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DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS

FOR MAGNOLIA PLACE

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**DECLARATION OF COVENANTS,  
RESTRICTIONS, AND EASEMENTS  
FOR MAGNOLIA PLACE**

**THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR MAGNOLIA PLACE** (hereinafter referred to as the "Declaration") is made as of the 29th day of April, 1996, by JACK BRUNSON, (hereinafter referred to as "Declarant").

**1. BACKGROUND STATEMENT**

Declarant is or was the Owner of certain real property in Gwinnett County, Georgia, which is more particularly described on Exhibit "A" attached hereto and made a part hereof.

Declarant intends to develop on lands, including the real property above, a development to be known as MAGNOLIA PLACE, (hereinafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the property now or hereafter made subject to this Declaration, by the recording of this Declaration and amendments thereto. Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration and certain other properties described in this Declaration.

Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

The Declarant hereby declares that all of the real property described above shall be held, sold, and conveyed subject to this Declaration of Covenants, Restrictions, and Easements, which is for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property (as hereinafter defined). The covenants, restrictions, and easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, devisees, successors and assigns and to the benefit of the Association.

**ARTICLE I**

**DEFINITIONS**

The following words, when used in this Declaration of Covenants, Restrictions, and Easements, shall have the following meanings:

**1.01 Association:** "Association" means MAGNOLIA PLACE HOMEOWNERS ASSOCIATION,

INC. (a non-profit, non-stock, membership corporation, organized under the Georgia Non-Profit Corporation Code) its successors and assigns.

**1.02 Board:** "Board" means the Board of Directors of the Association.

**1.03 By-Laws:** "By-Laws" means the By-Laws of the Association.

**1.04 Commencement Date:** "Commencement Date" means May 1, 1996.

**1.05 Common Property:** "Common Property" means all real and personal property owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

**1.06 Declarant:** "Declarant" means **JACK BRUNSON**, his successors-in-title and assigns, provided any such successors-in-title or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which is intended to become part of the Development, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the Grantor of such conveyance, which Grantor shall be the "Declarant" hereunder at the time of such conveyance, provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A", attached hereto, and which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

**1.07 Development-Wide Standard:** "Development-Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing in the Development. Such standard may be more specifically determined by the "Board" and by committees required or permitted to be established pursuant to this Declaration or the By-Laws. Such determination, however, must be consistent with the Development-Wide Standard originally established by the Declarant.

**1.08 Lot:** "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Gwinnett County, covering any portion of the Property, as such boundaries may be modified in accordance with Section 6.03, provided, however, that no portion of the Common Property shall ever be a lot except as provided in Section 2.05.

**1.09 Member:** "Member" means any member of the Association.

**1.10 Membership:** "Membership" means the collective total of all Members of the Association.

**1.11 Occupant:** "Occupant" means any person occupying all or any portion of a

Residence located within the Development for any period of time, regardless of whether such person is a tenant or the Owner of such property.

**1.12 Owner:** "Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

**1.13 Parcel:** "Parcel" means and refers to separately designated residential areas comprised of various types of housing initially or by annexation made subject to this Declaration. For example, and by way of illustration and not limitation, a condominium development, a townhouse development, an apartment complex, and a single family detached home subdivision may all be designated as separate Parcels. If separate Parcel Status is desired, the Declarant shall designate in an amendment to this Declaration subjecting property to the terms and conditions of this Declaration that such property shall constitute a separate Parcel or Parcels. In the absence of specific designation of separate Parcel status, all property made subject to this Declaration shall be considered a part of the same Parcel. The Board may also grant Parcel status to any area if so requested in writing by the Owners holding at least seventy-five (75%) percent of the total vote entitled to vote thereon in such area.

**1.14 Property:** "Property" means that certain real property hereinabove described, together with such additional real property as may be subjected to the provisions of the Declaration in accordance with the provisions Article X hereof.

**1.15 Residence:** "Residence" means a Structure and the Lot on which it is situated which is intended for independent use and occupancy as a residence for a single family. A Structure and the Lot upon which it is situated shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Lot and Structure located thereon shall have been conveyed to a third party other than the builder thereof. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a certificate of occupancy for the Residence.

**1.16 Restrictions:** "Restrictions" means all covenants, restrictions, easements, changes, liens, and other obligations created or imposed by this Declaration.

**1.17 Structure:** "Structure" means:

(a) Any thing or object the placement of which upon any lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, deck, swimming pool, dock, fence, driveway, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer) or any other

temporary or permanent improvement to such Lot;

(b) Any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(c) Any change in the grade at any point on a Lot of more than (6) inches, whether or not Subsection (b) of this Section 1.17 applies to such change.

## ARTICLE II

### COMMON PROPERTY

#### 2.01 Conveyance of Common Property:

(a) The Declarant may, from time to time, convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners of Residences (such real and personal property is hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration of Covenants, Restrictions, and Easements, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use to include facilities for swimming, tennis and exercise. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this Subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in Subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

(e) Lakes, dams, and retention ponds shall, without limitation, be included in the property that may be conveyed by Declarant and which shall be accepted by the Association. Declarant shall not be required to make any improvements whatsoever to

the property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake or retention pond that may be conveyed.

**2.02 Right of Enjoyment:** Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners, of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03 (f) and 3.05. Provided that rights to use the Common Property arising from non-voting membership rights shall not be altered, amended or otherwise abridged until such rights are voluntarily relinquished by such non-voting member, except for suspension pursuant to Sections 2.03(f) and 3.05(b)(c).

**2.03 Rights of the Association:** The rights and privileges conferred in Section 2.02 hereof shall be subject to the right, and where applicable, the obligation, of the Association acting through the Board to:

(a) Promulgate rules and regulations relating to the use, operation, and maintenance of the Common Property;

(b) Borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including Common Property and revenues from assessments, user fees, and other sources; and provided, however, that, during the period when the Declarant has the right to appoint members of the Board, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without approval by Declarant and a two-thirds (2/3) vote of the Members of the Association;

(c) Grant easements or rights-of-way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency, or to any utility company or cable television system;

(d) Dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members of the Association, cease to be subject to this Declaration or all or

any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

(e) Charge reasonable fees in connection with the admission to and use of facilities or services by Members and Non-members; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

(f) Suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;

(g) Sell, lease or otherwise convey all or any part of its properties and interests therein;

(h) Enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and

(i) Maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads serving the property.

**2.04 Conveyance of Common Property by Declarant to Association:** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all of its Members.

**2.05 Types of Common Property:** At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not be used for any different purpose or purposes without the prior written consent of the Declarant and a two-thirds (2/3) vote of the Members of the Association.

**2.06 Delegation of Use:** Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, his right to use and enjoy the Common Property.

**2.07 Maintenance:** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, the Association shall

maintain grass and other landscaping located along or in dedicated rights-of-way which were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority, and shall maintain all entry features and retention ponds for the Development. The foregoing maintenance shall be performed consistent with the Development-Wide Standard.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and agreements to share costs regarding such property where the Board has determined that this would benefit the Owners.

### ARTICLE III

#### MAGNOLIA PLACE HOMEOWNERS ASSOCIATION

**3.01 Purpose, Powers, and Duties of the Association:** The Association has been formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote, in some way, the common good and general welfare of the people of the Development. To the extent, and only to the extent, necessary to carry out such purpose, and subject to any limitations contained in this Declaration, the Association (a) shall have all of the powers of a corporation organized under the Georgia Non-Profit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers, and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

**3.02 Membership in the Association:** Every Owner shall automatically be a Member of the Association and such membership, shall terminate only as provided in this Declaration of Covenants, Restrictions, and Easements. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.03. There shall also be a non-voting class of membership as set out in Paragraph 3.09.

