

STATE OF GEORGIA  
COUNTY OF FULTON  
DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS

FOR

BRIERFIELD

THIS DECLARATION, made and entered into this 27th day of July, 1992, by Crabapple Properties, Ltd., a corporation authorized to do business in the State of Georgia, herein represented by John H. Fetzer, III, its President, duly authorized, hereinafter referred to interchangeably as "Declarant and/or Developer".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of a tract or parcel of land lying and being in land lots 1131, 1174 and 1175, Second District, Second Section, Fulton County, Georgia and known as Brierfield, Phase One, and being more particularly described according to a Plat of Survey prepared by Brumbelow-Reese & Associates, Inc., P.O. Box 713, Alpharetta, GA 30239, recorded at Plat Book 174, Page 88, Fulton County, Georgia records, which Plat of Survey by reference hereto is incorporated herein (the "Property" and/or the "Subdivision"); and

WHEREAS, in order to create, establish and execute a uniform plan for the improvement, development, sale, use and enjoyment of the Property, Declarant does hereby desire to declare, adopt and establish certain restrictions and easements for the lots (the "lots") which will comprise the Property.

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values in Brierfield and for the maintenance of the property and improvements thereon, and to this end desires to subject the real property to the restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner of lots therein; and

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

WHEREAS, Developer has caused to be incorporated, under the laws of the State of Georgia, Brierfield Homeowners Association, Inc., a nonprofit corporation, for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, for and in consideration of the benefit to be derived by Declarant, and subsequent owners of lots in the improvement, development, sale, use and enjoyment of same, the receipt and sufficiency of which is hereby acknowledged, Declarant, for itself and each and every subsequent owner of any and all portions of the Property, does hereby declare, adopt and establish the following restrictions and easements:

ARTICLE I  
DEFINITIONS

1. "Architectural Control Committee" shall mean and refer to John H. Fetzer, III, Glynda B. Fetzer and Deborah M. Fetzer and/or such other individuals as Developer may appoint, until all lots in Brierfield shall have been fully developed and permanent improvements constructed thereon and sold to permanent residents; after such time this title shall mean and refer to those persons selected annually by the Owners in compliance with the bylaws of the Association to serve as members of said committee.

2. "Association" shall mean and refer to Brierfield Homeowners Association, Inc., its successors and assigns.

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

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

5. "Common Expenses" shall mean and refer to the actual and estimated expenses of maintaining the Common Area and/or Common Properties and all improvements situated thereon together with the actual and/or estimated expenses for operating the Association, including any reasonable legal, accounting and/or other necessary expenses; any expense of the Association for which proposed assessments may be levied under these Covenants.

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.

7. "Developer or "Declarant" shall mean and refer to Crabapple Properties, Ltd.

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.

9. "Owner" shall mean and refer to the record owner(s), whether one or more Persons, of the fee simple title to any Lot which is a part of the Property, but excluding performance of an obligation.

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

11. "Plat" shall mean and refer to that certain Final Subdivision Plat for Brierfield prepared by Brumbelow-Reese & Associates, Inc., dated July 14 1992, and recorded in Plat Book 174, Page 88, in the office of the Clerk of Superior Court of Fulton County, Georgia.

12. "Property" shall mean and refer to that certain real property described in Exhibit A attached hereto and by reference made a part hereof, together with such additional real property as may by subsequent amendment be added to and subjected to this Declaration. For example, Developer contemplates the development of Brierfield, Phase Two which will be subject to this Declaration by Amendment.

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 quarters (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 natural flow of surface waters from, upon or across any Lot, or 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.

## ARTICLE II ASSOCIATION MEMBERSHIP AND ASSESSMENTS

1. Membership. Every person or entity who is a record Owner of a fee simple estate, or a life estate, in any Lot, which is subject to this Declaration shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member, and further provided that there shall be no more than two Members for any Lot, said two memberships to be as determined by a vote of the Owners of any jointly owned Lot. Membership shall be automatic and shall be appurtenant to and may not be separated from ownership of any Lot.

