

DECLARATION OF COVENANTS,  
CONDITIONS, AFFIRMATIVE OBLIGATIONS  
AND RESTRICTIONS FOR OLD SAYBROOK

FILED & RECORDED  
DEKALB CO. GA.

JAN 7 4 17 PM '85

WHITFIELD C. SMITH  
CLERK OF SUPERIOR COURT

THIS DECLARATION, made this 7TH day of January, 1985, by THE KEY COMPANY, a Georgia corporation ("Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain land in DeKalb County, Georgia, on which it intends to develop approximately twenty-eight (28) bungalows and townhomes known as Old Saybrook.

WHEREAS, Declarant hereby desires to provide for the ownership and maintenance of certain common areas of Old Saybrook, to declare certain restrictive covenants and affirmative obligations applicable to Old Saybrook, and to provide a vehicle for the rendering of community services and for the administration and enforcement of covenants and restrictions; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Georgia, a nonprofit corporation, Old Saybrook Homeowners Association, Inc., for the purpose of exercising the functions aforesaid and which are hereinafter more fully set forth.

NOW, THEREFORE, Declarant declares that the real property described on Exhibit A, attached hereto and made a part hereof by this reference, is, and shall be, held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (hereinafter sometimes referred to as the "Covenants") hereinafter set forth; and Declarant further declares that the Covenants shall run with the land and shall apply to all of said real property.

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NOTWITHSTANDING THE ESTABLISHMENT OF OLD SAYBROOK HOMEOWNERS ASSOCIATION, INC. AND THE SUBMISSION OF THE PROPERTY TO THE TERMS AND CONDITIONS OF THIS DECLARATION OF COVENANTS, CONDITIONS, AFFIRMATIVE OBLIGATIONS AND RESTRICTIONS FOR OLD SAYBROOK, OLD SAYBROOK, IS NOT A CONDOMINIUM AS DEFINED IN THE GEORGIA CONDOMINIUM ACT (O.C.G.A. 44-3-70, et. seq.).

ARTICLE I

DEFINITIONS

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to Old Saybrook Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

(b) "Common Properties" or "Common Areas" shall mean and refer to certain real property which is deeded to the Association for the use and benefit of its Members and any personal property acquired by the Association. All Common Properties are to be devoted to and intended for the common use and enjoyment of the Owners, Residents and their guests. The Common Areas shall also include a perpetual, nonexclusive easement, for the benefit of Declarant, the Association and its Members and their licensees and permittees for pedestrian ingress and egress to and from any Home to other Common Areas or roadways, over and across any and all paved sidewalks, walkways, and entranceways now or hereafter existing on any Lot connecting a Home to any other Common Areas or roadways.

(c) "Declarant" shall mean and refer to The Key Company, a Georgia corporation, its successors and assigns.

(d) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Affirmative Obligations and Restrictions Providing for Old Saybrook Homeowners Association, Inc.

(e) "Home" or "Homes" shall mean and refer to the improvements constructed on each Lot.

(f) "Lot" shall mean and refer to those portions of the Property upon which Declarant proposes to construct a Home for sale, use, or occupancy as a single-family residential dwelling in conformity with the terms of this Declaration as each such Lot will be shown on a plat which will be filed of record by Declarant prior to the conveyance of each Home on such Lot to the purchaser thereof.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as defined in Section 3.1.

(h) "Owner" shall mean and refer to the owner (including Declarant) as shown by the real estate records in the Office of the Clerk of the Superior Court of DeKalb County, Georgia, whether it be one or more persons, firms, associations, corporations or other legal entities, of fee simple title to any Lot and Home located within Old Saybrook, but, notwithstanding any applicable theory of a mortgage or deed to secure debt, shall not mean or refer to any mortgagee or holder as a deed to secure debt, its successors or assigns, unless and until such mortgagee or holder of a deed to secure debt has acquired title pursuant to foreclosure or by a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

(i) "Property," unless the context shall otherwise require, shall mean and refer to that tract of land described on Exhibit A, together with all improvements thereon.

(j) "Resident" shall mean and refer to each Owner and Tenant of a Lot and Home, together with the members of his family living in such Home.

(k) "Tenant" shall mean and refer to the lessee under a written agreement for the rent and hire of a Lot and Home in Old Saybrook.

## ARTICLE II

### PLAN OF DEVELOPMENT

The primary purpose of this Declaration and the foremost consideration in the origin of same has been the creation of a home development which is aesthetically pleasing and functionally convenient.

