

SECOND RESTATEMENT OF DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR GLEN EVES

Whereas there appears of record that certain Declaration of Covenants, Conditions and Restrictions for Glen Eves, dated March 7, 1984, recorded in Deed Book 8876, page 234, Fulton County Records which provided for a mandatory Homeowner's Association and mandatory assessments in favor of the Association, and

Whereas the Declaration was amended and restated in its entirety by that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Glen Eves, dated March 20, 1987, recorded in Deed Book 10730, page 9, Fulton County Records, which eliminated the provisions providing for a Homeowner's Association, and

Whereas the Lot Owners at Glen Eves Subdivision have formed a voluntary Homeowner's Association for the purpose of preservation of the values and desirability and attractiveness of the real property of this development and wish to provide authority for it to act and now desire that the Declaration of Covenants, Conditions and Restrictions for Glen Eves be further amended by enacting this Second Restatement of Declaration of Covenants, Conditions and Restrictions for Glen Eves and providing that it shall supersede in its entirety the Amended and Restated Declaration recorded in Deed Book 10730, page 9, Fulton County Records, and

Whereas the Lot Owners at Glen Eves Subdivision in Fulton County, Georgia who have executed this Declaration are the owners of that certain property described in the signature pages attached hereto and as listed on Exhibit "A" attached hereto and incorporated herein by reference and desire to subject their Lot and the Property to the terms and provisions of this Second Restatement of Declaration of Protective Covenants and Membership for Glen Eves Subdivision ("Declaration") and do hereby subject their Lots and the Property to the continuing Membership in the Glen Eves Homeowners Association, Inc. ("Association") and authorize and direct the Board of Directors to subject the Common Property, as described in Exhibit "B" as attached hereto and incorporated herein by this reference to the terms and provisions of this Declaration; and

Whereas the undersigned officers of the Association desire to approve this Declaration and membership in the Association on behalf of the Association; and

Whereas each Owner who has executed this Declaration does hereby consent, and does hereby bind himself, herself or themselves, and their respective successors, successors-in-title, heirs and assigns, and does hereby agree that such Owner's Lot shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in this Declaration, as a Member of the Association, all of which shall run with the title to such Owner's Lot, their respective heirs, legal representatives, successors, successors-in-title, and assigns. Each owner understands and acknowledges that by submitting Owner's Lot to Membership in the Association, each Owner is hereby subjecting Owner's Lot to mandatory assessments in favor of the Association, with lien rights afforded therefor, in

accordance with the Declaration. Each Owner does further consent to the submission of the Common Property (As defined in the Declaration) to this Declaration; and

Whereas these preambles are incorporated into the Declaration;

Now, therefore, the undersigned officers of the Association, and all Lot Owners who have executed this Declaration, hereby declare that all of the Property described herein and in Exhibit "A" and Exhibit "B" shall be held, sold and conveyed subject to this Declaration, which is for the purpose of enhancing and protecting the desirability and attractiveness of, and which shall run with, the Property, and be binding upon all parties having any right, title or interest in the Property, his heirs, grantees, distributees, successors, successors-in-title and assigns and to the benefit of the Association.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any supplemental declaration hereto (unless the context shall prohibit) shall have the following meanings:

1. 'Association' shall mean and refer to GLEN EVES Homeowners Association, Inc., a nonprofit corporation to be organized and existing under the laws of the State of Georgia, its successors and assigns.

2. 'Board of Directors' or 'Board' means the appointed or duly elected body of the Association, vested with the authority to manage the affairs of the Association.

3. 'Building' shall mean the building, buildings, or improvements to be located on the Property and contained within the Lots.

4. 'Declaration' shall mean and refer to this Second Restatement of Declaration of Covenants, Conditions and Restrictions for Glen Eves applicable to the property which is recorded in the Real Estate Records of Fulton County, Georgia, as amended from time to time.

5. 'Site' or 'Lot' shall mean and refer to any plot of land to be used for residential purposes and so designated on a subdivision plat of this Property, which shall be public record in the Register's Office for Fulton County, Georgia.

6. 'Owner' shall mean and refer to the record owner, whether one or more persons or entities, of the fee interest in any Site which is a part of this development, excluding, however, those parties having such interest merely as a security interest for the performance of an obligation.

7. 'Property' shall mean and refer to any and all of that certain real property more particularly described in Exhibit "A" and Exhibit "B" attached commonly known as GLEN EVES.

8. 'Member' shall mean and refer to any person or persons who shall be an owner and, as such, shall be a member of the Association.

9. 'Person' shall mean and refer to a natural person as well as a corporation, partnership, firm, association, trust or other legal entity. The use of the masculine

pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

10. 'GLEN EVES' shall mean and refer to that certain residential community known as GLEN EVES, as described in Exhibit "A" and Exhibit "B" attached, as shown on the subdivision plat referred to hereinabove.