#### **3.03 Voting Rights:**

(a) Each Owner of a Lot, with the exception of Declarant, shall be a Class A Member and shall be entitled to one (1) Class A vote per Lot owned by such Owner. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.

(b) The Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot owned; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B Membership shall cease and be converted to a Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and



officers of the Association pursuant to Section 3.08 below.

(c) The Development will be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Gwinnett County. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the annexation of additional real property composed of Lots pursuant to Article X of this Declaration, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in Subsection (b) of this Section 3.03; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless such phase is subjected to this Declaration.

**3.04 Board of Directors:** The affairs of the Association shall be managed by a Board of Directors. The number of directors and the method of election of directors shall be as set forth in the By-Laws of the Association.

**3.05 Suspension of Membership:** The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) Shall be subject to the Right of Abatement, as defined in Section 5.12, by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.13 or 8.02 hereof;

(b) Shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or

(c) Shall be in violation of any of the rules and regulations of the Association relating to the use, operation, or maintenance of Common Property.

Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in Subsection (c) of this Section 3.05, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

**3.06 Termination of Membership:** Membership shall cease only when a person ceases to be an Owner.

**3.07 Voting Procedures:** The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the Membership of the Association shall be governed by this Declaration, the Georgia Non-

Profit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, a copy of which is attached hereto as Exhibit "B", as each shall, from time to time, be in force and effect.

### **3.08 Control by Declarant:**

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of the Association, and any officer or officers of the Association until the first of the following events shall occur: (i) the expiration of seven (7) years after the date of the recording of this Declaration; (ii) the date upon which seventy-five (75%) percent of all of the Residences submitted or proposed to be submitted to this Declaration have been conveyed to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by the Declarant.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board and Declarant and shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or behalf of the Association during such period which Declarant has in its possession. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**3.09 Non-voting Membership:** Notwithstanding any of the foregoing, so long as Declarant is the owner of any Lot in the subdivision, Declarant may establish as many non-voting memberships as Declarant deems reasonable for the purpose of permitting the use and access by such non-voting members to the common areas designated for swim, tennis and other recreational purposes. Such non-voting memberships shall be established and maintained as follows:

(a) Declarant or the Board of the Association may sell a non-voting membership to a non-lot owner, the proceeds of which shall be paid to the Association. The initial purchase price for such membership rights shall be equal to the annual assessment set out in Paragraph 4.04, plus a prorated portion of said assessment which would be due for the balance of the calendar year in which said membership is purchased.

(b) Thereafter, non-voting members shall pay an annual assessment as set

out in Paragraphs 4.04 and 4.05. For all purposes except voting, such non-voting members shall have all rights, responsibilities and duties of a voting member and shall be subject to all the provisions, covenants and assessments set out in this Declaration, except as set forth to the contrary. Notwithstanding the foregoing, inasmuch as the Association shall have no lien rights against lots of non-voting members, as set forth in Paragraphs 4.01 (c) and 4.05, the membership of such non-voting members may be terminated upon default, failure to pay, or breach of the rules set forth for the use of the Common areas. Upon such default, the Association will give such non-voting member thirty (30) days' notice and right to cure. Upon failure of such non-voting member's to cure any breach or default of the financial obligations and rules set forth for the use of said Common areas, the Association may terminate such non-voting member's membership. After termination, any such non-voting member may reinstate such membership by paying an additional Membership Fee equal to one-year's assessment in addition to curing the default or breach which was cause for termination.

(c) Declarant may establish and sell such non-voting memberships on behalf of the Association as long as Declarant is a Lot owner in the Subdivision and will notify the Association of all such memberships sold or created within ten (10) days from the date of such sale or creation.

(d) Such non-voting memberships shall extend only to the owners of single-family residences within a five (5) mile radius of the Subdivision and to the immediate family thereof.

(e) Notwithstanding any other provisions for membership, liens or assessments, all membership dues and annual assessments due from non-voting members shall be paid in full within thirty (30) days of receipt of notice of non-payment. Notwithstanding the foregoing, any non-voting member's use of the Common areas after termination shall bring about said non-voting member's liability for the yearly dues or assessment for the entire year whether or not such membership is subsequently terminated. Failure to turn in keys to Common areas or other exercise of any incident of ownership shall be deemed a use of the Common areas.

(f) Non-voting memberships may be sold or re-transferred by such non-voting members provided that the purchaser or transferee is the owner of a single-family residence within the geographic area set forth above.

(g) The creation of non-voting memberships shall create only the right to use the Common areas subject to payment of assessments, fees and financial obligations of other Lot owners using said facilities. No non-voting member shall be subject to any architectural control nor any restrictions as to the use of Lots not located within the subdivisions subject to these assessments by virtue of purchasing a membership herein.

**ARTICLE IV****ASSESSMENTS****4.01 Covenants for Assessments and Creation of Lien and Personal Obligation:**

Each Owner of a Residence, jointly and severally, for himself, his heirs, devisees, legal representatives, successors and assigns, by acceptance of a deed for a Residence, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) To pay to the Association the annual assessments, any Parcel assessments, and any specific assessments which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him.

(b) To pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him.

(c) That there is hereby created a continuing charge and lien upon all Residences owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees.

(d) That such continuing charge and lien on such Residence binds such Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgement or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) any first mortgage on Lot or Lots which has been recorded prior to the date of such continuing charge and lien (a "Prior Recorded First Mortgage"). Such continuing charge and lien shall not be affected by any sale or transfer of a Lot, except that a sale or transfer of a Lot pursuant to a foreclosure of a Prior Recorded First Mortgage shall extinguish such continuing charge and lien.

(e) That no sale or transfer at foreclosure, or in lieu of foreclosure, shall relieve any Residence from liability for any assessment thereafter assessed.

(f) That all annual, special, Parcel, and specific assessments (together with interest thereon as provided in Section 4.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Residence owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in Section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Residence owned by him; provided, however, that such personal obligation for

delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

**4.02 Purpose of Assessments:** The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance, and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association, and the payment of all principal and interest when due on all debts owed by the Association.

**4.03 Accumulation of Funds Permitted:** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amounts of the annual assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purpose.

**4.04 Annual Assessment:**

(a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Residence shall be subject to a maximum annual assessment of three hundred and sixty dollars (\$360.00), as may be adjusted after December 31st, 1996, pursuant to Sections 4.04(b) and (c), below. In the event that the Commencement Date falls on a day other than January 1st, 1996, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year, and the "First Assessment Year" shall be the year 1996.

(b) Commencing with the First Assessment Year and continuing thereafter, without a vote of the membership, the annual assessment may be increased at any time and from time to time during each Assessment Year by a maximum percentage which is equal to the greater of (i) ten (10%) percent or (ii) the percentage increase, if any, in the Consumer Price Index for all Urban Consumers (the "CPI") as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the United State, All Items (1982 - 84 = 100) for the monthly period ending on the 31st day of the month of October which immediately proceeds each Assessment Year over the CPI for the monthly period ending on the 31st day of the month of October one year earlier. If such Consumer Price Index should cease to be published, the Association shall use the most comparable governmental index published in lieu thereof.

(c) Commencing with the First Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may, at any time, and, from time to time, be increased more than the amount permitted in Section 4.04(b), if such increase

is approved by a two-thirds (2/3) vote of the Members of the Association.

#### **4.05 Special and Parcel Assessments:**

(a) In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of a two-thirds (2/3) vote of the Members of the Association.