#### 2.1 Plan of Development of Property.

The Property shall contain twenty-eight (28) Lots and the Declarant shall construct twenty-eight (28) Homes on such Lots. The Property shall also include paved parking areas, drives, roads, utility systems, and other improvements or easements therefor serving the Lots. Inclusive of the parking provided in garages on certain Lots, there shall be at least

fifty-six (56) parking spaces provided and those parking spaces not located on a Lot shall be unassigned parking spaces. In the event two-thirds (2/3) of the Owners of Lots without garages shall vote in favor of assigning parking spaces, there shall be assigned to each Lot without a garage two (2) parking spaces. A plat of the general area and location of the homes and other improvements on the applicable portion of the Property and the dimensions of the Lots on Exhibit A in any given building will be filed of record prior to the conveyance of the first Home in such building to the purchaser thereof. The Lots shall be restricted exclusively to single-family residential use in accordance with the provisions of this Declaration. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot primarily for the purpose of sale, to make improvements and changes to all Common Areas and to all Lots owned by Declarant (other than changes to the location of the boundaries of the Lots affecting Lots not belonging to Declarant), including, without limitation, (i) addition to and realignment of parking spaces; (ii) installation of any utility systems and facilities; (iii) installation of security and/or refuse facilities; and (iv) work relating to Home exteriors and roofs.

## 2.2 Interest Subject to Plan of Development.

Every purchaser of a Lot shall purchase such Lot and every mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's plan of development as herein set forth. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article II may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Declarant.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

#### 3.1 Membership.

Every person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and ownership of a Lot shall be the sole qualification for such membership. The foregoing is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the



foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership or one vote per Lot.

### 3.2 Voting Rights.

Each Lot shall be entitled to one vote to be cast by the Owner thereof. When any Lot is owned by two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, or if property is owned by a corporation, then such Owners shall file with the Secretary of the Association an instrument in writing signed by all such Owners and designating one Owner (or in the case of a corporation, one of its officers) to cast the vote which is attributable to such Lot. The principles of this section shall apply, insofar as possible, to the execution of proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of a quorum.

### 3.3 Governing Body.

The Association shall be governed by a Board of Directors consisting of three (3) Members. Subject to the provisions of Section 3.6, the election of the Board of Directors shall be by the Members as provided in the Bylaws. Notwithstanding the foregoing, the Members shall, upon the termination of Declarant's rights under this Declaration, elect two (2) additional Directors for a total of five (5).

### 3.4 Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association.

The quorum required for any action which is subject to a vote of the members at a meeting of the Association shall be as follows:

The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of the total vote of the membership shall constitute a quorum. In the event the required quorum is not present at any such meeting, a second meeting may be called, subject to the giving of proper notice, and the presence of thirty percent (30%) of the total vote of the membership shall constitute a quorum for such second meeting. Any such second meeting must be held within sixty (60) days of the first meeting when the required quorum

was not present. Unless otherwise provided, the reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements for such "duly called meeting" which may be established by the Bylaws of the Association. For the purpose of this section, "proper notice" shall be deemed to be given to each Member not less than five (5) days nor more than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered.

### 3.5 Proxies.

All Members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing.

### 3.6 Control by Declarant.

NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BYLAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association until such time as the first of the following events shall have occurred: (i) the expiration of seven (7) years from the date of the recording of this Declaration, (ii) the closing of the sale of seventy-five percent (75%) of the homes which Declarant elects to build or (iii) the surrender of such right by Declarant evidenced by an express amendment hereto recorded in the public records of DeKalb County, Georgia. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association, such right shall automatically pass to the Owners, including Declarant if Declarant owns one or more Lots, and a special meeting of the Association shall be called at such time. At such special meeting, the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession. Any management contract or any other contract or lease executed by or on behalf of the Association during the period of Declarant's right to control the Association shall be subject to cancellation and termination at any time during the

twelve (12) months next immediately following the expiration of such period of control by the affirmative vote of the Owners to whom a majority of the votes in the Association appertain, unless the Owners by a like majority shall have theretofore, following the expiration of such period, expressly ratified and approved the same.

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

###### 4.1 Owner's Easements of Enjoyment in Common Properties.

Subject to the provisions of these Covenants, the rules and regulations established from time to time by the Association, and any fees or charges established by the Association, every Owner, resident and tenant shall have an easement of ingress and egress over all paved portions of the Common Properties and of use and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot and Home.

###### 4.2 Title to Common Properties.

Declarant shall, on or before the thirtieth (30th) day following the sale of the last Lot owned by Declarant, convey to the Association, by quitclaim deed, that portion of the Property described as Common Properties on plats filed from time to time or otherwise designated as Common Area by Declarant. Such conveyance shall be subject to all matters of record. The Association shall accept any such conveyance, without the need of any affirmative act and upon any such conveyance, the Association shall immediately become responsible for all maintenance, taxes and other obligations of such Common Property.

###### 4.3 Extent of Owner's Easement.

The easement of ingress, egress, use and enjoyment created hereby shall be subject to the following:

(a) The right of the Association to suspend the rights and easements of use of any Owner, resident or tenant of any Lot for any period during which the payment of any assessment made by the Association against such Lot remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either

nonpayment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Owner's obligation to pay the assessment.