2. Voting Rights. The Association shall have two classes of voting memberships:

Class A. Class A Members shall be all those Owners as defined in Paragraph 1 of this Article with the exception of the Developer. Class A Members shall be entitled to vote for each Lot in which they hold the interest required for membership by Paragraph 1 of this Article. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and 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 such Lot.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to the same number of votes as are cumulatively held by all Class A Members plus one, provided that Class B Membership shall cease at such time as the Developer holds less than one (1%) percent of the total number of votes held by all Members of the Association excluding the votes of the Developer as Class B members, provided, however, in no event shall Class B membership cease to exist prior to December 31, 1996, unless the Developer chooses to abolish Class B membership at some earlier date. At such time as Class B membership ceases to exist, the Developer shall remain Class A Members as to each Lot then owned by the Developer.

### 3. Maintenance.

(a) 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 maintenance responsibility with respect to the Common Area shall be deemed to include but are not limited to (i) swimming pool(s), tennis courts(s), 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 sewer systems which are a part of the Common Area; and (iii) the entrance wall(s) or fences or fences on lots adjacent to the right-of-way at Mid Broadwell Road together with all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area.

(b) Owner's Responsibilities. Each Owner of a Lot, whether vacant or occupied, shall keep and maintain that 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, downspouts, building surfaces, trees, shrubs, grass, walls and other exterior improvements. Should any Owner of a Lot fail to maintain his Lot or the improvements thereon as set forth hereinabove, the Architectural Control Committee, its agents and representatives, may, after the expiration of ten (10) days from date of written notice to the Owner of such Lot, enter upon the 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 the Lot are subject. Notice shall be by U.S. certified mail, return receipt requested. Although notice given as herein provided shall be sufficient to give the Architectural Control Committee, its agents and representatives, the right to enter upon such Lot and perform such maintenance, entry for such purpose shall be only between the hours of 9:00 a.m. and 5:00 p.m. on any day except Sunday. The provisions hereof shall not be construed, however, as an obligation on the part of the Architectural Control Committee to mow, clear, cut or prune any Lot; to provide garbage or trash removal service, or to perform any exterior maintenance.

### 4. Covenant for Maintenance and Capital Improvement Assessments

(a) Creation of the Lien and Personal Obligation of Assessments. Each Owner of a 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 to the Association: (1) annual assessments which may or shall be levied by the Association, and (2) special assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest thereon and costs of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors-in-title unless expressly assumed by them.

(b) Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the 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 the improvements thereon, if any, the maintenance of services furnished by the Association, the purchase of any insurance by the Association, the repair and replacement of improvements on 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.

(c) 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 or 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 the annual assessments shall be the same for each Lot. The budget shall be deemed approved at the annual meeting by either a vote of (i) the Developer, so long as there is a Class B member; or (ii) a vote of a 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 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 special assessment.

(d) 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 member, 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.

(e) Notice and Quorum for any Action Authorized Under Sections (c) and (d). Written notice of any meeting called for the purpose of taking any action authorized under Section (c) or (d) 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 proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be noticed less than ten (10) days following the date of preceding meeting.

(f) Rate of Assessment. Annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or in a lump sum in the discretion of the Association.

(g) 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. The Board shall determine the date of commencement for annual assessments. All Owners of Lots shall be responsible for annual and special assessments, provided however that no annual or special assessment shall be due on Lots owned by builders until title to the Lot(s) have been transferred to permanent owners; Developer shall not be responsible for assessments on Lots owned by the Developer. 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.

(h) Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid on or before the due date thereof, the assessment shall bear interest from the due date at the maximum legal rate per annum. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessment and may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage foreclosure on real property, and such Owner hereby expressly grants to the Association in a power of sale in connection with the foreclosure of said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid for the interest foreclosed at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, abandonment of his Lot or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

(i) Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage, purchase money security deed, or security deed representing a lien on said property. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure or any sale in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. The owner shall remain personally obligated for amount of the assessment, together with interest, costs and attorneys fees. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

(j) Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and lien created herein: (i) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to the public use; (ii) all Common Area; (iii) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption.

(k) Annual Meeting of the Association. The annual meeting of the Association shall be held on the third Tuesday of March unless the Board by Notice to be mailed to each owner of lot(s) shall state another date; Notice of the meeting shall state the location and time of the meeting.

