

SECOND AMENDMENT TO THE
DECLARATION OF PROTECTIVE
COVENANTS AND EASEMENTS
FOR
BRIERFIELD

GEORGIA, FULTON COUNTY
FILED AND RECORDED

94 JUN 22 AM 8:30

JUANITA HICKS
CLERK, SUPERIOR COURT

THIS SECOND AMENDMENT to Declaration of Protective Covenants and Easements for Brierfield, is made this 30th day of May, 1994 by

CRABAPPLE PROPERTIES, LTD., a corporation authorized to do business in the State of Georgia, hereinafter represented by John H. Fetzer, III, its President, duly authorized, hereinafter referred to interchangeably as "Declarant" and/or "Developer";

and

FETZER PROPERTIES, LTD., a corporation authorized to do business in the State of Georgia, hereinafter represented by John H. Fetzer, III, its Secretary, duly authorized;

RBD PROPERTIES, INC., a corporation authorized to do business in the State of Georgia, hereinafter represented by Dick Darnell, its President, duly authorized;

CORNERSTONE HOMES, INC., a corporation authorized to do business in the State of Georgia, hereinafter represented by Barbara Nash, its President, duly authorized;

W I T N E S S E T H:

WHEREAS, Declarant, Fetzer Properties, Ltd., RBD Properties, Inc., and Cornerstone Homes, Inc. are presently the owners of at least seventy-five (75%) percent of lots in Brierfield, Phase Two;

WHEREAS, the "Declaration of Protective Covenants and Easements for Brierfield" dated July 27, 1992, is recorded at Deed Book 15529, Page 320, Fulton County, Georgia records (hereinafter referred to as "Declaration");

WHEREAS, the "First Amendment to the Declaration of Protective Covenants and Easements for Brierfield" dated September 7, 1993, is recorded at Deed Book 17217, Page 104, Fulton County, Georgia records (hereinafter referred to as "First Amended Declaration");

WHEREAS, Developer wishes to amend and supplement the Declaration and First Amended Declaration by adding to the provisions of the Declaration and the First Amended Declaration the following paragraphs:

1.

Article I, Section 4, is hereby amended and supplemented so that same shall henceforth read as follows:

"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, including but not limited to the entrance walls and lighting, the subdivision sign and all landscaping situated on the thirty (30) foot no access buffer, sign and landscape easement, the detention pond situated on the "detention area and drainage easement" over and across Lot 121, Brierfield Phase One, the clubhouse, swimming pool, tennis courts and other improvements in the amenity area and the "easement for lake and dam maintenance", including control structure and siphon system. The designation of any land and/or improvements as common areas shall not infer or imply that the public at large acquires any rights of use or enjoyment therein, which rights are expressly denied."

2.

Article I is hereby amended and supplemented to add Section 14 which shall henceforth read as follows:

"14. "Lake" shall mean and refer to any lake presently existing on the property."

3.

Article II, Section 3(a) is hereby amended and supplemented so that same shall henceforth read as follows:

"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; (iii) the entrance wall(s) or fences situated on the thirty (30') foot buffer and easement over and across 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; and (iv) the detention area on the drainage easement over and across Lot 121, Brierfield Phase One. (Association responsible for grass cutting only). The Association shall maintain and keep in good repair the "easement for lake and dam maintenance" including the control structure and siphon system. The Association may utilize the "no access area" within the limit of the "easement for lake and dam maintenance" if necessary in connection with its maintenance obligations. However, the Association shall not have the obligation to maintain the "no access area", that obligation being the responsibility of the respective lot owners affected by the "no access area".

4.

Article V, Section 4 is hereby amended and supplemented to add sub-section (D) which shall henceforth read as follows:

"(d) An easement is hereby created and established on, over and across Lots 18, 19, and 20, Block "A", Brierfield, Phase Two as shown on the plat to accommodate the repair and maintenance of the Lake, the dam, the control structure and the siphon system for the Lake. ("Easement for Lake and Dam Maintenance"). No fence shall be constructed by the owners of Lots 18, 19 and 20 on the easement for lake and dam maintenance."

5.

Article V is hereby amended and supplemented to add Section 25 which shall henceforth read as follows:

"25. Use, operation and maintenance of Lake. The Lake and the bank of the Lake is private property owned by the respective owners of the lots on which the Lake and the bank of the Lake is located and/or situated.