(b) The right of the Association by action of its Board of Directors to dedicate or transfer to any public or private utility, cable or drainage easements on any part of the Common Properties.

(c) The rights and easements of the Association set forth in Section 4.4, below.

(d) The rights and easements of the Declarant set forth in Section 4.5, below.

(e) The right of the Association to grant easements and to dedicate or transfer fee simple title to all or any part of the Common Properties, including leasehold interests, to any public or private concern for such purposes and subject to such conditions as may be agreed to by the Association; provided, that no such dedication or transfer of fee simple title shall be effective unless authorized by the affirmative vote of a simple majority of the votes cast at a duly called meeting of the Association and by Declarant so long as Declarant owns any Lot primarily for the purpose of sale, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution, together with a certificate of the results of the vote taken thereon, shall be made by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association and such certificate, together with a certificate executed by Declarant, if such consent is required, shall be annexed to any instrument of dedication or transfer affecting the Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

#### 4.4 Easements for Association.

There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including, but not limited to, any manager employed by the Association, to enter upon the Property or any portion thereof in the performance of their respective duties. Except

in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever reasonably practicable, only upon advance notice to and with permission of the Owner or occupant of the Lot, home, garage or other structure or improvement directly affected thereby. In that connection, the Board of Directors, acting on behalf of the Association and, so long as Declarant shall retain the right to appoint and remove directors pursuant to Section 3.6, without the consent of the Members, shall have a perpetual easement, with the power to grant, accept and use easements, upon, over, under and across all of the Common Properties, as well as upon, over, under and across two strips, each ten (10) feet wide in width, and running along the front and rear boundaries of each Lot, and upon, over, under and across any remaining unimproved portion of each Lot, for ingress, egress, installing, replacing, repairing and maintaining master television antenna systems, Community Antenna Television System, cable TV, security and similar systems, and all utilities, including, but not limited to, storm sewers and electrical, gas, telephone, water and sanitary sewer lines (collectively, the "Utilities"); provided, however, that for so long as Declarant owns any Lot primarily for the purpose of sale, the Board of Directors must obtain the written consent of Declarant prior to granting or accepting such easements upon, over, under and across any of the Common Properties or upon, over, under or across any such Lot owned by Declarant. By virtue of any such easement, it shall be expressly permissible for the providing utility company or other supplier or servicer to erect and maintain upon the Property the necessary poles and other necessary equipment.

#### 4.5 Easements for Declarant.

(a) Construction. During the period that Declarant owns any Lot primarily for the purpose of sale, Declarant, and its duly authorized representatives, agents and employees shall have a transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing homes on the Lots and making such other improvements to the Property as are contemplated by this Declaration as Declarant, in its sole discretion, desires, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purposes of installing, replacing and maintaining all homes and other improvements within the Development, as well as Utilities serving the Property or any portion thereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith;

provided, however, that in no event shall Declarant have the obligation to do any of the foregoing.

(b) Sales Office. Notwithstanding any provisions or restrictions herein to the contrary, Declarant and its duly authorized agents, representatives and employees shall have an easement for the maintenance of signs, a sales office, a construction office, a business office and model homes on the Property, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement and sale of Lots, or any portion thereof.

#### 4.6 Structural Support.

Every portion of the Common Properties or of a Lot, townhouse, garage, or any other improvement which contributes to the structural support of another portion of the Common Properties or of another Lot, townhouse, garage, or other improvement shall be burdened with an easement for structural support and each Lot shall also have the right to lateral support which shall be appurtenant to and pass with title to such Lot. No Owner shall be permitted to demolish his townhouse or garage except to the extent that such demolition may be required (i) as a result of condemnation or eminent domain proceedings, (ii) as a result of repairing or rebuilding such townhouse or garage as provided in Section 5.6(b) hereof when the same has been partially or totally destroyed, or (iii) when the election is made not to rebuild or restore in the event of casualty or condemnation as provided in Section 5.6(c).

### ARTICLE V

#### RESTRICTIVE COVENANTS AND AFFIRMATIVE OBLIGATIONS

##### 5.1 Permitted Use of Lots.

Each Lot shall be used for residential purposes exclusively; provided, however, that until such time as Declarant has sold all of the Lots in Old Saybrook, it may use any Home which it owns as a model unit or as a sales office.

##### 5.2 Permitted Structures.

No structure shall be erected, placed or permitted to remain on any Lot other than the following:

- (a) One single-family Home dwelling;



(b) Landscaping structures of the type compatible with the Homes built in Old Saybrook, including, but not limited to, garden walls, walks, fences, driveways and parking areas.

(c) In no event shall any mobile home, tent, barn, shed, pet pen, pet house, or other similar outbuilding or structure be placed on any Lot at any time, either temporarily or permanently. No structure of a temporary character shall be placed upon any Lot at any time.

