Association.

Section 3. Nuisances.

- (a) No unlawful, noxious or offensive activities shall be carried on in any Lot, or upon the Common Area, nor shall anything be done therein or thereon which, in the judgment of the Board, constitutes a nuisance, causes unreasonable noise or disturbance of others or unreasonably interferes with Owners' use of their Lots and/or the Common Area.
- (b) No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of any Owner's Lot so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property or any portion thereof.

Section 4. Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the Architectural Control Committee of plans and specifications for such split, division or subdivision.

Section 5. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for the prevention and control of such erosion or siltation. The Architectural Control Committee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 6.

Section 6. Landscaping. No construction or alteration of any Structure shall take place without prior written approval by the Architectural Control Committee of plans and specifications for the landscaping to accompany such construction or alteration.

Section 7. Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desired for security purposes in accordance with plans and specifications therefor approved by the Architectural Control Committee. No contractor or builder shall erect on any Lot any temporary building or shed for use in conjunction with construction on such Lot without the prior written consent of the Architectural Control Committee.

Section 8. Signs.

- (a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the Architectural Control Committee's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Lot, or any portion of a Structure visible from the exterior thereof, except:
- (i) such signs as may be required by legal proceedings;
 - (ii) a sign indicating the builder of the residence on the Lot;
 - (iii) not more than one "For Sale" or "For Rent" sign; provided, however, that in no-event shall any such sign be larger than four square feet in area; and
 - (iv) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Control Committee.
- (b) Following the consummation of the sale of any Lot, the "For Sale" sign and the builder's sign located thereon, if any, shall be removed immediately.

Section 9. Setbacks. In approving plans and specifications for any proposed Structure, the Architectural Control Committee may establish setback requirements for the location of such Structures which are more restrictive than those established by the Plat. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

Section 10. Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such fences and walls.

Section 11. Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such roads and driveways. Such specifications shall include the proposed substance to be used in constructing such roads and driveways, which shall be satisfactory to the Architectural Control Committee.

Section 12. Antennae. No antenna, satellite dish or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on the exterior of any Structure without the prior written approval of the Architectural Control Committee. In no event shall freestanding transmission or receiving towers be permitted.

Section 13. Clotheslines. No outside clotheslines shall be placed on any Lot.

Section 14. Recreational Vehicles and Trailers. The Architectural Control Committee, in reviewing the plans and specifications for any proposed Structure, may

require that special parking areas be made available for recreational vehicles. No trailer house, boat, or recreational vehicle shall be parked on any Lot, except on such parking areas as specified by the Architectural Control Committee pursuant to this Section 14 or within enclosures or behind screening erected in accordance with plans and specifications submitted to and approved by the Architectural Control Committee. While nothing contained herein shall prohibit the use of portable or temporary building for trailers as field offices by contractors during actual construction, the use, appearance and maintenance of such a building or trailer must be specifically approved by the Architectural Control Committee prior to its being moved onto the construction site.

Section 15. Recreational Equipment. No recreational and playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot.

Section 16. Accessory Structures. A detached accessory structure may be placed on a Lot to be used for a playhouse, a swimming pool, tennis court, a tool shed, a mailbox, a dog house or a garage, a garage may also be an attached accessory structure. Such accessory structures shall not exceed 20 feet in height and shall conform in exterior design and quality to the dwelling and the mailbox, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts the street abutting such Lot. Such accessory structures shall also be located within each side and rear setback lines as may be required hereby or by applicable zoning law. The Architectural Control Committee shall have the right to approve or disapprove the plans and specifications for any accessory structure to be erected on any Lot, and construction of any accessory structure may not be commenced until final plans and specifications shall have been submitted to and approved by the Architectural Control Committee in accordance with the provisions of these covenants. Any accessory structure shall be constructed concurrently with or subsequent to the construction of the dwelling on the Lot which such accessory structure is located.

Section 17. Improvement of Lots. All maintenance, modification, improvements and construction of dwellings, accessory structures and all other improvements in Butler Creek shall be undertaken and completed in accordance with the following conditions:

- (a) All construction shall be carried out in compliance with the laws, codes, rules, regulations and orders of all applicable governmental agencies and authorities.
- (b) All single-family residences constructed on the Lots shall be "traditional" or "European" in style. The determination of whether or not a residence is "traditional" or "European" shall be decided by the Architectural Control Committee in its sole and uncontrolled discretion.
- (c) All foundations when exposed must either be stuccoed or brick, and there shall be no chain-link fence or fences of walls of any material which the Architectural Control Committee determines to be incompatible with dwellings or other structures in Butler Creek.
- (d) Only one mailbox shall be located on any Lot, which mailbox will be consistent with the quality and design of surrounding dwellings and mailboxes. Said mailbox shall be placed and maintained to complement the dwelling to which it is appurtenant to the extent such mailbox is permitted to

be located and maintained by the United States Postal Service, its successors and assigns.