(b) The Association shall also be authorized to levy, in any Assessment Year and with such frequency as the Association shall deem necessary, Parcel assessments for the purpose of paying, in whole or in part, the cost of estimated expenses for the sole benefit of a particular Parcel, which Parcel assessments shall be allocated equally among the Residences in a Parcel.

#### **4.06 Assessment Procedure:**

(a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article IV. The annual assessment shall be due and payable on January 1 of each year (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article IV.

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(c) or Section 4.05 of this Article IV. Such written notice shall specify under which Section or Sections the Board will propose action.

**4.07 Uniform Rate of Assessment:** Both annual and special assessments must be fixed at a uniform rate for all Residences.

**4.08 Contribution by Declarant:** For so long as Declarant has the authority to appoint and remove directors and officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association, and the sum of annual, special, Parcel, and specific assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

**4.09 Effect of Non-Payment of Assessments:** Any assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of twelve (12%) percent per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Residence enforceable in accordance with the provisions of this Declaration.

**4.10 Certificate of Payment:** Upon written demand by an Owner, the Association shall, within a reasonable period of time, issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

**4.11 Approval by Declarant:** Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the Approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.

**4.12 Specific Assessments:** The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's rights to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of

items which are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitably among all of the Residences which are benefited according to the benefit received;

(b) Expenses incurred by the Association pursuant to Section 6.13 hereof;  
and

(c) Reasonable fines as may be imposed in accordance with terms of the Declaration and By-Laws.

## ARTICLE V

### ARCHITECTURAL CONTROL

#### 5.01 Architectural Control Committee - Creation and Composition:

(a) An Architectural Control Committee (the "ACC") shall be established consisting of not less than three (3) or more than five (5) individuals, provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all of the residences for all of the Lots in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association.

(b) Each initial member of the ACC shall be appointed for a term expiring on December 31st, 1998. Thereafter each member of the ACC shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall, subject to the provisions of Section 5.01(a), be filled by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Declarant while the Declarant has power to appoint members of the ACC pursuant to the provisions of Section 5.01(a) hereof (or by the Board if at the time the Board has the right to appoint members of the ACC).

**5.02 Purpose, Powers, and Duties of the ACC:** The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with



respect to topography, finished ground elevation, and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

**5.03 Officers, Subcommittees, and Compensation:** The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC shall be reimbursed by the Association for traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC.

**5.04 Operations of the ACC:**

**(a) Meetings:** The ACC shall hold regular meetings at least once every three (3) months or more often as may be established by the ACC. Special meetings may be called by the Chairman at any time, and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such

consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

**(b) Activities:** (i) The ACC shall adopt and promulgate the Design Standards described in Section 5.05 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of the Declaration.

(ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ACC on its own motion or to appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

#### **5.05 Design Standards:**

(a) The ACC shall, from time to time, adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purpose of:

(i) Governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of the Declaration;

(ii) Governing the procedure for such submission of plans and specifications;

(iii) Establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and

(iv) Assuring the conformity and harmony of external design and general quality of the Development.

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(b) The ACC shall make a published copy of its current Design Standards readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

**5.06 Submission of Plans and Specifications:** No Structure shall be commenced, erected, placed, moved onto, or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefore shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including, without being limited to:

(a) A site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, and driveways;

(b) A foundation plan;

(c) Exterior elevations of all proposed Structures and alterations to existing Structures; and

(d) Specification of materials, color scheme, and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures.

**5.07 Approval of Plans and Specifications:** Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

**5.08 Disapproval of Plans and Specifications:** The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

(a) The failure to include information in such plans and specifications as may have been reasonably requested;

(b) The failure of such plans or specifications to comply with this Declaration or the Design Standards; or

(c) Any other matter which, in the judgement of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards for the Development as set forth in the Design Standards or the Development-Wide Standard, or (ii) as to location to be incompatible with topography, finished ground elevation, or surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

**5.09 Obligation to Act:** The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the ACC to take action within thirty (30) days after receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

**5.10 Inspection Rights:** Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times, enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

**5.11 Violations:** If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association and the Board shall take appropriate measures to correct the violation; the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

**5.12 Certification of Compliance:**

(a) Upon completion of the installation, construction or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrance in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article; provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warrant to anyone the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment.

The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation or in accordance with every detail on the approved plans and specifications.

**5.13 Fees:** The ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and specifications and of inspections performed pursuant to Section 5.10. The fee shall be established from time to time by the ACC and published in the Design Standards.

**5.14 Non-Discrimination by ACC:** The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age, or national origin. Further, the ACC, in the exercise of its powers granted pursuant to this Declaration, shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

**5.15 Disclaimer as to ACC Approval:** Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or non-feasance arising out of or in

connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications.

## ARTICLE VI

### GENERAL COVENANTS AND RESTRICTIONS

**6.01 Application:** The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon. ,

**6.02 Restriction of Use:** Lots may be used for single-family residences only and for no other purpose provided that Declarant or any builder acquiring any Lots from Declarant may operate a Sales Office and/or Model Home on a Lot or Lots designated or approved by Declarant. No house or structure shall be erected or remodeled on any Lot and used as a Church, School or Kindergarten provided that in-house day care or baby sitting for six (6) children or less shall not be deemed to violate this provision. All County zoning restrictions applicable to this Property shall be observed. In the event of any conflict between any provision of such codes, regulations and the provision of such codes, regulations and restrictions and the provisions of the Declaration, the more restrictive provisions shall apply.

**6.03 Resubdivision of Property:** No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division, or subdivision. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter; and, provided, further, that the Owner of the Residence on such Lot shall be responsible for annual, Parcel, specific, and special assessments based upon the number of Lots combined into one Lot. Notwithstanding anything contained herein to the contrary, the Declarant reserves the right to replat any Lot still owned by the Declarant and shown upon recorded plats of the Community in order to modify the boundary lines and to take such other steps reasonably necessary or desirable to make such re-platted Lot suitable and fit as a building site, including, but not limited to, the relocation of easements, walkways, rights-of-way, roads, bridges, parks, recreational facilities, and other amenities to conform to the new boundaries of such replatted Lots; provided, however, that no Lot originally shown on a final recorded plat of the Property shall be reduced to a size more than ten percent (10%) smaller than the smallest Lot shown on such plat.

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

provided for in Section 6.05. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

**6.05 Landscaping:** No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Design Standards of the ACC. No living trees may be cut on any of the Lots in the Subdivision without express consent of the ACC.

**6.06 Temporary Buildings:** No temporary building, trailer, garage, or building under construction on any Lot shall be used, temporarily or permanently, as a residence except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefor approved by the ACC. Unless extended by Declarant, all temporary buildings, trailers, and sheds used by contractors or builders shall be removed at any time such contractor or builder has fewer than four (4) houses actively under construction for a period of thirty (30) days.

**6.07 Signs:**

(a) No signs whatsoever (including, but not limited to, commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefor, be installed, altered to maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

(i) Such signs as may be required by legal proceedings and for display of all building permits;

(ii) Not more than one "For Sale" sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and, provided, further, that if, at the time of any desired use of such sign, the Association is making "For Sale" signs available for the use of owners, the signs made available by the Association must be used;

(iii) Not more than one lot identification sign in accordance with plans and specification approval by the ACC; and

(iv) Directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC.

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC.