ARTICLE II

PROPERTIES SUBJECT TO THIS DECLARATION

The Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Fulton County, Georgia and is more particularly described and shown on the residential plan of GLEN EVES consisting of lot numbers 1 thru 60 shown thereon. Only those lots and the Common Areas are made subject to this Declaration.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS, BOARD OF DIRECTORS

Section One. Membership. 1. Every person or entity who is the Owner of record of a fee interest in any lot within the Properties shall be a member of the Association, subject to and bound by the Association's Articles of Incorporation, By-Laws, rules and regulations. The foregoing is not intended to include persons or entities who hold an interest in any lot merely as security for the performance of an obligation. Ownership of such lot shall be the sole qualification for membership. When any lot is owned of record in tenancy by the entireties or tenancy in common or by some other legal entity, membership as to such lot shall be joint and the right of such membership (including the voting power arising therefrom) shall be exercised only as stipulated in Section Two herein below.

2. During any period in which a member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights and any other facilities which the Association may provide may be suspended by the Board of Directors until such assessment is paid. In the event of violation by a member of any rules or regulations established by the Board of Directors, such member's voting and use rights may be suspended by the Board after a hearing at which the general requirements of due process requirements shall be observed. Such hearing shall only be held by the Board (or a committee thereof) after giving member not less than ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of any violation shall be made by a majority vote of the Board or the committee thereof.

3. No membership or initiation fee shall be charged, nor shall Members be required to pay at any time any amount to carry on the business of the Association except to apply when due the charges, assessments and special assessments levied upon each

Member's Lot as specified in the Declaration, the By-Laws, or the Directors of the Association may from time to time, hereafter adopt.

Section Two. Voting and Voting Rights.

1. The voting rights of the membership shall be appurtenant to the ownership of the lot.

2. Any member who is delinquent in the payment of any charges duly levied by the Association against a Lot owned by such Member shall not be entitled to vote until all such charges, together such reasonable penalties as the Board of Directors of the Association may impose, have been paid

3. Members shall vote in person *or by proxy* executed in writing by the Member. No proxy shall be valid after eleven (11) months from the date of its execution or upon conveyance by the Member of his Lot. A corporation Member's vote shall be cast by the President of the Member corporation or by any other officer or proxy appointed by the President or designated by the Board of Directors of such corporation.

4. Voting on all matters except the election of directors shall be by voice vote or by show of hands unless a majority of the Members present at the meeting shall, prior to voting on any matter, demand a ballot vote on that particular matter. Where directors or officers are to be elected by the Members, the solicitation of proxies for such elections may be conducted by mail.

Section Three. Board of Directors.

1. Management of the business of the Association shall be conducted by a Board of Directors, consisting of a President, Secretary and Treasurer. The Directors shall be elected annually by a majority vote of the Association. The Association will have an annual meeting for election of Directors during the month of September. A proposed budget and assessment amount will be presented for ratification at the annual meeting. Annual assessments will be due and payable on January 1st of each calendar year.

2. The Board of Directors shall maintain a list of members entitled to notice of and to vote at any meeting of members or to make a determination of membership for any other purpose, including any determination as to the status of that member's payment of assessments. The Directors shall be authorized, on behalf of the Association to provide written evidence of the status of assessment payments and to file and release liens.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section One. Monthly or Annual Assessment for Maintenance Fund.

Every Owner covenants, and each subsequent Owner of any such Lot, by acceptance of a deed therefor, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay to The Association monthly or annual assessments or charges for the creation and continuation of a maintenance fund in the amount hereinafter set forth, which may be levied by the Board of Directors of the Association, for the payments of, without limitation, the expenses of the administration and operation of the Common Improvements and of any other expenses incurred in conformance with this Declaration or as determined by the Association. All such assessments, together with late charges, interest, and costs of collection, including, without limitation, reasonable attorneys fees actually incurred shall from the time such sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the lot against which such assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required.

Section Two. Subordination of Liens to Mortgages.

The lien of all assessments authorized herein is hereby made subordinate to the lien of any first priority Deed to Secure Debt provided that the assessment charges with respect to such lot were paid and current prior to the date said Deed to Secure Debt was filed for record. Such subordination shall not relieve an Owner of the personal obligation to pay all assessments coming due during such period of ownership and shall not relieve such property from the lien provided for herein except to the extent a subordinated lien is extinguished by foreclosure.

Section Three. Remedies of the Association.

Any assessments or installments thereof which are not paid when due shall be delinquent. The Association may file a notice of its claim of lien in the Real Estate Records of Fulton County, but no such claim of lien shall be required to establish or perfect such lien. The Association shall also have the power to suspend membership rights to the delinquent owner.