### 5.3 Architectural Approvals.

(a) Alterations to Homes. No Owner shall make modifications or alterations to such Owner's Home which affect the structural integrity, soundness, design, appearance, elevations or of any of the improvements located on the Property, including, without limitation, the color of siding, woodwork and roofing, without previously obtaining the written approval of two-thirds (2/3) of the Board of Directors of the Association. No screened enclosures of outside balconies, ground terraces or patios shall be permitted without the written approval of two-thirds (2/3) of the Board of Directors of the Association. Changes to the interior of a Home which do not affect the structural integrity or soundness of the improvements located on the Property may be made without the approval of the Association.

(b) Landscaping Alterations. No Owner shall make alterations, modifications or changes to the landscaping, including, but not limited to, the removing, planting or placing of trees, shrubbery, bushes, grass or ground cover, or the construction or removal of any walls, fences, fountains, pools, ponds, streams, gardens, decks, or patios without previously obtaining the written consent of the Association; provided, however, if trees or shrubbery located on a Lot should die, the Owner shall be responsible for its removal, in which event the Owner shall, at its expense, promptly replace them with reasonably similar trees or shrubbery; provided, however, that any such replacements may be of a lesser age.

(c) Procedure for Seeking Consent of Association. In order to seek the consent of the Association required hereunder, an Owner shall submit to the Board of Directors of the Association a written request for consent describing the modification, alteration, or change which the Owner desires to

make. Such request shall be accompanied by full and complete plans and specifications, a site plan, a work schedule and list of those who will be performing the work for the alteration, modification or change which the Owner desires to make. The Board of Directors shall, in writing, grant or deny a request for its consent within sixty (60) days after receiving a written request from an Owner. If the consent requested is not granted or denied in writing within said sixty (60) day period, then the Board of Directors shall be deemed to have given its written consent as requested by the Owner.

(d) Discretion of Association in Granting Consent. The Board of Directors may base its decision to grant or deny its consent hereunder upon any ground, including purely aesthetic considerations, which, in the sole and uncontrolled discretion of the Board of Directors, is deemed to be sufficient.

5.4 Restricted Fixtures, Installations and Other Objects.

(a) Antennas, Air Conditioning Units and Other Objects Located Outside of Home. No Owner shall install or permit to be installed television or radio antennae, window or roof-top air conditioning units or similar machines or objects outside of Owner's Home or which protrude through the walls or roof of the Home.

(b) Flower Pots or Boxes. No flower pots, flower boxes or similar items shall be attached to the outside walls of any Home or placed on or suspended from windows, ledges, balconies or outside doors of any Home.

(c) Underground Utilities. All utility services to each Home in Old Saybrook shall be run underground from the point of connection at the Home to the main service line providing such utility service.

(d) No Signs. Except for the rights given to Declarant hereunder, no signs, advertisements, or notices shall be erected, exhibited, maintained, inscribed, painted or affixed on any portion of a Lot or on any Home by anyone, including, but not limited to, an Owner, a realtor, a contractor, or subcontractor, except with the prior written consent of a two-thirds (2/3) majority of the Board of Directors of the Association or except as may be required by legal proceedings. If such consent is

granted, the Board of Directors shall have the right to restrict the size, material, color and content of such signs. Residential property identification and like signs not exceeding a combined total of more than one (1) square foot may be exhibited and maintained without the written consent of the Board of Directors. Likewise, one sign of not more than five (5) square feet advertising a Lot for sale may be exhibited or maintained in a window of a Home during the period for which it is for sale without the consent of the Board of Directors.

#### 5.5 Restricted Uses of Lots.

(a) No Burning. No outside burning of wood, leaves, trash, garbage or other refuse shall be permitted on any Lot.

(b) Pets. Except as may be herein permitted, no animals, livestock or poultry of any kind shall be kept, raised or bred on any Lot; provided, however, that an Owner may be permitted to keep no more than two (2), in the aggregate, dogs, cats or other types of normal household pets on his Lot. In the event that pets are kept on a Lot, such pets shall not be kept, maintained or bred for any commercial purposes and must be secured by a leash or lead at any time they are permitted outside a Home. In no event shall an Owner maintain on a Lot any pet which causes distress to other Owners by barking, howling, whining, biting, scratching or damaging property.

(c) Parking of Vehicles. No vehicle of any type (including, but not limited to, boats, trailers, trucks, buses, motor homes and campers) other than conventional automobiles and pickup trucks shall be parked or maintained on any Lot except in a garage with a closed door or in an area which as the Association shall specially designate for such purpose.

(d) Activities Causing Disorderly Conditions. The pursuit of hobbies or other activities which might lead to disorderly, unsightly or unkempt conditions shall not be pursued or undertaken on any Lot.