- (e) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot, nor shall any such building materials or devices be stored on any Lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.
- (f) No exposed, aboveground tanks for storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.
- (g) Adequate off-street parking shall be provided for each Lot.
- (h) Containers for garbage and other refuse shall be underground or in screened sanitary enclosures, no incinerators for garbage, trash or other refuse shall be used, and a garbage disposal is required for each dwelling.
- (i) All garages must have doors, and each garage door must be coordinated with the dwelling to which it is appurtenant.
- (j) No window air conditioning unit may be located in any part of any dwelling or accessory structure which is visible from any street, and all exterior compressor units shall be ground mounted and screened by fencing or planting of a density and height to hide the unit effectively, which fencing or planting shall first be approved by the Architectural Control Committee.
- (k) Any screen porch which is a part of any dwelling or accessory structure must have a dark color screen, and no bright color silver finish screens may be used.
- (l) No plumbing vent or heating vent shall be placed on the front side of any roof or any dwelling or accessory structure, and any such vent shall be painted the same color as the roof on which it is placed.
- (m) Any construction on a Lot shall be at the risk of the Owner of such Lot and the Owner of such Lot shall be responsible for any damage to any curbing or street resulting from construction on such Lot; repairs of such damage must be made within 30 days after completion of such construction.
- (n) The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of one-story dwellings shall contain not less than 1,800 square feet. The enclosed heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of all one and one-half -story dwellings shall contain not less than 2,000 square feet. The enclosed heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of all two story and two and one-half -

story dwellings shall contain not less than 2,200 square feet. No dwelling shall be constructed exceeding two and one-half stories in height on any Lot.

- (o) Colors of all exterior surfaces of all structures including, but not limited to, walls, siding, doors, trim, roofing, decks, and fencing are to be approved by the Architectural Control Committee. Repainting or replacing using the same approved color does not require reapproval.

Section 18. Animals. No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animals shall be allowed to become a nuisance. No Structure for the care, housing or confinement of animal shall be constructed, placed or altered on any Lot unless plans and specification for said Structure have first been approved by the Architectural Control Committee.

Section 19. Water Supply. No individual water supply system shall be permitted on any Lot without the prior written approval of the Architectural Control Committee. If such approval is given, such system must be located, constructed and equipped in accordance with the requirements, standards and recommendations of federal, state and local public health authorities, and all necessary approvals of such system as installed shall be obtained from such authorities at the sole cost and expense of the Owner of the Lot to be served by such system.

Section 20. Trees and Shrubs. No trees measuring 18 inches or more in diameter at a point 3 feet above ground level on any Lot may be removed without the prior approval of the Architectural Control Committee unless located within 10 feet of the approved site for a dwelling or within the right of way of driveways or walkways. Excepted herefrom shall be damaged or dead trees and trees which must be removed due to an emergency.

ARTICLE IX INSURANCE

The Board, or its duly authorized agent, shall obtain such insurance policies upon the Common Area as the Board deems necessary or desirable in its sole discretion. The named insured on all policies on insurance shall be the Association.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement.

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

- (b) The Architectural Control Committee shall have the right of abatement in all cases where an Owner of a Lot shall fail to take reasonable steps to remedy a violation or breach of any restriction contained in this Declaration within 20 days after the mailing of a written notice of such violation or breach. The right of abatement means the right of the Architectural Control Committee, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which violation or breach exists, and to take such action or actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation or breach, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions.

Section 2. Severability. If any provision of the Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

Section 3. Headings. The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles and sections.

Section 4. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

Section 5. Rights and Obligations. Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed interest or estate in the Property or any portion thereof, and shall bind any person having at any time any interest or estate in the Property or any portion thereof, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Section 6. Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his Lot or at such other addresses as herein provided. Notices to the Developer shall be in writing and shall be addressed to Polygon Properties, Inc., Attn: Tom Eubanks, Smyrna Professional Building, 3830 S. Cobb Drive, Suite 203, Smyrna, Georgia 30080, or at such different address as disclosed in a written notice of change of address furnished to all Owners. Any Owner may designate a different address for notices to him by giving written notice to the Developer. Notices addressed as above shall be deemed delivered upon mailing by United States registered or certified mail, return receipt requested, or when delivered in person.

Section 7. Amendments. Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66 2/3%) percent of the

total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Cobb County, Georgia, land records.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to comply with the Act, any applicable state, city or federal laws, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"). The Department of Housing and Urban Development ("HUD") and the Veteran's Administration ("VA").

Any action to challenge the validity of an amendment adopted under this Section must be brought within one(1) year of the effective sate of such amendment. No action to challenge such amendment may be brought after such time.

Section 8. No Liability. Developer has used its best efforts and acted with due diligence in connections with drafting these covenants.