**6.08 Setbacks:** In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the

ACC. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

**6.09 Fences:** No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. No chain-link fences shall be erected or maintained on any Lot. Guidelines relating to the design, location and uses of fences and walls may be included in the the Design Standards of the ACC. The initial design standards shall be as follows; no fence or wall shall be erected, placed, or altered on any Lot nearer to any street than said minimum building setback lines unless the same be retaining walls of masonry construction which do not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced, or stabilized, except that this restriction shall not apply to fences or walls which have been approved by Declarant or ACC. The exposed part of retaining walls shall be made of clay brick, natural stone, stucco, railroad ties, or veneered with brick or natural stone. No fence shall be erected using materials such as hog or chicken wire, barbed wire or other similar material. Black or green vinyl coated chain link fences may be erected provided they are screened from street view by a wood privacy fence that is architecturally similar to the neighboring architecture, and shall including planting as an integral component. Street view shall mean that view from the front corner pin to other front corner pin and any Lot that is a corner Lot with two street views shall also apply pin to pint front or side if said side is a front street view side. Wood fences are permitted, finished side turned out, shall enclose rear yard only. No fence shall extend beyond rear corner of house. Declarant or ACC must approve any fence or wall prior to installation. Said approval shall include materials used and cosmetic features.

**6.10 Roads and Driveways:** No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards of the ACC.

**6.11 Clotheslines, Antennae, Etc.:** No clotheslines or exterior television or radio antenna or satellite dish or receiver or solar or other equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without the prior written approval by the ACC. No antenna shall be installed or used for the purpose of transmitting electronic signals. Notwithstanding the foregoing, standard 18" Digital Satellite TV Dishes shall be permitted on the roof or side of the house facing the rear yard.

**6.12 Garbage Cans and Woodpiles:** All clotheslines, equipment, garbage cans, woodpiles and solar equipment shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring Residences and streets, and may be maintained only the the rear yard of a Lot.

**6.13 Maintenance:** Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and



repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures, (ii) the seeding, watering and mowing of all lawns, and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curb of the street bordering said Lot. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

**6.14 Commercial and Recreational Vehicles and Trailers:** No commercial vehicle (other than passenger vehicles having a capacity of less than nine (9) passengers), house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat, or boat trailer, or like equipment shall be permitted on any Lot or within the right-of-way of any street in the Development on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided that RV's, trailers, trucks, school buses, boats, campers, boat trailers and utility trailers up to twenty-two (22) feet must be kept in the rear yard, but must not be lived in and shall be screened by a wood privacy fence equal to or greater than the height, width and length of item being screened to conceal them from view of neighboring lots and streets. No house trailers or mobile homes or other habitable motor vehicles of any kind, school buses, trucks or commercial vehicles over one ton capacity, shall not be kept, stored or parked overnight either on any street or any lot. No parking of any vehicle that is non-operative or under repair shall occur on any lot, driveway or street for more than any 24-hour period. Said vehicle must be removed by vehicle owner within said vehicle must be removed by vehicle owner within said 24-hour period; if not, Declarant or any Lot owner may remove said vehicle at owner's expense.

**6.15 Recreational Equipment:** Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC. Basketball goals may be placed adjacent to the driveway, but may not be attached to a Residence without the prior written approval of the ACC. No above-ground pool shall be allowed.

**6.16 Non-Discrimination:** No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any person because of race, color, religion, sex, age

or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

**6.17 Animals:** No agricultural animals may be kept on any Lot and no animals, including birds, insects, and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have been approved by the ACC.

**6.18 Solid Waste:**

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property or within the right-of-way of any street in the Development.

(b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property or within the right-of-way of any street in the Development.

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such a pick-up. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Design Standards.

**6.19 Nuisances:** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become an annoyance or nuisance to anyone in the Development.

**6.20 Residence-Construction Standards:** Until such time as the Architectural Control Committee has been formed and unless otherwise waived or modified by the ACC, the following standards shall control:

(a) No residential structure shall be erected on any Lot having less than 1,850 square feet of heatable space;

(b) Roofs shall have no less than 8-12 pitch. All roof shall be black

unless otherwise approved by the ACC;

(c) No building, including tool shed, storage facilities, and greenhouses shall be erected, or placed on any Lot or permitted to remain on said Lot until building plans, elevations, specifications of construction methods, with plans showing location of such building, have been approved in writing by Declarant or the ACC, as to the conformity and harmony of external finish, color, design and general quality with existing standards of the neighborhood, and as to location of building with respect to topography and finish ground elevations, which approval shall be at the sole discretion of Declarant. After final plans and specifications have been approved by Declarant, no changes may be made in said plans or specifications without the consent of the Declarant or ACC.

(d) All residence shall have either stucco, brick or stone fronts. Except that cantilevered fronts and wrap-around porches shall be subject to the design standards set by the ACC.

(e) No window air conditioning units shall be permitted.

(f) Declarant or ACC shall designate the type and color of mail boxes to be erected in the Subdivision.

(g) All front yards shall be sodded.

(h) All County zoning restrictions applicable to the Lots shall be observed. In the event of any conflict between any provision of such codes, regulations and the provisions of such codes, regulations and restrictions and the provision of this Declaration, the more restrictive provisions shall apply.

(i) No above the ground pools shall be permitted.

## ARTICLE VII

### EASEMENTS, ZONING, AND OTHER RESTRICTIONS

#### 7.01 Easements:

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns, for so long as the Declarant owns any Lot within the Development, the right to create perpetual easements in, on, over and under any part of the Property for any purpose which Declarant deems reasonably necessary for completing improvements or effecting repairs within the Development, including, by way of example, and not limitation, the following:

(i) The erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments and guy wires in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities;

(ii) The erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, retention ponds, irrigation systems, pipelines for supplying gas and water, and for any other public or quasi-public facility, service or function;

(iii) Slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;

(iv) The planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and

(v) The maintenance of all entry features and retention ponds for the Development.

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

**7.02 Easement Area:** The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.

**7.03 Entry:** The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area.

**7.04 Easements for Encroachment and Overhang:** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of any Structure constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the common property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

**7.05 Easement for Lake Maintenance:** Declarant hereby expressly reserves a

perpetual easement for the benefit of Declarant and its successors and assigns, across such portions of the Development, determined in the sole discretion of Declarant (or its successors and assigns), as are necessary to allow for the maintenance of lakes, lakebeds, and shorelines, if any, which are within the Development or which are made available for the use and enjoyment of the Owners within the Development. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the property adjacent to the lakes, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person or entity causing the damage at its sole expense. In order to allow the exercise of the rights created pursuant to this easement, no tree or Structure may be placed within twenty (20) feet of the line formed by the highest normal pool elevation of any lake unless otherwise approved by the ACC.

**7.06 Zoning and Private Restrictions:** None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

## ARTICLE VIII

### ENFORCEMENT

**8.01 Right of Enforcement:** This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner (ii) the Association, and (iii) each Owner, his heirs, devisees, legal representatives, successors and assigns.

**8.02 Right of Abatement:**

(a) Except where different notice provisions are provided in Sections 5.11 and 6.13, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Sections 5.11 and 6.13 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such

entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or twelve (12%) percent to be binding personal obligation of such Owner enforceable at law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgement or decree or by any other agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof, and (iii) any Prior Recorded First Mortgage on a Lot or Lots. Such lien shall not be affected by any sale or transfer of a Lot, except that sale or transfer of a Lot pursuant to a foreclosure of a Prior Recorded First Mortgage shall extinguish such lien.