(e) Disturbing Others. Each Owner shall be responsible for and shall regulate the occupancy and use of such Owner's Lot and Home so as to not unreasonably disturb other residents of Old Saybrook or to interfere unreasonably with the peace and enjoyment of other Lots and Homes by the Owners

thereof. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done on a Lot which creates an annoyance or nuisance to the Owners or residents within Old Saybrook. No Owner shall allow any disturbing noises on such Owner's Lot nor interfere with the rights, comforts or conveniences of other Owners. No Owner shall permit any musical instrument to be played or any phonograph, tape player, television, radio or other audio equipment to be operated on such Owner's Lot at a volume which disturbs or annoys other residents of Old Saybrook.

(f) Rubbish and Trash. No portion of a Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash, garbage or other waste shall be stored only temporarily awaiting pickup and must be kept in adequate sanitary containers. All equipment for the storage or disposal of trash, garbage and other waste shall be kept in a clean and sanitary condition.

(g) Sewerage Disposal. All sewerage disposal from a Lot must be into the DeKalb County Sewerage Collection and Disposal System. No individual sewerage disposal system shall be permitted on any Lot.

(h) Maintenance of Home Exterior and Landscaping. Each Owner shall maintain in good condition the exterior of his Home and the landscaping of his Lot as set forth in Section 7.1.

#### 5.6 Insurance and Reconstruction.

(a) Owner Must Provide Insurance of Home. Each Owner shall, at his own expense, insure his Home and all other insurable improvements on his Lot in an amount not less than the then current maximum insurable replacement value thereof. Such coverage shall afford protection against loss or damage by fire or other hazards covered by the standard extended coverage endorsements and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm and water damage.

(b) Reconstruction or Repair of Damaged Homes. If any Home shall be damaged by casualty, the Owner of such Home shall promptly reconstruct or repair it so

as to restore such Home as nearly as possible to its condition prior to suffering the damage. All such reconstruction and repair work shall be done in accordance with plans and specifications therefor, approved by the Board of Directors. Encroachments upon or in favor of Homes or Lots, which may be necessary for or created as result of such reconstruction or repair, shall not constitute a claim or basis of a proceeding or action by the Owner on whose Home or Lot such encroachment exists, provided that such reconstruction or repair is done substantially in accordance with the plans and specifications approved by the Board of Directors or as the building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the buildings stand.

(c) Decision Not to Reconstruct. An Owner shall not be required to reconstruct a damaged Home only if one hundred percent (100%) of the Homes in Old Saybrook are rendered uninhabitable by such damage and Declarant, if Declarant owns a Lot, and Owners who in the aggregate have one hundred percent (100%) of the total number of votes of the Association vote against reconstruction and repair of the Homes at a meeting of the Association which shall be held within 90 days after the date of the casualty, or if by such date the insurance loss has not been finally adjusted, then within 30 days after such final adjustment.

#### 5.7 Covenants for Assessments.

(a) Creation of the Lien and Personal Obligations of Assessments. Declarant covenants and each Owner of any Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (i) regular annual assessments or charges; and (ii) special assessments or charges for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as may be hereinafter provided. The regular annual assessments and special assessments together with such interest thereon and costs of collection therefor as may be hereinafter provided, shall be a charge and continuing lien on the Lot and Home thereon against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as

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may be hereinafter provided, shall also be the personal obligation of the Owner of such Lot at the time when the assessment first became due and payable. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment with interest and costs of collection as hereinafter provided. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of Common Properties or abandonment of his Lot and Home.

(b) Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot by Declarant. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. Declarant shall pay the annual assessment for all Lots owned by Declarant. The annual assessment for the calendar year 1985 shall not exceed One Hundred Twenty and No/100 Dollars (\$120.00) per Lot.

(c) Purpose of Regular Annual Assessment. The regular annual assessments shall be levied by the Board of Directors of the Association, shall be payable monthly and shall be used exclusively for the improvement, maintenance, repair and enhancement of the Common Properties, to provide the required services as set forth in Section 6.2, herein and to provide so many of the discretionary services set forth in Section 6.3 herein, as the Board of Directors may determine.

(d) Special Assessments. In addition to the annual regular assessments authorized by Section 5.7(c) hereunder, the Board of Directors of the Association may levy special assessments against Lots for the following purposes to the extent any regular annual assessment is insufficient:

(i) Repair or replacement of any paved areas located on the Common Properties;

(ii) Repair, replacement and maintenance of the walls and landscaping on the Common Properties;

(iii) To provide for the necessary facilities and equipment to offer the services authorized herein;



(iv) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein; and

(v) To resolve any emergency which threatens life or property.

Before any special assessment is levied by the Association, it must receive the assent of a simple majority of the votes cast at a duly held meeting of the Association; provided, however, that the consent of the Declarant shall be required if Declarant owns at least one (1) Lot in Old Saybrook. In mailing out the notice of such meeting, the Association shall include in such notice, one statement from those Directors favoring the special assessment and one statement from the Directors opposing the special assessment (if any), containing the reasons for those Directors' support and opposition for the assessment. Neither statement shall exceed five (5) pages in length.