### ARTICLE III. COMMON PROPERTIES

1. Declarant does hereby dedicate to the Association all of Declarant's right, title and interest in and to the entrance, fence and wall situated on the easement created over and across Lots 1 and 121, together with the subdivision sign and light fixtures and all plants and plant materials and all of its right, title and interest in and to the median property which is situated near the entrances of the subdivision at Mid-Broadwell Road, together with all the plants and plant materials. The entrance, the fence and/or wall are situated on an easement created across Lots 1 and 121, for the use and maintenance of same.

### ARTICLE IV. ARCHITECTURAL CONTROL COMMITTEE

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 the 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 of the powers and duties to do each and everything incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any lot.

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 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 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 by 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 of the Architectural Control Committee, may be taken without 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.

3. Action of Members of Architectural Control Committee. Any member of the Architectural Control Committee may be authorized by resolution of 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. The action of such member with respect to the matters specified shall be final and binding upon the Architectural Control Committee and conclusive as to any matter properly before the Architectural Control Committee, subject, however, to review and 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, 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 matter shall be final and binding.

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 specifications therefore shall have been first submitted to and approved in writing by

the Architectural Control Committee. Such plans and specifications shall be of 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 building 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 backfilling 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.

(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 at 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 Structures to be constructed on the Property and otherwise meets the qualifications for approval by the Architectural Control Committee as hereinabove set forth.

(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 considerations which shall be deemed sufficient. The Architectural Control Committee may issue from time to time a manual containing guidelines for use by builders and homeowners in the selection of concepts, design techniques and/or materials/finishes for construction within the development. These guidelines shall be utilized by the Architectural Control Committee in its review of plans and specifications. However, notwithstanding anything contained herein or in any such manual of guidelines, the Architectural Control Committee may in its discretion approve or disapprove any proposed matter for any reason set forth in these covenants.

(b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be held for permanent record by 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 specifications 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 specifications or any of the features or elements included therein if such plans, specifications, 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 approval 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 for 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 and 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 or 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.

(7) **Obligation to Act.** The Architectural Control Committee shall take action on any plans and specifications submitted as herein provided within thirty (30) 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 thirty (30) days of the receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

(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 and Structure 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 of other wrongful act solely by reason of such entry or inspection.

(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 construction 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 Owners shall not have taken reasonable steps toward the required remedial action within ten (10) 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 VI 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.

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 V  
RESIDENTIAL AREA RESTRICTIONS

1. Land Use and Building Type. All of the lots contained in the Property are hereby designated as residential for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached, single-family dwelling with garage facilities and other out-buildings incident to the residential use of the lot. No garage apartments or servants quarters shall be used as a residence, except that, servants quarters may be occupied by servants actually employed on the premises. No animals, livestock, or poultry, of any kind, shall be raised, bred, or kept, on any lot except that household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose.

2. Dwelling Quality and Size. No residence on any lot in the subdivision shall contain a floor area of heated living space of less than 1,800 square feet for single story residences and 2,000 square feet for two (2) story residences, exclusive of porches, garages, decks and basements. No residence, garage or other building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure on the lot have been approved by the Architectural Control Committee (as hereinafter constituted) as to quality of workmanship and materials, color and harmony of the exterior design with existing structures and as to location with respect to topography and finish grade elevation. All fences shall likewise be approved by the Architectural Control Committee. Approval by the Architectural Control Committee shall be as provided hereinbelow.

3. Building Location. No residence or building of any kind shall be located on any lot nearer to the front line or nearer to a side street line than the building lines shown on the Final Plat of the subdivision and/or in accordance with the ordinances, laws and/or requirements for front, rear and side yards of the City of Alpharetta, County of Fulton and/or State of Georgia.

4. Easements.

(a) Easements for installation, repair and maintenance of utilities, including (but not limited to) storm drains, water, electric and gas are created over the lots, as shown on the recorded plat. All utilities shall be layed underground. The right is also reserved by Declarant to prepare sloping banks, cut or fill, on a slope, on all streets and roads. Drainage flows shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein or as may appear on any plat of record.