**8.03 Specific Performance:** Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association, or any Owner to enforce the Restrictions by appropriate judicial proceeding or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform, any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

**8.04 Collection of Assessments and Enforcement of Lien:**

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney; To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Courthouse in Gwinnett County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Gwinnett County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in

fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and attorney-in-fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or its assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, legal representatives, devisees, successors, and assigns of such Owner, and that the conveyance to be made by the Association or its assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or its assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessments, interest, cost or other charge due, together with all costs and expenses of sale and fifteen (15%) percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law and any mortgagee of said Lot or Lots. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collections of said indebtedness provided by law.

(c) No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law or ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

**8.05 No Waiver:** The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective heirs, legal representative, devisees, successors, and assigns, to enforce any Restriction herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach, or as to any violation or breach occurring prior or subsequent thereto, or as to the same violation or breach by the Owner of any other Lot.

## ARTICLE IX

### DURATION AND AMENDMENT

**9.01 Duration:** This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Gwinnett County, Georgia, after which time this Declaration and Restrictions shall be automatically renewed for successive periods of ten (10) years; provided, however, that after the end of the said twenty (20) year period and during any ten (10) year

renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instruments executed by the proper Association officers and recorded in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of the Class A Members of the Association.

**9.02 Amendments by Declarant:** During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing, filed and recorded in the Deed Records of the Superior Court of Gwinnett County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees, if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if such amendment is necessary to enable any government agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

**9.03 Amendments by Association:** Amendments to this Declaration, other than those authorized by Section 9.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed



amendment is to be considered and shall be delivered to each Member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee, and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

## ARTICLE X

### ANNEXATION AND CONSTRUCTION AND SALE PERIOD

**10.01 Annexation:** Until December 31st, 2000, any portion of the additional real property described in Exhibit "C" attached hereto and made a part hereof may be annexed to the Property by the Declarant without the consent of the Class A Members. Provided, however, that all improvements on such additional real property shall be substantially complete before annexation. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Gwinnett County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or by filing an amendment to the Declaration which shall be executed by the Declarant and has been consented to by the owners of the real property to be annexed if any portion of such real property is owned by someone other than Declarant. After January 1st, 2001, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association.

**10.02 Construction and Sale Period:** Notwithstanding any provision contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, Design Standards, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided herein terminates, it shall be expressly permissible for Declarant and any builder or developer approved by

Declarant to maintain and carry on, upon such portion of the Development as Declarant may deem necessary, such facilities and activities as may reasonably be required by the Declarant and such builder in the Development, construction, and sales activities related to property subject to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Development; the right to tie into any portion of the Development with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; the right to carry on sales and promotional activities in the Development; and the right to construct and operate business offices, signs, construction trailers, material storage areas, model residences, off-street parking areas, and sales offices. Declarant and any such builder or developer may use residences or offices owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing any damage at its sole expense.

## ARTICLE XI

### MISCELLANEOUS

**11.01 No Reverter:** No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating possibility of reverter.

**11.02 Severability:** A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

**11.03 Headings:** The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

**11.04 Gender:** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

**11.05 Notices:** All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient if personally delivered or if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

Declarant:

Jack Brunson  
4625 Wheeler Bend Way  
Auburn, Georgia 30203

Owners:

Each Owner's address as registered with the Association in accordance with the By-Laws, or if no such address has been registered, at the Owner's last know address.

The Declarant reserves the right to change his address from time to time by filing an amendment to this Declaration specifying his new address in the Deed Records of Gwinnett County, Georgia.

Any written communication mailed in accordance with this Section 11.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

**11.06 No Liability:** Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration or any provision herein is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability. In addition, neither the Declarant nor the Association shall have any liability of any kind as a result of any failure to enforce any provision contained in this Declaration.

**11.07 Insurance:**

(a) At all times during the terms of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the state of Georgia with (i) fire, vandalism, malicious mischief and extended coverage in an amount adequate to cover the cost of replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof, and (ii) comprehensive general liability insurance covering all of the Common Property, including, without limitation, the operation, maintenance or use thereof and improvements and facilities thereon, for at least One Million Dollars (\$1,000,000.00) for bodily injury, including death and property damage, arising out of a single occurrence. Each such policy of insurance shall require that the certificate holders and insured by given thirty (30) days' prior written notice of any cancellation of such policies.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means

repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove directors, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Development in a neat and attractive condition until the Association establishes another use for said property.

(c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

(d) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time by either the Veterans Administration or Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.

(e) All insurance coverage required by the Association shall be written in the name of the Association as trustee for the benefit of the Association, the Owners and each such Owner's mortgagee. The Associations Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board, its manager, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be reduced in amount, cancelled, subjected to nonrenewal, invalidated, or suspended on account of the act or omission of any one (1) or more individual Owners;

(iv) that no policy may be reduced in amount, cancelled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Board to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Board, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) in no event shall the insurance coverage obtained and insured by the Association's Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance if and to the extent necessary to satisfy the requirements of applicable law.

(f) The Association shall obtain and maintain a blanket fidelity bond for all officers, directors, and employees of the Association and all other persons who handle, or are responsible for, funds of or administered by the Association. If the Association engages a management agent who has responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or administering the funds of the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the management agent at any time during the period of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots plus reserve funds. The bonds shall contain waivers by the issuer of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior notice to the Association.

**11.08 Variances:** Notwithstanding anything to the contrary contained herein, the Declarant or the Board of Directors of the Association or the designee of either of them shall be authorized to grant individual variances from any of the provisions of

this Declaration, the By-Laws, and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Development.

## ARTICLE XII

### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on Residences in the Development. The provisions of this Article apply to both this Declaration and to the by-laws, notwithstanding any other provisions contained therein.

#### **12.01 Special Mortgagee Provisions:**

(a) As used in this Section 12.01, the term "Eligible Holder" shall mean a holder, insurer or guarantor of a first mortgage on a Lot which has requested notice in accordance with the provisions of this Section 12.01 (b).

(b) A holder, insurer or guarantor of a first mortgage, upon written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), will be entitled to timely written notice of:

(i) Any proposed amendment of the Declaration effecting a change in (A) the boundaries of any Lot or the exclusive easement rights appertaining thereto; (B) the interests in the Common Property or the liability for common expenses appertaining thereto; (C) the number of votes in the Association appertaining to any Lot; or (D) the purposes to which any Lot or the Common Property are restricted;

(ii) any proposed termination of the administration of the Common Property pursuant to this Declaration;

(iii) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first mortgage held, insured or guaranteed by such Eligible Holder;

(iv) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first mortgage held by such Eligible Holder which remains uncured for a period of sixty (60) days;

(v) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(vi) any proposed action which would require the consent of a specified percentage of Eligible Holders, as specified herein; and

(vii) an annual financial statement, or audit if available, of the Association for the immediately preceding fiscal year, free of charge.

(c) To the extent permissible under the law of the State of Georgia, the following provisions shall apply:

(i) Any restoration or repair of the Common Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to mortgages held by such Eligible Holders are allocated, is obtained.

(ii) Any election to terminate the administration of the Common Property pursuant to this Declaration after substantial destruction or a substantial taking in condemnation of the Property must require the approval of the Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to mortgages held by such Eligible Holders are allocated.

(d) The following provisions do not apply to amendments to the constituent documents or termination of the Association pursuant to Section 12.01(c) hereof made as a result of destruction, damage, or condemnation, or to the addition of land pursuant to any plan of expansion or phased development previously approved by the Department of Housing and Urban Development ("H.U.D.") or the Veterans Administration ("V.A.") to the extent such approval is required by H.U.D. or the V.A.:

(i) The consent of Owners representing at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it holds any land subject to this Declaration, and the approval of the Eligible Holders of first mortgages on Lots to which at least sixty-seven (67%) percent of the votes of Lots subject to a mortgage appertain, shall be required to terminate the administration of the Property subject to this Declaration.