In the event any Owner shall fail to fulfill all of its obligations under Sections 5.7 or 7.1 hereunder, and the Association shall, with the approval of a two-thirds (2/3) majority of the Board of Directors, fulfill any of such obligations for such Owner, the Association shall be entitled to specially assess such Owner, without the requirement of a vote, for all costs incurred by the Association in performing such service, including, without limitation, costs of collection, attorney's fees and interest at the rate of the lesser of (i) fifteen percent (15%) per annum or (ii) the highest rate permitted by law.

(e) Reserve Funds. The Association may establish reserve funds from its regular annual assessments to be held in reserve in an interest drawing account or investments of a reserve for (i) major rehabilitation, major repairs, or major maintenance; and (ii) for emergency and other repairs required as a result of fire, storm, flood, wind, natural disaster or other casualty loss.

(f) Certificate of Payment. The Association shall upon demand at any time, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such

certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid.

(g) Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association. If the regular annual assessment or any special assessment is not paid by an Owner on or before its past due date, then such assessment shall become delinquent, shall bear interest from the past due date until paid at the rate of the lesser of (i) fifteen percent (15%) per annum; or (ii) the highest rate permitted by law, and shall automatically and immediately (together with interest thereon as provided herein and costs of collection thereof, including, without limitation, attorney's fees) become a charge and continuing lien on the Lot and Home thereon, against which each such assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, Tenants, successors and assigns.

If the assessment is not paid within thirty (30) days after the past due date, the Association may, at its election, bring an action to foreclose its lien on the property or bring an action at law against the Owner personally. If a delinquent assessment is put in the hands of an attorney-at-law for collection, there shall be added to the amount of such assessment all costs of collection, including, without limitation, reasonable attorneys' fees.

(h) Subordination of the Lien to Deeds to Secure Debt. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or deed to secure debt now or hereafter placed upon the Lot and Home which, at the time of such lien of the assessments, and, except for such lien, would constitute a first lien on the Lot and Home. Sums collected by foreclosure of such mortgage or deed to secure debt shall be applied first to the indebtedness secured thereby and all costs of collection, and second to past due assessments, interest thereon and costs of collection.

(i) Annual Statements. The president, treasurer or such other officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such

fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association; provided, however, that this requirement shall be construed to apply only to creditors of more than Two Hundred Fifty and No/100 Dollars (\$250.00). Such officer shall furnish to each Member of the Association who may make request therefor in writing, a copy of such statement within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail.

(j) Annual Budget. The Board of Directors shall prepare and make available to all Members at least sixty (60) days prior to the first day of each fiscal year, a budget outlining anticipated receipts and expenses for the upcoming fiscal year. The financial books of the Association shall be available for inspection by all Members at all reasonable times.

(k) Uniform Assessments. All assessments made under this Declaration shall be equal as between Lots.

#### 5.8 Easement for Encroachment.

If any portion of a Home now encroaches upon any other Home or Lot as a result of the construction of the buildings, or if any such encroachment shall occur hereafter as a result of settling or shifting of the buildings, there shall exist a valid easement for these encroachments and for the maintenance of same so long as the buildings stand.

#### 5.9 Term of Covenants.

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of twenty (20) years from the date this Declaration is recorded. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited and this Declaration shall be automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty (20) year period or during the last year of any subsequent ten (10) year renewal period, a simple majority of the votes cast at a duly held meeting of the Association vote in favor of

terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the president and secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Office of the Clerk of the Superior Court of DeKalb County, Georgia, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

#### 5.10 Enforcement of Covenants.

In the event of a violation or breach of any of the restrictions or other obligations contained herein by any Owner or agent of such Owner, the Owners of Lots in Old Saybrook, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, Declarant and/or the Association shall have the right, whenever there shall have been built or put in place on any Lot in Old Saybrook any structure or landscaping in violation of these restrictions, to enter upon such Lot where such violation exists and summarily abate or remove the same at the expense of the Owner if, after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry and abatement or removal shall not be deemed to be a trespass. The failure to enforce any rights, reservations, restrictions, or conditions contained in this Declaration, regardless of how long such failure shall continue, shall not constitute a waiver of or a bar to such right to enforce.

#### 5.11 Severability.

Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid,



illegal or unenforceable for any reason by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no event affect the other provisions hereof, which are hereby declared to be severable and which shall remain in full force and effect.

## ARTICLE VI

### FUNCTIONS OF ASSOCIATION

#### 6.1 Ownership and Maintenance of Common Properties.

The Association shall be authorized to own and maintain the Common Properties. The Association shall accept all properties designated as "Common Properties" by Declarant and deeded to the Association. The Association shall pay any ad valorem taxes on the Common Properties. Each Owner shall be responsible for the payment of all ad valorem taxes on his Lot.