The following restrictions and covenants shall regulate the use of the Lake and the bank of the Lake, to-wit:

(a) The Lake and the bank of the Lake shall be maintained by the respective owners of the lots on which the Lake and the bank of the Lake is located and/or situated, except that the Association shall have the obligation to maintain the easement for lake and dam easement over and across Lots 18, 19, & 20, Block A, Brierfield, Phase Two as shown on the plat:

(b) The bank of the Lake shall be a "no access area". For the purposes of this Declaration, the "no access area" shall mean the ten (10') foot wide strip of land designated as a "drainage easement" on the bank of the Lake as shown on the Final Plat. The "no access area" shall have restricted access, i.e., no member, owner, guest, invitee or other person may utilize the "no access area" for any purpose whatsoever, including walking, jogging, fishing, swimming, and any other recreational activity, except that the owner of the lot abutting any portion of a "no access area" may use that portion of the "no access area" abutting his/her lot for walking, fishing or other similar activity. Additionally, the City of Alpharetta, its agents or employees may utilize the "no access area" in connection with its obligation to maintain the ten (10') foot drainage easement located on the bank of the Lake as shown on the plat.

(c) No piers and/or decks and/or other structures shall be constructed on the "no access area" or within the Lake;

(d) No gasoline powered boats or other floating devices shall be kept, stored, used or operated on the Lake;

(e) No owner may plant any tree or other vegetation on the "no access area" without the consent of the Architectural Control Committee;

(f) Any and all recreational use of the Lake shall be at the risk of the members, owners and their guests and invitees;

(g) The Architectural Control Committee shall have the authority to remove from the Lake any waterfowl not approved by the Architectural Control Committee."

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

Signed, sealed and delivered in the presence of:

Eileen Chaplain
Unofficial witness

E. L. S. N.P.
Notary Public SEAL

E. HARRY SWYERS
Notary Public, Parish of East Baton Rouge, State of La.
My Commission is issued for life.

Signed, sealed and delivered in the presence of:

Eileen Chaplain

E. L. S. N.P.
Notary Public SEAL

E. HARRY SWYERS
Notary Public, Parish of East Baton Rouge, State of La.

DECLARANT:
CRABAPPLE PROPERTIES, LTD.

BY: [Signature]
John H. Fetzer, III
President

FETZER PROPERTIES, LTD.

BY: [Signature]
John H. Fetzer, III
Secretary

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lots 1175, 1176, 1201 and 1202 of the 2nd District, 2nd Section, Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at the point of intersection of the Westerly line of Land Lot 1201 with the Northwesterly right-of-way of Mid Broadwell Road (50-foot right-of-way) at a 1 inch c.t. found and running thence North 03 degrees 42 minutes 29 seconds East along the West line of Land Lot 1201, 684.97 feet to an iron pin found at the Northwest corner of Land Lot 1201 (corner common to Land Lots 1175, 1176, 1201 and 1202); running thence North 86 degrees 04 minutes 21 seconds West along the South line of Land Lot 1175, 569.64 feet to a point; running thence South 03 degrees 15 minutes 57 seconds West 794.91 feet to an iron pin placed on the Northwesterly right-of-way of Mid Broadwell Road (60-foot right-of-way); running thence Southwesterly along the Northwesterly right-of-way of Mid Broadwell Road an arc distance of 139.83 feet, said arc being subtended by a chord of South 88 degrees 23 minutes 40 seconds West 139.78 feet; running thence North 89 degrees 03 minutes 41 seconds West along the Northwesterly right-of-way of Mid Broadwell Road 37.07 feet to a point; running thence Northwesterly along the Northeasterly right-of-way of Mid Broadwell Road an arc distance of 23.10 feet to a point, said arc being subtended by a chord of North 88 degrees 39 minutes 18 seconds West 23.10 feet; running thence South 03 degrees 08 minutes 04 seconds West along the Westerly right-of-way of Mid Broadwell Road 5.00 feet (this being the point where the right-of-way of Mid Broadwell Road changes from 60 feet in width to 50 feet in width); running thence Northwesterly along the Northeasterly right-of-way of Mid Broadwell Road (50-foot right-of-way) an arc distance of 150.03 feet, said arc being subtended by a chord of North 85 degrees 36 minutes 47 seconds West 149.98 feet; running thence Northwesterly along the Northeasterly 50-foot right-of-way of Mid Broadwell Road an arc distance of 232.00 feet, said arc being subtended by a chord of North 72 degrees 25 minutes 25 seconds West 230.69 feet; running thence North 61 degrees 51 minutes 57 seconds West along the 50-foot right-of-way of Mid Broadwell Road 20.97 feet to a point; running thence Northwesterly along the Northeasterly 50-foot right-of-way of Mid Broadwell Road an arc distance of 265.30 feet, said arc being subtended by a chord of North 49 degrees 42 minutes 54 seconds West 263.32 feet to a point where the Northeasterly right-of-way of Mid Broadwell Road is intersected by the centerline of a creek; running thence generally Northeasterly along the centerline of a creek and following the curvature and meanderings thereof 672 feet, more or less, to a point on the North line of Land Lot 1202 where said North line is intersected by the centerline of said creek (the last call being indicated on the referenced survey by two traverse calls as follows: North 51 degrees 49 minutes 19 seconds East 312.87 feet to a point; thence North 10 degrees 49 minutes 31 seconds East 389.82 feet to a point which is on the North line of Land Lot 1202 and is South 85 degrees 55 minutes 36 seconds East 24 feet, more or less, from the point of intersection of the North line of Land Lot 1202 with the centerline of said creek); running thence North 85 degrees 55 minutes 36 seconds West along the North line of Land Lot 1202, 46 feet, more or less, to an iron pin found at the Southeast corner of property now or formerly owned by Hardage; running thence North 03 degrees 47 minutes 42 seconds West 304.15 feet to an iron pin found; running thence South 85 degrees 53 minutes 19 seconds East 422.00 feet to an iron pin found; running thence South 85 degrees 58 minutes 59 seconds East 158.00 feet to an iron pin placed; running thence North 77 degrees 35 minutes 08 seconds East 875.23 feet to a point in a lake; running thence North 60 degrees 17 minutes 13 seconds East 507.29 feet to an iron pin placed; running thence South 02 degrees 24 minutes 19 seconds West 809.53 feet to an axle found; running thence South 63 degrees 29 minutes 21 seconds West 8.67 feet to a 1 inch c.t. found on the South line of Land Lot 1176; running thence North 87 degrees 20 minutes 10 seconds West along the South line of Land Lot 1176, 64.40 feet to an iron pin