ARTICLE V

ARCHITECTURAL, MAINTENANCE AND USE RESTRICTIONS

The following architectural, maintenance and use restrictions shall apply to each and every lot now or hereafter subjected to this Declaration.

Section One. Approval of Plans

No external construction, reconstruction, remodeling, alteration or addition to any structure, building, fence, wall, driveway, path or other external improvement of any nature shall be constructed without obtaining the prior written approval of the Board of Directors as to the location of the same as to its plans and specifications. The Board of

Directors shall be the sole arbiter of the same and may withhold approval for any reason, including purely aesthetic considerations. Upon approval being given, construction shall commence within ninety (90) days, and shall be prosecuted to completion promptly and in strict compliance with the approved plans, otherwise the approval shall be void. The failure of the Board of Directors to act upon any set of plans and specification is within thirty (30) days from the date of the submission of the same shall constitute the approval of such plans.

Section Two. Improvement, Setback and Use Restrictions.

The following architectural restrictions shall apply to all construction of Buildings, and exterior decorating thereof, and shall guide the decisions and be taken into account by the Board, in connection with the authority and rights granted to it or them herein:

1. All exterior colors, materials and textures shall be subject to review and approval by the Board of Directors to insure compatibility and consistency within the Property

2. Minimum setback requirements have been established but are not intended to engender uniformity. They are intended to avoid overcrowding and monotony. It is therefore intended that setbacks may be staggered, where appropriate, so as to preserve trees and to assure vistas of open areas. No building or structure, or any part thereof, shall be located on any lot nearer to the front line and rear yard setback than the minimum setback lines shown on the recorded plan or as specified in Restrictions and more specifically being a 20' front yard minimum setback and a 25' rear yard minimum setback.

3. No wall shall be built without the prior written approval of the Board of Directors. No retaining wall shall extend to a height greater than 3 feet above the earth being retained and no wall or fence enclosing a patio or courtyard shall extend to a height greater than 6 feet from ground level. All walls and fences must be of brick, stone, stucco, or other material approved by the Board of Directors and of a style and design approved by the Board of Directors. No wall, fence or permanent structure shall be permitted within the rear yard setback area contiguous to Woodfield Subdivision.

4. Swimming pools must be located to the rear of the main dwelling and shall be no nearer than five (5) feet to any lot line.

5. The Board of Directors reserves the right to establish a uniform mail box and mail box location.

6. Incinerators for garbage, trash or other debris shall not be used, nor permitted to be erected or placed on any lot. All equipment, coolers, woodpiles, garbage cans, refuse or storage piles on any lot whether temporary or permanent, shall be walled in to conceal the same from the view of neighboring lots, roads, streets and screening walls and enclosures must be approved by the Board of Directors.

7. No lumber, brick, stone, block, concrete or other building materials, nor any other thing used for building purposes shall be stored on any lot except for the purpose of construction on such lot, and then only for such length of time as is reasonably necessary for the construction of the improvements then in progress.

8. No radio or television transmission or reception towers or antennae shall be erected on the Property other than "customary" antennae which do not exceed ten (10) feet in height above the roof-ridge line of any house. Any exceptions must be reviewed and approved in writing in advance by the Board of Directors. In no event shall free-standing transmission or receiving towers be permitted.

9. No owner shall excavate or extract earth from any of the lots subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which will materially affect the surface grade of surrounding lot except to the extent that fill may be required on certain lots as shown on the recorded plan. All fill shall be subject to the approval of the Board of Directors, as to the nature of the fill employed and as to the manner and methods of installation.

10. Outside clotheslines and clothes hanging devices shall not be permitted and no clothes or rugs, etc., will be cleaned, aired or dried outside, except as they are out of sight of adjoining property areas.

11. No garage, outbuilding, trailer or other like construction shall be used for residential purposes, either temporarily or permanently.

12. No exposed concrete block will be permitted above ground level in the construction of any building, wall or fences with the exception of retaining walls.

13. All improvements shall be completed within one (1) year from the commencement of construction.

14. No livestock, poultry, fowl, swine or other nuisances shall be permitted or kept upon the property.

15. All front yard areas shall be sodded.

Section Three. Maintenance.

All lots, together with the exterior of all improvements located thereon, shall be maintained in a neat and attractive condition by their respective owners. Such maintenances shall include, but not be limited to, building, repairing, replacing and cleaning the roofs, gutters, downspouts, building surfaces, walkways, driveways, and other exterior improvements

Section Four. Use of Premises.

Each owner shall refrain from any act or use of his site which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No noxious, offensive or illegal activity shall be carried on upon any site.

Section Five. Pets.

Household pets may be kept on any lot by the owner thereof in reasonable numbers for the sole pleasure and purpose of the occupants, but not for any commercial use or purposes.