(ii) The consent of Owners representing at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it holds any land subject to this Declaration, and the approval of Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to a mortgage appertain, shall be required to materially amend any provisions of this Declaration, the By-Laws or the Articles of Incorporation to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

(A) Voting;

(B) Assessments, assessment liens or subordination of such liens;

(C) Reserves for maintenance, repair and replacement of the Common Property;

- (D) Insurance or fidelity bonds;
  - (E) Rights to use of the Common Property;
  - (F) Responsibility for maintenance and repair of the several portions of the Property;
  - (G) Expansion or contraction of the Property or the addition, annexation or withdrawal of land to or from the Property;
  - (H) Boundaries of any Lot;
  - (I) Convertibility of Lots into Common Property or of Common Property into Lots;
  - (J) Leasing of Lots;
  - (K) Imposition of any right of first refusal or similar restriction on the right of a Lot owner to sell, transfer, or otherwise convey his or her Lot;
  - (L) Establishment of self-management by the Association where professional management, if any, has been employed;
  - (M) The approval of Eligible Holders of first mortgages on Lots to which at least fifty-one (51%) percent of the votes of Lots subject to a mortgage appertain, shall be required to amend any provisions included in this Declaration, the By-Laws or the Articles of Incorporation which are for the express benefit of holders or insurers of first mortgages on Lots.
- (e) The provisions of this Section 12.01 shall not be construed to reduce the percentage vote that must be obtained from mortgagees of Lot Owners where a larger percentage vote is otherwise required by applicable law or in any other provision in the Declaration, the By-Laws or the Articles of Incorporation for any of the actions contained in this Section 12.01.

**12.02 Special FHLMC Provision:** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first mortgagees or at least two thirds (2/3) of the total Members of the Association entitled to vote thereon consent, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);



(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Residence;

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and Residences and of the Common Property (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**12.03 No Priority:** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**12.04 Notice to Association:** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Residence.

**12.05 Amendment By Board:** Should the Department of Housing and Urban Development ("H.U.D."), the Veterans Administration ("V.A."), the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**12.06 V.A. and H.U.D. APPROVAL :** As long as there is a Class B membership, the following actions shall require the prior approval of the V.A. so long as the V.A. is guaranteeing any mortgage in the Property and the prior approval of H.U.D. so long as H.U.D. is insuring any mortgage in the Property: Annexation of additional land to the Property, except for annexation by Declarant in accordance with Article X pursuant to a plan of annexation previously approved by the V.A., or H.U.D.; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation.

**12.07 Applicability of Article XII:** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

**12.08 Failure of Mortgagee to Respond:** Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the date of the Association's request.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed as of the day and year first above written.

Signed, sealed and delivered  
in presence of:

Diane R. Locklain  
Unofficial Witness

Jack Brunson (SEAL)  
JACK BRUNSON

Beverly B. Anderson  
Notary Public

Notarial Execution Date: 4-29-96

My Commission Expires: 3-20-98

The Association, by the execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Association's obligations under this Declaration of Covenants, Restrictions, and Easements.

IN WITNESS WHEREOF, the Association, acting through its duly authorized Officers, has caused this Declaration to be executed and sealed as of the 29th day of April, 1996.

Signed, Sealed and delivered  
in the presence of:

Diane R. Locklain  
Unofficial Witness

Beverly B. Anderson  
Notary Public

MAGNOLIA PLACE HOMEOWNERS ASSOCIATION, INC.

BY: Jack Brunson  
JACK BRUNSON, President

Notarial Execution Date: 4-29-96

My Commission Expires: 3-20-98

(CORPORATE SEAL)

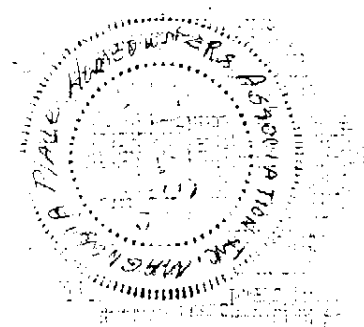


EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lots 171 and 182 of the 5th Land District, Gwinnett County, Georgia, as shown and delineated on plat of survey for Jack Brunson by Ringo & Sadler dated September 1, 1995, and being more particularly described as follows:

BEGINNING at the intersection of the original line dividing Land Lots 182 and 171 and the northern right-of-way of New Hope Road (80-foot right-of-way); thence running northwesterly along said right-of-way, following the curvature thereof, along an arc to the right having a radius of 2,446.55 feet, an arc distance of 54.57 feet, to an iron pin, said pin being North 73 degrees 16 minutes 31 seconds West, a distance of 54.57 feet, from the previous iron pin; thence running North 72 degrees 38 minutes 09 seconds West along said right-of-way, a distance of 299.21 feet to an iron pin; thence running North 70 degrees 36 minutes 46 seconds West, a distance of 345.22 feet to an iron pin; thence running North 08 degrees 40 minutes 12 seconds West, a distance of 1,240.50 feet to an iron pin on the original line dividing Land Lots 171 and 182; thence running South 29 degrees 50 minutes 46 seconds East along said Land Lot Line a distance of 477.57 feet to an iron pin; thence running South 30 degrees 43 minutes 05 seconds East along said Land Lot Line, a distance of 311.00 feet to an iron pin; running thence North 60 degrees 04 minutes 08 seconds East, 820 feet to a point; running thence South 14 degrees 34 minutes 10 seconds East, 188.74 feet to a point; running thence South 20 degrees 19 minutes 50 seconds East, 50.24 feet to a point; running thence South 02 degrees 42 minutes 52 seconds East, 210 feet to a point; running thence North 57 degrees 05 minutes 01 seconds West, 40 feet to a point; running thence North 88 degrees 26 minutes 09 seconds West, 120 feet to a point; running thence South 57 degrees 51 minutes 59 seconds West, 130.10 feet to a point; running thence South 60 degrees 04 minutes 08 seconds West, 175 feet to a point; running thence South 30 degrees 51 minutes 05 seconds East, 275.37 feet to a point; running thence South 60 degrees 04 minutes 20 seconds West, 236.31 feet to a point on the Land Lot Line common to Land Lot 182 and Land Lot 171 of said County and District; running thence South 30 degrees 42 minutes 30 seconds East along said Land Lot Line 288.59 feet to the POINT OF BEGINNING.

EXHIBIT "B"

## BY-LAWS OF

## MAGNOLIA PLACE HOMEOWNERS ASSOCIATION, INC.

A Nonprofit Corporation  
(the "Association")

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These By-Laws are the By-Laws of the Association, which is the Corporation created by Articles of Incorporation filed with the Secretary of State of Georgia on April 30th, 1996. (The "Articles of Incorporation"). All references herein to the "Declaration" shall refer to that certain Declaration re Magnolia Place Subdivision and MAGNOLIA PLACE HOMEOWNERS ASSOCIATION, INC. recorded at Deed Book \_\_\_\_\_, Pages \_\_\_\_\_, Gwinnett County, Georgia Records, and all capitalized under defined terms used herein shall have the meanings assigned thereto by the Declaration unless the context clearly otherwise requires. The "Subdivision" referred to herein shall mean Magnolia Place Subdivision, Gwinnett County, Georgia.

ARTICLE I

## Offices

Section 1. Registered Office. The registered office of the Association shall be located at 4625 Wheeler Bend Way, Auburn, Georgia 30203, or such other office as the Board of Directors shall select.