(b) The right is reserved by Declarant for itself and for the Association, to construct, operate, maintain, repair and replace a wall or walls at or near the entrance of the subdivision, a sign identifying the subdivision and such landscaping, flowers, shrubs, and plants as may be approved by the Architectural Control Committee. The cost of maintaining, operating, repairing and replacing such improvements shall be paid by the Association. The area affected by this easement shall be more particularly shown on the Final Plat of the Subdivision.

(c) An easement is hereby created and/or established on Lots 1 and 121, of this subdivision to accommodate the construction, repair and maintenance of the fence or wall at or near the entrance of the subdivision as same is now located. This easement shall affect Lots 1 and 121 for so long as the wall and/or fence or any part of same shall remain. However, the location of the sign, fence and/or wall on these lots shall not be changed without the consent of the owners of Lots 1 and 121.

5. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereupon which may be or may become an annoyance or nuisance to the neighborhood.

6. Completion and Exterior Materials. No building shall be occupied or used as a dwelling before the exterior has been finished. Wood, when used on the exterior, shall not be considered a finished material until it is covered with paint, varnish or stain. Felt, asphalt shingles, paper, roll siding, imitation brick siding and stone marked asphalt siding shall not be used as an exterior finish material.

7. Weed Control. Lot owners shall keep their respective lots mowed and free of noxious weeds. In the event that an owner fails to discharge this obligation, the Architectural Control Committee may, at its discretion, cause the lot(s) to be mowed, and the owner of such lot(s) shall be obligated to pay the cost of such mowing.

8. Building Materials. No building materials and no building equipment of any kind may be placed or stored on any lot except in the actual course of construction of a residence or other building thereon. No vacant lot shall be used for gardening or farming purposes, except that flowers and shrubbery may be grown for non-commercial purposes.

9. Commercial Operation Prohibited. No commercial business or noxious, offensive trade or activity shall be conducted on any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood; this shall not be interpreted to restrict a builder from erecting temporary warehouses and/or offices on any lots for the construction of houses on other lots.

10. Architectural Control and Exterior Appearance.

(a) The roofs of all residences must be various shades of black, gray or earth tones. Light colored and white roofs shall not be permitted.

(b) Aluminum doors or window frames shall not be permitted and any stone utilized in the exterior construction of a residence shall be natural weathered stone with natural colored mortar joints.

(c) No plumbing vent shall be visible from the street on which the house is fronting and no heating vent shall protrude to the front side of any roof.

(d) No window air conditioning units shall be visible from any street.

(e) No concrete blocks either in building or walls shall be used above ground elevations unless said blocks are covered with brick veneer, stone or stucco.

(f) All residences shall be required to have a garage, which must be a minimum of a two (2) car garage in size. All garages shall have doors.

(g) No fences shall be used/placed on any lot except wood fences not exceeding six (6) feet in height, which wood fences shall be approved by Architectural Control Committee prior to construction. No chain link fencing shall be allowed.

(h) No antenna of any type shall exceed in height more than ten feet above the highest point of the roof. No satellite dish shall be permitted except when located, installed and maintained in an area on a lot which is not visible from any location on Mid-Broadwell and/or any street in the Subdivision.

(i) No healthy trees measuring six inches or more in diameter at a point two feet above ground level, flowering trees or shrubs may be removed unless necessary in the construction of the residence, driveways or walkways.

11. Temporary Structures. No trailer, basement, tent, shack or garage placed or erected on the tract shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence. Exteriors of dwellings must be complete in every detail before being occupied; landscaping and on site improvements must be in keeping with that of neighboring homes. No garage apartment or servant's quarters shall be used as a residence, except that, a garage apartment or servant's quarters may be occupied by servants actually employed on the premises. The foregoing restriction shall not preclude the temporary use of a garage, residence or temporary building by the developer, as approved by the Architectural Control Committee to be used as a sales or construction office.

12. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition and either underground or screened from view. Grass and weeds shall be kept mowed to prevent unsightly appearances. Dead, diseased or damaged trees which might create a hazard to property or persons on any lot or adjacent lot shall be promptly removed or repaired.