#### 6.2 Required Services.

The Association shall be required to provide the following services:

(a) To repair, replace and maintain the Common Properties and all improvements located thereon.

(b) To take any and all actions necessary to enforce all covenants and restrictions affecting Old Saybrook and to perform all of the functions and duties delegated to the Association in any covenants or restrictions applicable to Old Saybrook.

(c) To provide administrative services, including, but not limited to, legal, accounting and financial, and communication services informing Members of activities and giving required notices incident to carrying out the functions of the Association.

(d) To review and approve or disapprove plans and specifications for work to any Home or landscaping, all as provided for in Article V hereof.

(e) To purchase liability insurance for the Association in such amounts as shall be determined by the Board of Directors to be sufficient for the protection of the Association against claims for personal injury or damage to the property, including,

without limitation, the Common Properties, and any other risks which the Board of Directors determine should be covered, including, without limitation, insurance for the officers and directors in connection with their relation to the Association.

(f) To enforce the obligation of each Owner to maintain and keep in good repair the exterior of such Owner's Home(s) and such Owner's Lot(s).

(g) To maintain the easement areas for underground Utilities in the Common Areas and to assure that all such easement areas in the Common Areas and on Lots remain clear of all types of temporary or permanent obstructions. Any and all such obstructions shall be removed at the expense of the Association, at the request of the company providing the respective Utility.

(h) To maintain, repair and replace any retaining walls now existing or hereafter constructed by Declarant or the Association on the Property.

#### 6.3 Discretionary Services.

The Association shall be authorized, but not required, to provide the following services:

(a) Provide police protection and security to Old Saybrook, including, but not limited to, the employment of police and security guards.

(b) Provide the services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this Declaration.

(c) Provide garbage and trash collection to each Home within Old Saybrook.

(d) Purchase hazard insurance covering the improvements located on the Common Properties and any items of personal property which are part of the Common Properties.

#### 6.4 Obligation of the Association.

The Association shall be obligated to carry out those services specified in Section 6.2 of this Article, but shall not be obligated to carry out or offer any of the functions and services specified in Section 6.3 of this Article. The functions and services listed in Section 6.3 to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking



into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or to provide may be added to or reduced or may be changed in nature (i.e., from required to discretionary or vice versa) at any time upon the affirmative vote of a simple majority of the voting rights of those voting at a duly held meeting of Members together with the consent of Declarant, so long as Declarant owns a Lot primarily for the purpose of sale.

#### 6.5 Pledge of Revenues.

The Board of Directors of the Association shall have the power and authority to borrow funds for the benefit of the Association in performing its authorized functions and to pledge the revenues of the Association as security for such loans.

#### 6.6 No Trespass.

Entrance upon any Lot by the Association or its agents or assigns pursuant to the provisions of this Declaration shall be deemed to not be a trespass.

### ARTICLE VII

#### MAINTENANCE

#### 7.1 Owner's Responsibility.

Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of a Lot, together with all portions of the Home, and other improvements thereon and shall be the responsibility of the Owner of such Lot. The responsibility of each Owner shall include the maintenance, repair, and replacement of all fixtures, equipment and appliances (including, without limitation, the heating and air-conditioning system for his Home) and all chutes, flues, ducts, conduits, wires, pipes, plumbing or other apparatus which are deemed to be a part of his Lot or Home. The responsibility of the Owner shall also include the maintenance, repair and replacement of all glass, lights and light fixtures (exterior and interior), awnings, window boxes, window screens, and all screens or glass enclosed porches, balconies, or decks which are a part of the Lot. Each Owner shall maintain and keep the exterior and grounds of his Home in good, neat, clean and sanitary condition and such responsibility shall include the maintenance and painting of the exterior and the maintenance and care of all lawns, trees, shrubs, hedges, grass, and other landscaping contained within

such Lots, including, without limitation, proper and regular mowing, fertilization, edging, pruning, sweeping and raking. Each Owner shall also be obligated to pay for the costs incurred by the Association, with the approval of two-thirds (2/3) majority of the Board of Directors, for repairing, replacing or cleaning any item or fulfilling any other obligation which is the responsibility of the Owner, but which responsibility such Owner fails or refuses to discharge, including, without limitation, maintenance of the landscaping of the Lot and the Association may specially assess the Owner for such amount.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

#### 8.1 Amendments.

Declarant specifically reserves the right to amend this Declaration, or any portion hereof, on its own motion without the consent of any other Owners, for so long as Declarant owns at least one (1) Lot in Old Saybrook. In all other instances, the procedure for amendment shall be as follows: All proposed amendments shall be submitted to a vote of the Members at a duly called meeting of the Association and any such proposed amendment shall be deemed approved if two-thirds (2/3) of the votes cast at such meeting vote in favor of such proposed amendment. Notice shall be given each member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the president and secretary of the Association shall execute an addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be prior to the date on which such addendum is recorded in the Office of the Clerk of the Superior Court of DeKalb County, Georgia, the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Members, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of the amendment, and the total number of votes cast against the amendment. Such addendum shall be recorded in the Office of the Clerk of the Superior Court of DeKalb County, Georgia. Notwithstanding any provision herein to the contrary, this Declaration shall not be amended without the express written consent of Declarant until Declarant's rights under Section 3.6 hereof have expired.