Section 2. Other Offices. The Association may also have offices at such other places, both within and without the State of Georgia, as the Board of Directors may, from time to time, determine, or the business of the Association may make appropriate.

ARTICLE II

## Meetings of Members

Section 1. Location of Meetings. All meetings of members shall be held

at such place, within or without the State of Georgia, as may be, from time to time, fixed by the Board of Directors, or as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof, or at the Association's registered office if not so fixed or stated.

Section 2. Annual Meetings. Annual meetings of members shall be held on the second Tuesday of March in each year, or if such day is a legal holiday, then on the next following Tuesday. At each such meeting, the members shall, by a majority vote, elect a Board of Directors, and, by majority vote, transact such other business as may be properly brought before the meeting.

Section 3. Special Meetings. Unless otherwise prescribed by law, by the Declaration, or by the Articles of Incorporation, special meetings of members may be called for any purpose or purposes by the President, the Board of Directors, the holders of \_\_\_\_\_ (\_\_\_\_\_% ) percent of the outstanding voting interest in the Association, or such other officers or persons as may at the time be provided in the Articles of Incorporation, or in the event there are no officers or directors, then by any member.

Section 4. Notice of Meetings. Written notice of a meeting stating the place, day and hour of meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than three (3) nor more than ten (10) days before the date of the meeting.

Section 5. Business of Meetings. At an annual meeting of members, any matter relating to the affairs of the Association, whether or not stated in the notice of meeting, may be brought up for action (unless otherwise provided by law). Unless a majority of the members of this Association entitled to vote are present and specifically agree thereto in writing, no matter that was not stated

in the notice of a special meeting of members shall be brought up for action at such a special meeting.

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Section 6. Quorum. The holders of more than \_\_\_\_\_ (10 %) percent of the interests entitled to vote, present in person, or by proxy, shall constitute a quorum at all meetings of members for the transaction of business except as otherwise provided by law. If a quorum shall not be present, the members present in person or by proxy shall have power to adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At such reconvened meeting, any business may be transacted which might have been transacted at the adjourned meeting.

Section 7. Majority. If a quorum is present, the affirmative vote of a majority of the members entitled to vote and represented at the meeting shall be the act of the members, except that unanimous vote of all members entitled to vote and represented at the meeting shall be required to approve matters at a special meeting of members with respect to which matters no notice had been given in the notice of such special meeting.

Section 8. Voting.

(a) Anything herein to the contrary notwithstanding, all voting contemplated by these By-Laws shall be governed by the Declaration and any reference herein to the voting rights of any member shall be governed by the relevant provisions of the Declaration.

(b) To the extent not in conflict with the Declaration, from and after the date the Class A members become entitled to vote, the following provisions shall apply. Each Unit shall be entitled to one vote on each matter submitted to a vote at a meeting of members. A member may vote either in person

or by a proxy executed in writing by the member or by his duly authorized attorney-in-fact. Any proxy must be in writing, signed by the Unit Owner (or Owners as provided below) and submitted to the President prior to the meeting. If any Unit is owned by a corporation, partnership, trustee or other entity or by a group of owners in any form of joint tenancy, the vote allocated to such Unit shall be exercisable by such Owner or Owners only as provided by the Declaration, as amended from time to time. Unless the holder of a valid proxy, a mere lessee of any Unit shall have no right to vote and shall, in no respect, be deemed a member of the Association. In all elections for directors, every member entitled to vote shall have the right to vote, in person or by proxy, the number of units owned by him for as many persons as there are directors to be elected and for whose election he has the right to vote but members may not cumulate their votes.

Section 9. Action by Consent. Any action required or permitted to be taken at a meeting of members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by the holders of all interests entitled to vote with respect to the subject matter thereof.

### ARTICLE III

#### Directors

Section 1. Number; Election. The number of Directors shall be one (1). Directors must be over age eighteen (18), but need not be (i) residents of the State of Georgia (ii) Owners of Units or (iii) residents of the Subdivision. The Directors, other than the first Board of Directors, shall be elected at the annual meeting of members, and each Director shall serve until the next succeeding annual meeting and until his successor shall have been elected and qualified. The first Board of Directors shall hold office until the first annual meeting of members.

Section 2. **Vacancies.** Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors even though the remaining Directors may constitute less than a quorum of the Board of Directors. A Director elected to fill a vacancy shall be elected for the unexpired portion of the term of his predecessor in office.

Any directorship to be filled by reason of an increase in the number of Directors may be filled by the affirmative vote of a majority of the remaining Directors present at a meeting even though less than a quorum of the Board of Directors is present. A Director elected to fill a newly created directorship shall serve until the next election of Directors by the members and the election and qualification of his successor.

Section 3. **Powers.** The business and affairs of the Association shall be managed by its Board of Directors which may exercise all such powers of the Association and do all such lawful acts and things as are not by law, the Declaration, the Articles of Incorporation or these By-Laws directed or required to be exercised or done by the members.

Section 4. **Compensation of Directors.** The Board of Directors shall receive no compensation, except as provided in Section 5 of this Article 3.

Section 5. **Indemnification.** As an inducement to the officers and directors of the Association to act on the Association's behalf, the Association shall, out of its general funds, or by special assessment, indemnify and hold harmless, the Developer and each officer or director acting in accordance with these By-Laws and the Declaration, including without limitation, all actions taken in connection with the levying, collection and enforcement of assessments. All such indemnification shall be paid upon written request of the Developer or such



officer or director setting forth in reasonable detail the reason for such indemnification, which request shall be given to each of the officers of the Association.

#### **ARTICLE IV**

##### **Meetings of the Board of Directors**

Section 1. **Location of Meetings.** Meetings of the Board of Directors, regular or special, may be held either within or without the State of Georgia.

Section 2. **First Meeting of New Board.** The first meeting of each newly elected Board of Directors shall be held immediately following the annual meeting of members at the place where such annual meeting is held. Such meeting shall be designated as the annual meeting of the Board of Directors, and no notice of such meeting shall be necessary to the newly elected Directors in order legally to constitute the meeting, provided a quorum shall be present. Alternatively, the new Board of Directors may convene at such place and time as shall be fixed by the consent in writing of all its members.

Section 3. **Regular Meetings.** Regular meetings of the Board of Directors may be held with such frequency and at such time and at such place as shall, from time to time, be determined by the Board. If the Board has so fixed the frequency, time and place of regular meetings, no notice thereof shall be necessary.

Section 4. **Special Meetings.** Special meetings of the Board of Directors may be called by the Chairman of the Board, by the President, or by any two Directors on three days' notice to each Director, in accordance with Article 6.

Section 5. **Notice of Meetings.** Notice of a meeting need not be given

to any Director who signs a waiver of notice either before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice thereof. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specific in the notice or waiver of notice of such meeting.

Section 6. Quorum. A majority of the Directors shall constitute a quorum for the transaction of business unless a greater number is required by law or by the Articles of Incorporation. If a quorum shall not be present at any meeting of the Directors, the Directors present may adjourn the meeting from time to time until a quorum shall be present, without notice of the time and place that the meeting will be reconvened other than announcement at the adjourned meeting.

Section 7. Majority. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by the Articles of Incorporation.

Section 8. Action by Consent. Any action required or permitted to be taken at a meeting of Directors, or a committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all Directors or all members of the committee, as the case may be, entitled to vote with respect to the subject matter thereof. Such consent shall be filed with the minutes of the proceedings of the Board or the committee.