13. Sight Distance at Intersections. No fence, wall, sign, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot with the triangular formed by the street property lines and a line connecting them at points thirty (30) feet from the intersections of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

14. Occupancy. No house shall be occupied until it is completely finished on the exterior in accordance with the plans approved by the Architectural Control Committee and until all the yard which is visible from any street is planted with grass or other suitable ground cover and the driveway surface is paved with concrete.

15. Signs. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than six (6) square feet advertising the property for sale or rent, or signs of such size used by a builder to advertise the Property during the construction and sales period. Declarant may maintain a sign of any size advertising in the Subdivision lots and homes for sale until all lots owned by Declarant have been sold and the Acts of Sale closed.

16. Landscaping. No residence shall be occupied until the landscaping as shown in the plan for landscaping which has been previously approved by the Architectural Control Committee has been completed.

17. 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 of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and landscaping.

18. 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 substance shall be satisfactory to the Architectural Control Committee.

19. Clotheslines. No outside clothesline shall be placed on any lot.

20. 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 "third" motor vehicle, trailer, trailer house, boat, or recreational vehicle shall be parked on any Lot, without specific approval from the Architectural Control Committee and then on such additional parking areas as specified by the Architectural Control Committee pursuant to Section 21 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 buildings or 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.

21. Recreational Equipment. No recreational and playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot, except that basketball goals may be located in accordance with the recommendations of the Architectural Control Committee.

22. Accessory Structures. A detached accessory structure may be placed on a Lot to be used for a playhouse, a swimming pool, tennis court, a doghouse or a garage; a garage may also be an attached accessory structure. Such accessory structures shall not exceed twenty (20) feet in height and shall conform in exterior design and quality to the dwelling on the same Lot. With the exception of a garage that is attached to a dwelling, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot. Such accessory structures shall also be located within such 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 the construction of an accessory structure may not be commenced until complete 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 on which such accessory structure is located. No pre-fab or portable buildings may be used/placed on any lot.

23. Improvement of Lots. All construction of dwellings, accessory structures and all other improvements in Brierfield shall be undertaken and completed in accordance with the following conditions:

(a) All Construction shall be carried out in compliance with the laws, code rules, regulations and orders of all applicable governmental agencies and authorities.

(b) All single-family residences constructed on the Lots shall be "traditional" in style. The determination of whether or not a residence is "traditional" shall be decided by the Architectural Control Committee in its sole and uncontrolled discretion.

(c) Only one mailbox shall be located on any Lot, which mailbox shall be of the type selected by the Architectural Control Committee and consistent with the quality and design of surrounding dwellings and mailboxes. Each 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.

(d) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used 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.

(e) No exposed, aboveground tanks for the 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, except that retention ponds as required by the City of Alpharetta and/or Fulton County shall be permitted.

(f) Adequate offstreet parking shall be provided for each residence.

(g) Containers for garbage and other refuse shall be located, if outside the garage or heated area of the structure, in a place not visible from the public right of way; and a garbage disposer is required for each dwelling.

(h) Any screen porch which is a part of any dwelling or accessory structure must have a dark color screen, and no bright color silver screens may be used.

(i) 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 prior to the completion of such construction and before occupancy.

24. 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.

#### ARTICLE VI GENERAL PROVISIONS

##### 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

#### ARTICLE VI GENERAL PROVISIONS

##### 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 when 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 ten (10) days after date of the mailing of written notice of such violation or breach. Any such notice shall be mailed by U.S. certified mail, return receipt requested. 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 a 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.

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.

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.

4. Duration. The covenants and restrictions of this Declaration and/or amendments thereof shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, at the end of which period such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless 75% of the Owners shall sign an instrument in which said covenants and restrictions are amended to state a different duration, which instrument shall be filed of record in Fulton County.

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 and taken to be covenants running with the land 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.

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 address as hereinafter provided. Notices to the Developer shall be in writing and shall be addressed to Crabapple Properties, Ltd., P.O. Box 65121, Baton Rouge, Louisiana 70896, 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.