## 8.2 Notices.

Any notice required to be sent to any Member under the provisions of the Declaration shall be deemed to have been properly sent and notice thereby given when personally delivered or when mailed, certified or registered, return receipt requested, with the proper postage affixed, to the address appearing on the Association's Membership list. Notice to one or two or more co-owners or co-tenants of a Lot shall constitute notice to all co-owners or co-tenants. It shall be the obligation of every Member to give thirty (30) days prior written notice to the secretary of the Association of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is mailed, shall be deemed to have been given notice if notice was given to his predecessor in title.

## 8.3 Interpretation.

The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration, to construe and interpret its provisions, and such determination, construction or interpretation, shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of this Declaration.

## 8.4 Authorized Action.

All actions which the Association is allowed or required to take under this Declaration and all approvals or disapprovals which the Association is authorized to make shall be authorized actions of the Association only if approved by the majority of members of the Board of Directors of the Association present at a duly held meeting of such Board of Directors, unless the terms of this Declaration expressly provide otherwise.

## 8.5 Limited Liability.

In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Association contemplated under this Declaration, neither Declarant nor the Association, nor any director or officer thereof, shall be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to (i) the subject matter of any such reviews, acceptances,

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inspections, permissions, consents or required approvals, whether given, granted or withheld, or (ii) any act or omission of Declarant.

8.6 Termination of Association.

In the event that this Declaration is declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Section 9.1 hereof, all of the Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Superior Court of DeKalb County, Georgia, which Trustee shall own and operate said Common Properties for the use and benefit of Owners within Old Saybrook as set forth below:

(a) Each Lot shall be subject to an annual assessment which shall be paid by the Owner of such Lot to the Trustee. The amount of such annual assessment and its due date shall be determined solely by the Trustee.

(b) Any past due annual assessment, together with interest thereon at the rate of fifteen percent (15%) per annum from the due date and all costs of collection including, without limitation, reasonable attorney's fees, shall be a personal obligation of the Owner at the time the annual assessments become past due, and it shall also constitute and become a charge and continuing lien on the Lot against which the assessment has been made in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns.

(c) The Trustee shall be required to use the funds collected as annual assessments for the maintenance, repair and upkeep of the Common Properties. The Trustee may charge as part of the cost of such functions, the reasonable value of its services in carrying out the duties herein provided. The Trustee shall not have the obligation to provide for maintenance, repair and upkeep of the Common Properties once the funds provided by the annual assessments have been exhausted.

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

THE KEY COMPANY,  
a Georgia corporation

Signed, sealed and delivered  
in the presence of:

George P. Jones  
Witness

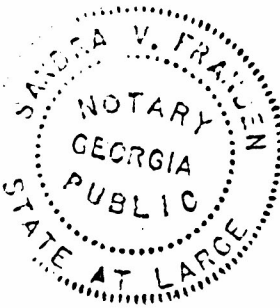
By: John L. Sauers  
John L. Sauers, President

Dandra V. Franzen  
Notary Public

[CORPORATE SEAL]

[Affix Notarial Seal  
and Indicate Expiration  
Date of Commission]

Notary Public, Georgia State at Large  
My Commission Expires Aug. 15, 1987



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EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 92 of the 18th District, Dekalb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin found at the intersection of the north line of Land Lot 92 with the southwestern right-of-way line of Central Drive (an 80-foot right-of-way); thence running south 75 degrees 54 minutes 13 seconds east 104.65 feet to a concrete monument; thence running due south 942.90 feet to an iron pin set; thence running north 22 degrees 42 minutes 20 seconds west 122.80 feet to an iron pin found; thence running north 38 degrees 55 minutes 53 seconds west 81.80 feet to an iron pin found; thence running north 02 degrees 04 minutes 56 seconds east 116.50 feet to a concrete monument; thence running south 69 degrees 04 minutes 56 seconds west 21.0 feet to the center line of a creek; thence running along the center line of said creek in a northwesterly, northerly, northeasterly and northwesterly direction and following the meanderings of said center line a distance of 811 feet, more or less, to a point on the northern line of Land Lot 92; thence running along the northern line of Land Lot 92 south 88 degrees 33 minutes 23 seconds east 279.30 feet to the POINT OF BEGINNING.

All as is more particularly described and delineated in a survey for The Key Company by Melvin H. Pair, Registered Land Surveyor, dated January 16, 1984, revised March 28, 1984. Reference is hereby made to said survey for a more complete description.