## ARTICLE V

### Notices

Section 1. Required Notices. Whenever, under the provisions of applicable law, the Articles of Incorporation or these By-Laws, any notice is

required to be given to any Director or member, such notice shall be given in writing and delivered either personally or by first class mail or telegram, addressed to such Director or member, at his address as it appears on the records of the Association. If mailed, such notice shall be deemed to be delivered five (5) business days after it was deposited in the United States mail with first class postage prepaid. Notices given by any other means shall be deemed delivered when received by the addressee.

Section 2. Waiver of Notice. Whenever, under the provisions of applicable law, the Articles of Incorporation or these By-Laws, any notice is required to be given to any Director or member, a written waiver thereof signed by the person or persons entitled to such notice, either before or after the time stated therein, shall be deemed the equivalent to the giving of such notice.

#### ARTICLE VI

##### Officers

Section 1. Offices; Election; Term. The officers of the Association shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer. Except as otherwise provided by law, any person may hold more than one office. Officers shall be elected at the first meeting of the Board of Directors following the annual meeting of members and shall hold offices until their respective successors have been elected and shall have qualified, and if the Board of Directors shall fail in any year or years to meet and elect officers, the officers last elected shall continue to hold office. No officer need be (i) a member of the Board of Directors (ii) a resident of the State of Georgia, (iii) an Owner of any Unit, or (iv) a resident of the Subdivision.

Section 2. Additional Officers and Agents. The Board of Directors may

appoint such other officers, including vice presidents, assistant secretaries and assistant treasurers, and agents as it shall deem necessary. Such officers and agents shall hold their respective offices for such terms and shall exercise such powers and perform such duties as shall be determined, from time to time, by the Board of Directors.

Section 3. Salaries. The officers shall receive no compensation except as provided in Section 5 of Article 3.

Section 4. Removal; Vacancies. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board at any time with or without cause by the affirmative vote of a majority of the Board of Directors. Officers and agents otherwise elected or appointed may be removed in accordance with Georgia law. Any vacancy occurring in any office of the Association may be filled by the Board of Directors.

Section 5. The President. The President shall be the chief executive officer of the Association, shall preside at all meetings of members and the Board of Directors, shall have general and active management of the business of the Association and shall see that all orders and resolutions of the Board of Directors are carried into effect. He or she shall have the authority and power to execute, on behalf of the Association, bonds, mortgages, notes, contracts, leases and other documents and instruments (whether or not requiring a seal of the Association) except where such documents or instruments are required by law to be otherwise signed and executed and except the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Association.

Section 6. Vice President. The Vice President, or if there shall be

more than one, the Vice Presidents, in the order determined by the Board of Directors, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors may, from time to time, prescribe.

Section 7. Secretary and Assistant Secretaries. The Secretary shall attend all meeting of members and the Board of Directors and shall record the proceedings of such meetings in books to be kept for that purpose, and shall perform like duties for the committees of Directors when required. He or she shall give, or cause to be given, notice of all meetings of members and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision he or she shall be. He or she shall have custody of the Corporate Seal of the Association and he or she shall have authority to affix it to any instrument requiring it and when so affixed, it may be attested by his or her signature. The Assistant Secretary, or if there be more than one, the Assistant Secretaries, in the order determined by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers (including affixation of the Corporate Seal) of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may, from time to time, prescribe.

Section 8. Treasurer and Assistant Treasurers. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association and shall deposit all monies and other valuable effects in the name

and to the credit of the Association in such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Association as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Association. If required by the Board of Directors, he or she shall give the Association a bond in such sum and with surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Association, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Association. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers, in the order determined by the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may, from time to time, prescribe.

#### ARTICLE VII

##### General Provisions

Section 1. Checks. All checks, drafts, demands for money and notes of the Association shall be signed by such officer or officers or such other person or persons as the Board of Directors may, from time to time, designate.

Section 2. Fiscal Year. The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

Section 3. Seal. The Association shall have a corporate seal which shall have inscribed thereon the name of the Association, the year of its organization and the words "Corporate Seal-Georgia". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced. The Board of Directors may, from time to time, authorize any other officer to affix the seal of the Association and to attest to such affixation by his or her signature.

Section 4. Books and Records. The Association shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of its members, Board of Directors, and committees of Directors.

Not later than four (4) months after the close of each fiscal year, and in any case, prior to the next annual meeting of members, the Association shall prepare a balance sheet showing, in reasonable detail, the financial condition of the Association as of the close of its preceding fiscal year, and a profit and loss statement showing the results of its operations during such fiscal year. Upon written request, the Association promptly shall mail to any member of record, a copy of such balance sheet and profit and loss statement.

Section 5. By-Law Amendments. These By-Laws may be altered, amended, or repealed or new By-Laws may be adopted by the Board of Directors or the members.

Section 6. Conflict. In the event of any conflict between these By-Laws and the following, the controlling language shall be found in: the laws of the State of Georgia, the Declaration or the Articles of Incorporation, in the order listed.

EXHIBIT "C"

All that tract or parcel of land lying and being in Land Lots 171 and 182 of the 5th Land District, Gwinnett County, Georgia, as shown and delineated on plat of survey for Jack Brunson by Ringo & Sadler dated September 1, 1995, and being more particularly described as follows:

BEGINNING at the intersection of the original line dividing Land Lots 182 and 171 and the northern right-of-way of New Hope Road (80-foot right-of-way); thence running northwesterly along said right-of-way, following the curvature thereof, along an arc to the right having a radius of 2,446.55 feet, an arc distance of 54.57 feet, to an iron pin, said pin being North 73 degrees 16 minutes 31 seconds West, a distance of 54.57 feet, from the previous iron pin; thence running North 72 degrees 38 minutes 09 seconds West along said right-of-way, a distance of 299.21 feet to an iron pin; thence running North 70 degrees 36 minutes 46 seconds West, a distance of 345.22 feet to an iron pin; thence running North 08 degrees 40 minutes 12 seconds West, a distance of 1,240.50 feet to an iron pin on the original line dividing Land Lots 171 and 182; thence running South 29 degrees 50 minutes 46 seconds East along said Land Lot Line a distance of 477.57 feet to an iron pin; thence running South 30 degrees 43 minutes 05 seconds East along said Land Lot Line, a distance of 311.00 feet to an iron pin; thence running North 60 degrees 04 minutes 08 seconds East a distance of 3,360.72 feet to an iron pin; thence running South 29 degrees 52 minutes 24 seconds East a distance of 670.38 feet to an iron pin; thence running South 53 degrees 20 minutes 02 seconds West a distance of 1,319.35 feet to an iron pin; thence running South 54 degrees 44 minutes 40 seconds West a distance of 1,085.36 feet to an iron pin; thence running South 09 degrees 04 minutes 32 seconds West a distance of 554.85 feet to an iron pin on the northern right-of-way of New Hope Road; thence running North 87 degrees 18 minutes 30 seconds West along said right-of-way a distance of 197.57 feet to an iron pin; thence running northwesterly along said right-of-way, following the curvature thereof, a distance of 301.38 feet along an arc to the right having a radius of 2,446.55 feet to an iron pin, said pin being North 83 degrees 46 minutes 46 seconds West, a distance of 301.19 feet from the previous iron pin; thence leaving said right-of-way and running North 10 degrees 14 minutes 06 seconds West a distance of 501.81 feet to an iron pin; thence running South 60 degrees 04 minutes 20 seconds East a distance of 371.31 feet to an iron pin on the original line dividing Land Lots 171 and 182; thence running South 30 degrees 42 minutes 36 seconds East along said Land Lot line a distance of 288.59 feet to an iron pin on the northern right-of-way of New Hope Road, the place or point of beginning.