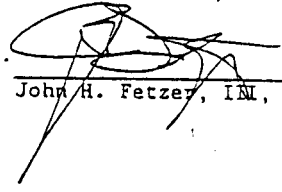
7. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Developer (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance with respect to the Lots subject to this Declaration; (iii) if such amendment is required to obtain the approval of this Declaration by an institutional lender, such as a bank, savings and loan association or life insurance company, or by a governmental lender or purchaser of mortgage loans, such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (vi) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not make any substantial changes in any of the provisions of this Declaration. Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) percent of the Owners of Lots; provided, however, such amendment by the Owners shall not be effective unless also signed by Developer, if Developer is the owner of any real property then subject to this Declaration. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Every purchaser or grantee of any interest in any real property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

8. No Liability. Developer has used its best efforts and acted with due diligence in connection with the preparation and recording of this Declaration to ensure that each Owner has the right and power to enforce the terms and provisions hereof against every other Owner. In the event this Declaration is unenforceable by an Owner or any other person for any reason whatsoever, Developer shall have no liability of any kind as a result of such unenforceability, and each Owner, by acceptance of a deed conveying a Lot, acknowledges and agrees that Developer shall have no such liability.

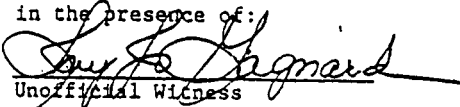
IN WITNESS WHEREOF, the undersigned has caused its hand and seal to be affixed as of the day and year first above written.

DECLARANT

CRABAPPLE PROPERTIES, LTD.

By:   
John H. Fetzer, INC., President

Signed, sealed and delivered  
in the presence of:

  
Unofficial Witness

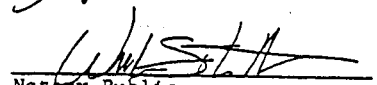
  
Notary Public

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lots 1131, 1174 and 1175 of the 2nd District, 2nd Section, in the City of Alpharetta, Fulton County, Georgia, being shown and designated as 25.175 acres according to a plat of survey for John H. Fetzer, III, dated January 20, 1992 by Brumbelow-Reese & Assoc., Inc., RLS, and being more particularly described as follows:

BEGINNING at a point at the common corner of Land Lots 1131, 1130, 1174 and 1175 of said District and County; running thence North 89 degrees 48 minutes 02 seconds East along the northerly land lot line of Land Lot 1175, 60.77 feet to an iron pin; running thence South 07 degrees 04 minutes 00 seconds East, 1030.57 feet to an iron pin; running thence North 87 degrees 59 minutes 29 seconds West, 914.86 feet to a point on the northeasterly right-of-way of Mid-Broadwell Road (based on a 60 foot right-of-way); running thence northwesterly along the northeasterly right-of-way of Mid-Broadwell Road and following the curvature thereof an arc distance subtended by chords having the following courses and distances: North 37 degrees 26 minutes 52 seconds West, 93.54 Feet, North 38 degrees 23 minutes 01 seconds West, 97.43 Feet, North 38 degrees 51 minutes 07 seconds West, 97.74 feet, North 39 degrees 29 minutes 56 seconds West, 51.97 feet, North 42 degrees 49 minutes 28 seconds West, 52.54 feet, North 47 degrees 05 minutes 04 seconds West, 52.32 feet, North 50 degrees 36 minutes 46 seconds West, 60.77 feet, and North 55 degrees 07 minutes 59 seconds West, 53.57 feet; running thence North 33 degrees 07 minutes 57 seconds East, 49.27 feet to a point; running thence North 72 degrees 15 minutes 07 seconds East, 113.65 feet to a point; running thence South 41 degrees 13 minutes 38 seconds East, 20.0 feet to a point; running thence North 48 degrees 46 minutes 22 seconds East, 167.2 feet to an iron pin; running thence North 44 degrees 52 minutes 55 seconds East, 128.37 feet to an iron pin; running thence North 39 degrees 29 minutes 52 seconds East, 75.12 feet to an iron pin; running thence North 34 degrees 39 minutes 26 seconds East, 602.31 feet to an iron pin; running thence North 35 degrees 36 minutes 32 seconds East, 347.71 feet to an iron pin; running thence South 41 degrees 54 minutes 56 seconds East, 230.41 feet to an iron pin on the land lot line common to Land Lots 1131 and 1130, running thence South 01 degrees 18 minutes 28 seconds West, along the said land lot line, 346.48 feet to an iron pin and the POINT OF BEGINNING..