placed; running thence South 08 degrees 53 minutes 20 seconds West 669.49 feet to a point on the Northeasterly right-of-way of Mid Broadwell Road (50-foot right-of-way); running thence Northwesterly along the Northeasterly 50-foot right-of-way of Mid Broadwell Road an arc distance of 321.66 feet to a point, said arc being subtended by a chord of North 83 degrees 40 minutes 05 seconds West 319.09 feet; running thence South 83 degrees 46 minutes 16 seconds West along the Northwesterly 50-foot right-of-way of Mid Broadwell Road 26.80 feet to a point; running thence Southwesterly along the Northwesterly 50-foot right-of-way of Mid Broadwell Road an arc distance of 49.59 feet, said arc being subtended by a chord of South 82 degrees 48 minutes 09 seconds West 49.59 feet; running thence South 81 degrees 50 minutes 02 seconds West along the Northwesterly 50-foot right-of-way of Mid Broadwell Road 143.55 feet to the West line of Land Lot 1201 and the point of beginning, said property being a tract of 39.3069 acres, more or less, as shown on Survey for Crabapple Properties, Ltd., by LCE Engineers, dated July 7, 1993, and consisting of six tracts, Tract 1 being in Land Lot 1202 and consisting of 8.3406 acres, more or less; Tract 2 being in Land Lot 1175 and consisting of 2.7906 acres; Tract 3 being in Land Lots 1175 and 1176 and consisting of 11.6420 acres; Tract 4 being in Land Lot 1201 and consisting of 8.4607 acres; Tract 5 being in Land Lot 1202 and consisting of 3.7017 acres; and Tract 6 being in Land Lot 1176 and consisting of 4.3713 acres.

Signed, sealed and delivered
in the presence of:

Eric K. [Signature]
Melba F. Cole
Notary Public
NOTARY PUBLIC
MELBA F. COLE
FEB. 11, 1985
FORSYTH COUNTY, GEORGIA

RBD PROPERTIES, INC.

BY: R.B. Darnell (PRES)
R.B. Darnell, President

Signed, sealed and delivered
in the presence of:

Debbie Holtz
Melba F. Cole
Notary Public
NOTARY PUBLIC
MELBA F. COLE
FEB. 11, 1985
FORSYTH COUNTY, GEORGIA

CORNERSTONE HOMES, INC.

BY: Barbara P. Nash, Pres.
Barbara P. Nash, President