Section Six. Governmental Restrictions.

Each owner shall observe all governmental building codes, health regulations, zoning restrictions and other regulations applicable to his lot. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provisions of this Declaration, the more restrictive provision shall apply.

Section Seven. Alterations, Additions or Improvements.

No alterations of any building, or any addition or improvements thereto, including the erection of any fences or other structures of any type on any Lot shall be made by any Owner without the prior written approval of the Board of Directors. The Board of Directors shall take into consideration the maintenance of the architectural and aesthetic integrity of the Property in determining whether such approval shall be given. Any Owner, without prior written approval of the Board, may make within any building or structure on any Lot alterations, additions or improvements which do not affect the exterior appearance, design or structure of any such building or structure. Owners shall be responsible for any damage to other Lots, the Property or any part thereof resulting from such alterations, additions or improvements.

ARTICLE VI
EASEMENTS

Section One. General. Each Lot now or hereafter subjected to this Declaration shall be subject to all easements shown or set forth on the recorded plat(s) of survey upon which such Lot is shown. No structure(s) of any type shall be erected or placed upon any part of a Lot which will interfere with the rights and use of any and all easements shown on said recorded plat.

ARTICLE VII
GENERAL PROVISIONS

Section One. Duration.

The foregoing restrictions shall be construed to be covenants running with the land and shall be binding and effective until December 31, 2027, at which time they shall be automatically extended for successive periods of ten (10) years each unless it is agreed by the vote of a majority in interest of the then Owners of the above-described Property to change, amend or revoke the restrictions in whole or in part. Every purchaser or subsequent grantee of any interest in any Property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the covenants and restrictions of this Declaration. may be extended as provided in this Article.

Section Two. Amendment.

The covenants and restrictions of this Declaration may be amended by an agreement signed by at least two thirds (2/3) of the owners whose Lots are then subject hereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Every purchaser or subsequent grantee of any interest in any property now or hereafter made subject to this Declaration by acceptance of a deed or other conveyance therefor, thereby agrees that the covenants and restrictions of this Declaration may be amended as provided herein.

Section Three. Enforcement.

If any person, firm or corporation shall violate or attempt to violate any of these restrictions, it shall be lawful for the Association through its Board of Directors, and any other person, firm or corporation owning any property within GLEN EVES to bring action against the violating party at law or in equity for any claim which these restrictions may create in such other owner or interested party either to prevent said person, firm or corporation from so doing such acts or to recover damages for such violation. The provisions of this Section are in addition to and separate from the rights of the Association to collect Association fees. Any failure by the Association or any property Owner to enforce any of said covenants and restrictions or other provisions shall in no event be deemed a waiver of the right to do so thereafter. Invalidation of any one or more of these restrictions by judgment or Court Order shall neither affect any of the other provisions not expressly held to be void nor the provisions so voided in circumstances or application other than those expressly invalidated, and all such remaining provisions shall remain in full force and effect together with the provisions ruled upon as they apply to circumstances other than those expressly invalidated.

Section Four. Headings and Binding Effect.

Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer. The covenants, agreements and rights set forth herein shall be binding upon and insure to the benefit of the respective heirs, executors, successors and assigns of all owners of lots within the subdivision.

IN WITNESS WHEREOF, the Lot Owners whose names appear on the attached Exhibit "A" have evidenced their consent to this SECOND RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GLEN EVES by signing next to their names and lot numbers.

Exhibit "A"

We the undersigned are the owners of the below listed lot in Glen Eves Subdivision. Each Owner who has executed this Declaration does hereby consent, and does hereby bind himself, herself or themselves, and their respective successors, successors-in-title, heirs and assigns, and does hereby agree that such Owner's Lot shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in this Declaration, as a Member of the Association, all of which shall run with the title to such Owner's Lot, their respective heirs, legal representatives, successors, successors-in-title, and assigns. Each owner understands and acknowledges that by submitting Owner's Lot to Membership in the Association, each Owner is hereby subjecting Owner's Lot to mandatory assessments in favor of the Association, with lien rights afforded therefore, in accordance with the Declaration. Each Owner does further consent to the submission of the Common Property (As defined in the Declaration) to this Declaration.

Lot 27

Unofficial Witness

_____(Seal)
«Grantor»
Print Name:_____
Grantor

Notary Public

(Seal)

_____(Seal)
«Grantor»
Print Name:_____
Grantor

Exhibit "B"

All that tract or parcel of land lying and being in Land Lot 675 of the 1st District, 2nd Section, of Fulton County, Georgia, being Lots 1-60 inclusive of Glen Eves Subdivision, as per plat recorded in Plat Book 150, page 116, Fulton County Records, which plat is hereby referred to and made a part of this description, together with all common areas as shown on said plat.